Better Regulation in Europe
HIGHLIGHTS

OECD

Foreword

The OECD Review of Better Regulation in Europe is a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in the 15 original member states of the European Union (EU), including trends in their development, and to identify gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The reviews were conducted in three groups. The first group of Denmark, the Netherlands, Portugal and the United Kingdom were published in May 2009, the second group of Belgium, Finland, France, Germany, Spain and Sweden in mid-2010. Austria, Ireland and Luxembourg were puiblished in the second half of 2010.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process, (Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews) and to find out what has happened in respect of the recommendations made at the time.

The completed reviews have been used to inform the development of a synthesis report, *Regulatory Policy and the Road to Sustainable Growth*, which also takes into account the experiences of other OECD countries. This is an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.

This highlights package contains the assessment and recommendations from the 13 countires reviewed so far.

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Better Regulation in Europe: Austria - *Executive Summary*

Economic context and drivers of Better Regulation

Austria has one of the higher rates of GDP per capita levels in Europe. Like other OECD countries, it has however, been challenged by the effects of the economic and fiscal crisis. The Austrian government has improved its processes for strategic planning of public expenditure through budget reforms to set explicit performance targets for all key public services to facilitate the assessment of the costs of public activities against their social benefits and lead to efficient programme design. This output based budgeting will be enforced from 2013. In addition, strategies focused on reducing the administrative burdens on business and citizens are intended to improve the efficiency of the public sector. However, the OECD Economic Review (OECD 2009) also identified that, in the long-term, structural reforms in product and labour markets held the potential to boost output, improve trend growth and raise average per capita income levels. It encouraged an assessment of the impacts of prevailing regulations on cost, productivity and price outcomes in specific areas to identify the resulting impacts on potential supply and employment, and for targeted regulatory reforms to close these gaps. A policy goal of Better Regulation is ensuring that regulation promotes entrepreneurship and a competitive private sector, and achieves policy objectives at least cost to society. This at least points to the potential for Better Regulation strategies to improve the competitiveness of the economy through, for example, improved *ex ante* and *ex post* review of the effectiveness of regulation.

The public governance context for Better Regulation

The federal structure and competences across the levels of government

Austria is a federal republic with some direct democratic features. It is based on the principles of a democratic republic (the law emanates from the people, it has an elected Head of State). Austria is a federal state and constitutional state (the administration of the State is carried out solely on the basis of laws). The fundamental rights and rights of personal liberty guaranteed in the Federal Constitution of 1920 were already incorporated in the Basic Law of the State in 1867.

The Austrian federal administrative structure consists of a four-tiered system comprising the federal government, the federal states (*Länder*), districts and municipalities. All political institutions established by the constitution are elected. Direct elections are held for the National Council (*Nationalrat*), the Federal President and the nine state parliaments (*Landtage*) and of municipal Mayors.

A number of instruments of direct democracy are used at the Federal and *Länder* level:

- *Referendum* – Introduced in 1972, referenda may be held on a law adopted by parliament. Their result is binding on the legislator.
- *Petition for a referendum* – A petition for a referendum differs from an actual referendum in that it involves collecting signatures. If a petition collects a minimum of 100 000 signatures, the National Council must take up the issue. However, it is not compelled to legislate on it. A petition therefore has no direct repercussions, but is mainly a political signal. It was introduced in 1973.
- *Consultations* – A consultation is held if the issue is of fundamental importance and concerns Austria as a whole, and the National Council decides to hold the consultation based on a motion by its members or the Federal Government.

The Federal Constitutional Law contains an exhaustive list of the competences conferred on the

Federation, whereas the competences of the states are established by a general clause. The latter states that the *Länder* have the competence in a matter unless the Constitution expressly assigns it to the federal level. Overall, many legislative competences are conferred on the federal level while the *Länder* often play an implementing role, to the extent that Austria sometimes is described as a "centralised federal state".

The Federal Constitution distinguishes four general types of competence:

- Both legislation and execution are the responsibility of the Federation (Article 10 of the Federal Constitution).
- Legislation is the responsibility of the Federation, execution of the States (Article 11 of the Federal Constitution).
- The Federation is responsible for legislative principles, the States for translating these principles into law and executing them.
- Both legislation and execution are the responsibility of the States (Article 15 of the Federal Constitution).

An overlapping of rule-making responsibilities is not legally possible, because the allocation of the various powers is understood to be exclusive. This means that an area is exclusively and unambiguously assigned to the competence either of the Federation or of the *Länder*. According to the Austrian Constitutional Law, it is unimaginable that both these levels are competent in a specific area. However, this does not remove the possibility of dispute over the competence among the federal government or *Länder*. In cases of dispute the Constitutional Court determines at the application of the federal government or *Länder* whether an act of legislation or execution falls into the competence of the Federation or the *Länder*.

The Austrian political system has been classified as an extreme case of *consociational* democracy and neo-corporatism (Schmitter/Lehmbruch 1979). While the latter term describes the particularly intertwined relationship of key stakeholders organisations (the Social Partners) in the political, economic and social life of the republic, the first term refers to the dominant position held by the two largest parties of in the political system of the country. The conservative Austrian People's Party (ÖVP) and the Austrian Social Democratic Party (SPÖ) have formed most of the governing coalitions (based on the "historic compromise") and until the 1980s they have accounted for more than 80% of the electoral votes. A relative exception occurred during the period of the conservative government of the ÖVP and the Freedom Party (FPÖ) (2000-06), which moved in the direction of a more conflict oriented system where the importance of the social partnership diminished.

Source: Reponses of the Austrian Government to the OECD questionnaire; Federal Chancellery (2006;2007a); EUI (2008;2009).

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

Better Regulation has successfully incorporated administrative reforms directed at improving administrative efficiency. Austria has an established history in promoting administrative reforms of which the programme of administrative burden reduction and e-Government are the most recent and prominent. In this context, the main driver of the Better Regulation programme is the goal of improving public sector efficiency. There appears to be a strong appreciation of the potential for administrative burden reduction and e-Government to reduce the costs of government on citizens and business as well as to reduce the incidence of unnecessary costs of government activities on the budget. In support of this, a comprehensive programme of budget reform commencing in 2013 will place greater incentives on ministries to plan and manage their use of resources against government priorities. The Austrian federal government's administrative burden reduction programme has a number of strengths and appears to be on course to deliver the expected benefits. E-Government

initiatives in particular have led to comparatively remarkable achievements. Over the past years, steady progress has been made to diffuse ICT to support administrative reform.

An emphasis on administrative efficiency is important, but it tends to narrow the conception of the potential for Better Regulation to improve the welfare of citizens and businesses. The main aim of administrative burden reduction programmes is lower administrative costs for companies and citizens principally brought about through a reduction in information obligations, and the budget reforms have significant potential to deliver programme efficiencies. This is an important, but limited objective. The broader perspective of better regulation, which seeks to ensure that regulations are effective and efficient and achieve public policy goals efficiently and effectively, cannot be fully addressed by burden reduction programmes. It requires a broader set of initiatives integrating Better Regulation with the design, implementation and review of new and existing regulation, including a fully fledged impact assessment process, a proactive and integrated policy for efficient implementation and enforcement of legislation, effective processes for public consultation and the integration of multilevel (*Länder* and EU) regulatory management into the policy.

The economic and competitiveness potential of Better Regulation as well as its potential to contribute to sustainable development is, as a result, not being fully exploited. The relative failure to define Better Regulation in broader terms means that there is a lack of focus on the potential economic and competitiveness benefits which it could deliver, and the broader dimensions of sustainable reform. In Austria the links between administrative reform, public sector efficiency and more efficient systems of federalism and fiscal policy are all clearly articulated in policy arrangements. Better regulation has a role in promoting these goals but should be viewed as a strategy in its own right.

There are significant potential economic opportunities for Austria through improved regulatory management, in particular competition assessment and promoting productivity enhancement in the economy. The OECD Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria (OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading arrangements (OECD 2009:45). The performance of Austria's internal market is thus likely to be affected by the absence of a well conceived Better Regulation strategy. There are also likely to be opportunities for unlocking productivity gains through an assessment of restrictions on competition in the services sector. It is in Austria's interest to examine how to apply Better Regulation strategies to consider and identify these opportunities.

There is no clear expression of political support for Better Regulation which can establish its potential to deliver economic and competitiveness advantages, and no overarching strategy. The current imperative for Better Regulation appears to come from outside the Austrian administration from the Lisbon agenda of the EU. It is not driven from within Austria, by the political level within the executive, or by Parliament. In discussions with Austrian officials, the OECD review team noted no emphasis on competitiveness as a driver of Better Regulation initiatives. This raises the question as to whether there is an adequate allocation of resources within government dedicated to administrative reform versus initiatives for economic reform. To be effective, a "whole-of-government" policy on Better Regulation requires support at the highest political levels and has to be communicated to stakeholders. But there is, as yet, no overarching strategy for promoting the full potential of Better Regulation initiatives, and no broad policy statement on Better Regulation in the Austrian administration. The Ministry of Finance takes the lead on the administrative efficiency and administrative burden reduction goals and initiatives. The Legal Service of the Federal Chancellery has a broader perspective on legal quality. The production of the Better Regulation Handbook reflects a valuable step in promoting the Better Regulation initiative. But no Better Regulation champion has yet emerged.

The development of an overarching strategy on Better Regulation with strong political support would require a consensual approach and strong communication internally and externally. The elements of Better Regulation that are in place appear to be well understood, however the gap in understanding the potential of Better Regulation has to be addressed internally. Officials need to be made aware that the current emphasis in their activities is too focussed (as it also is in many other EU countries) on administrative burden reduction and other efficiency measures, at the expense of the potential for impact assessment, and other key aspects of effective regulatory governance. External communication and debate will also be needed. It is interesting that there is no broader public debate of the merits of better regulation.

The budget reforms can also be a vehicle for promoting better regulation. The full implementation in 2013 of the Austrian federal budget reforms will integrate the existing procedures for the *ex ante* assessment of the financial consequences of government regulation and projects on the budget and the administrative burdens on citizens and businesses. These assessments are planned to form an integral part of the future impact assessment framework. To the extent that they encompass an assessment of the broader economic impact of regulations, and are not confined to the impacts on the public sector or administrative burdens, the impact assessment initiatives proposed to be implemented under the federal budget reforms can be used to provide a strong foundation for advancing the broader Better Regulation strategy.

The Austrian government has successfully promoted the merits of its administrative burden reduction programme across government and its budget reforms. The initiatives in relation to the administrative burden reduction programme, the budget reform programme and the e-Government programme are all well publicised and appear to be well understood across government. For the achievement of these programmes, there was explicit institutional restructuring (for example, the establishment of the Federal Chief Information Officer, ICT Strategic Unit for e-Government; and the dedicated unit on administrative burden reduction for business in the Ministry of Finance). This involved the deployment of new resources and training and intense interface with stakeholders (notably chambers of commerce) in the design and implementation of the programmes, as well as to diffuse information on the initiatives and its intended outcomes. In addition, the Council of Ministers is currently considering the elaboration of an overall and integrated Better Regulation strategy "in and for Austria".

In general however, only single elements of the Better Regulation programme policy are being communicated. In the absence of an integrated strategy on better regulation, there is no basis for an overarching communication programme to promote its merits. This also means that some elements that contribute to better regulation, such as Austria's e-Government activities and the budget reforms may not be understood as an enabler of Better Regulation as this is not their primary purpose.

Austria has the facility for comprehensive programme and policy evaluation and the capacity to introduce sustained reforms. However, because no explicit regulatory policy yet exists in Austria, comprehensive reviews of the strategy and its outcomes have not been carried out. The individual elements of the Better Regulation agenda have been subject to forms of *ex post* evaluation. Of these, the relatively institutionalised forms are the reviews of public consultation practices, and the administrative burden reduction strategy by the Austrian Court of Audit.

The use of ICT and e-Government systems is well advanced in Austria and could become an even stronger enabler of Better Regulation. Austria has well-developed e-Government systems for Better Regulation with strong links to other aspects of regulatory policy; for example the drafting of legislation within the e-Law system and the use of the electronic administrative burdens calculator and the business portal. However, there appears to be unrealised potential for synergies.

There would be merit in examining the extent to which the e-Law process can be enhanced to enable public consultation on the development of legislation. The e-Law making process might also help in mainstreaming Better Regulation and facilitating a wider focus such as legal quality and

integrated impact assessments for new legislation. E-Government in Austria has been led to a certain extent by central co-ordination and steer. However, there also appears to be examples where the benefits of and the knowledge created within the policy field are not shared across the administration, arguing for further initiatives to share best practice.

Institutional capacities for Better Regulation

Within the Austrian administration there is a highly professional administration with a clear focus on administrative efficiency. The Austrian administration relies upon the efficient operation of institutions that operate with a high degree of autonomy to deliver their own policy agenda. Effective administrative relationships follow from established modes of operation which tend to be focussed on reducing administrative costs and promoting the quality of legal drafting. The absence of hierarchy in the executive and the principle of unanimity in the Council of Ministers mean that no single ministry has significant institutional leverage to impose an overarching policy on Better Regulation across the administration. While this creates potential opportunities for fruitful competition and internal benchmarking, it can also mean that good initiatives and practices which develop within agencies are not necessarily diffused across the government.

Whilst there is no specific institutional ownership of the Better Regulation agenda in Austria, three entities (the Federal Chancellery, the Finance ministry and the Court of Audit) currently play a key role which needs to be reinforced. Responsibilities and capacities for Better regulation are shared across the Austrian administration. This appears to have had the effect of making it difficult to establish accountability for Better Regulation and has undermined the organisational focus, attention to and resources for Better Regulation initiatives. However, the Federal Chancellery, the Ministry of Economy, Family and Youth, the Ministry of Finance and the Court of Audit are the existing basic structural elements on the institutional map of Better Regulation in Austria. Each of these institutions is engaged in important roles to promote the quality of rule-making processes and improve the design of regulatory proposals. The Federal Chancellery currently gives guidance on legal quality to other actors within the administration. It has the most comprehensive perspective on better regulation, but currently does not have the institutional leverage to enforce the adoption of a Better Regulation policy across the administration, as the role of the Chancellor is primus inter pares with no authority to set binding policy guidelines. The Ministry of Finance does not claim overall responsibility for better regulation. It has a strong focus on budgetary consequences and public sector efficiency. It monitors the delivery of the administrative burden reduction programme and provides the guidelines and tools to assess financial impacts on the budget. This is supported by the Court of Audit which oversees that the guidelines for the calculation of administrative costs have been followed, but does not extend its analysis to an assessment of the quality of the economic analysis supporting a regulatory proposal. Improvements to the effectiveness of Better Regulation strategies could be expected to come from strengthening co-operation between these institutions.

A stronger gatekeeper function is essential to ensure that key Better Regulation policies, such as consultation and impact assessment, are carried out to minimum standards. A particularly important function is oversight of the Regulatory Impact Assessment process. This is needed to ensure that the analysis of the economic, social and environmental costs as well as benefits of regulatory proposals have been given thorough consideration. This requires staff trained in specific skills as well as the authority to challenge the adequacy of assessments, either directly with rule-making bodies, or by raising awareness of the quality of the assessments with decision makers, or possibly by publishing information for public consumption. The aim is to provide an incentive for proponents of regulation to undertake an early and thorough assessment of the implications of regulatory proposals and to consider any possible, more efficient, alternatives to regulation.

A further objective should be to identify and disseminate the good practices that are currently being undertaken by ministries, and to champion good ideas. For example, the OECD mission heard of commercial innovation by the Ministry of Economy, Family and Youth to make Austrian government services more competitive relative to other EU countries in the field of assessing

import/export licences. The competition analysis that underpins this type of innovation should be captured as it could be transferable to other areas of government to improve productivity.

It appears that the Federal Chancellery is best placed to take primary responsibility as gatekeeper and co-ordinator for the implementation of an overall Better Regulation strategy. The Federal Chancellery already has a strong co-ordination function at the centre of the federal government and ensures the legal quality of proposals. In 2008, it prepared a handbook on Better regulation that mapped the main elements of a comprehensive Better regulation strategy. The Federal Chancellery designs and manages horizontal tools and programmes, and has competence over administrative reform. It is for example responsible for the development of e-Government, the e-Law system, the RIS-system and the co-ordination of EU matters. The Chancellery also represents the Republic in front of the Constitutional Court, the Administrative Court and international courts. Broadening its role would depend on the Federal Chancellery being invested with the necessary political support to oversee the dissemination of better regulation. It would also require that the Federal Chancellery have an appropriate allocation of staff with relevant (including economic) skills. In principle, the role of assessing the quality of regulatory impact assessments could be undertaken either by the Federal Chancellery or the Court of Audit. It might not, however, be appropriate to require that the Court of Audit do the job of mainstreaming and strengthening Better Regulation is the task of the Court of Audit on its own as this could undermine its independence. Similarly, the Court of Audit should not conduct impact assessment itself. The Ministry of Finance would continue to play an important role in ensuring administrative efficiency assessing financial impacts on the budget and overseeing administrative cost issues as part of impact assessment. OECD principles an international practices show that the role of assessing the quality of RIAs is best assigned to a body at the centre of government.

Improving the capacity of the Austrian administration to undertake Better Regulation will also require further training and the development of supporting materials. One of the issues heard by the OECD review team was that insufficient resources are given to undertaking the important tasks of considering and reporting on the impacts of regulatory proposals in the *Vorblatt*. Building the capacity for Better Regulation in the Austrian administration is a core task. Beyond the training given on the standard cost mode to implement the administrative burden reduction programme, little else appears to be on offer. There is for example, no training in the conduct of impact assessment and evaluation of alternatives to regulation. The 2008 handbook on Better Regulation does not constitute a comprehensive guide to implementing regulatory impact analysis. The development of a more comprehensive handbook/manual would assist the Better Regulation agenda. This should be supported by the development of online tools that at a minimum assist agencies to calculate compliance costs and identify the potential impact of regulatory proposals. Expanding the current training provided for the staff of the Courts of Audit could provide the basis for training programmes for other officials.

It also appears that, at the federal level, there is no systematic and ongoing legal drafting training for those involved in regulatory work. At the *Länder* level, the situation varies from *Land* to *Land*. However, there are *Länder* which seem to be more active in this field than the federal authorities and sometimes offer, in co-operation with the federal government, training for legists working at the federal level.

A stronger role is also needed for external partners, as Better Regulation programmes benefit from the incorporation of a variety of views. Many countries have sought to establish external bodies with responsibility for advising the government on how to implement Better Regulation and reviewing the achievements of Better Regulation programmes. The core membership of these bodies usually includes business representation. Within Austria, the institutional functions performed by the Social Partners are already often integral to the effective operation of government administration. They include providing a source of consultation on the impacts of proposals but can also extend to research and analysis on the effects of existing regulatory arrangements. Regarding this latter function, the Social Partners might be asked to conduct further studies on the effectiveness of

regulation in specific areas to assist in informing the government where reforms efforts may be applied to the greatest social advantage. Any formal arrangements should be mindful of the need to have a transparent process taking account of the views of all stakeholders, including interests outside the Social Partners.

The Parliament needs to be encouraged into playing a stronger role in support of the executive's work on Better Regulation. Although the parliament does not have a specific Better Regulation orientation, its website on legislative procedures and consultations contributes significantly to communication and consultation practices. It also has a formal role in the "e-Law" process for the standardised development of regulations. However, it does not currently have a committee structure with responsibility for reviewing the effects of regulatory proposals, as exists in a number of other European countries.

The landscape of regulatory agencies in Austria is varied and dynamic. The practice of creating legally independent entities to undertake technical and administrative governmental functions appears to be in common use within Austria. . Part of the purpose of using this type of "des-incorporated body" appears to be to create staffing and budgetary independence for the performance of its functions. Of itself this may not be an issue, but it raises questions about the transparency of agency activities and of how to include these functions within the better regulation agenda. Like many countries, Austria cannot afford to maintain administrative overlaps and has an imperative to control its fiscal obligations to manage its budget. Furthermore, the diffusion of the better regulation agenda requires a comprehensive approach that involves and influences all agencies with rule-making or other coercive powers.

Apparently there is no central database listing all of the regulatory agencies in Austria, including the so called "des-incorporated bodies". The absence of a database makes it difficult to assess a number of critical issues relevant to whether the Austrian administration is receiving value for money from its regulatory agencies. For example, is the number, and the design of regulatory agencies, appropriate for the delivery of the government's policy programme? This can only be assessed by an examination of the administrative design of the regulatory agencies, which requires, as a start, an audit of the number of organisations, their purpose, budgets and reporting frameworks. This may involve a review of the des-incorporation guidelines of 1992 (*Ausgliederungsrichtilininen* 1992) to determine if it provides a clear policy on the budget accountability, and organisation structure that is appropriate to the purpose of the regulatory agencies.

Transparency through public consultation and communication

Austria's public consultation approach is structured around formal and informal institutional relationships (including not least with the social partner) and the individual practices of ministries. The approach is robust in many respects, as the institutionalised relationships cover a wide range of relevant interests, and there is evidence of specific good practices. Some ministries, for example, put consultation results on their websites. The consultation process has a pre-consultation phase, and an official consultation phase. There is no administration wide forward legislative plan to use as a practical starting point for citizen engagement. In the first phase the competent federal ministries are responsible for commencing the development of regulations, including initiating contact with colleagues in other ministries as well as with relevant stakeholders including the Social Partners, the *Länder* and the Court of Audit. This part of the consultation exercise is not public, but depending on the political salience of the issue, Ministries may use the internet or mass media to inform the public. The subsequent official consultation phase involves the circulation of a draft bill. It is understood that this should occur for a minimum of six weeks, but in practice this may vary from two weeks to six months. Administrative requirements exist for consultation with the Court of Audit, the Social Partners and the legal service of the Federal Chancellery.

Austria's aim for its consultation practices should be to enhance transparency in the regulatory environment in order to ensure that all relevant aspects and interests have been

taken into account, and to improve the quality of regulation. Effective public consultation has systemic benefits including improving the evidence basis for regulation and promoting legitimacy and trust. Citizen engagement is an important part of improving the design of rules and promoting acceptance of and compliance with rules. However, increased public participation can also present political challenges and mean additional administrative delay to the legislative process. It therefore requires careful planning and preparation. It also usually requires culture change to be successfully integrated within the administration. The development of a policy on public consultation supported by clear guidance documents can assist in promoting a commitment to citizen engagement within the administration. It clearly expresses the government's expectation that civil servants will engage the public and also provides valuable technical guidance to public officials on how to design effective public consultation and integrate the views of the public.

The approach is largely dependent on formal and informal relationships with the Social Partners, which can raise issues of exclusion. Of itself, the emphasis on consultation with the Social Partners is not necessarily detrimental to the development of good policy. The Social Partners can together claim membership representative of the majority of Austrian citizenry. The role of Social Partners at the pre-consultation stage is important for ensuring that representative views are taken into account in the development of regulations. But care is needed not to block out other interests. There is a risk that consultation processes do not provide opportunities to account for the views of all citizens, and may not pick up innovative perspectives. An effective system of public consultation must be able to assure the public that there is an opportunity for their views to be heard and considered outside the institutional relationships. The main challenge here appears to be to develop a systemic approach to facilitate early and open participation of citizens and other groups in policy development. The public notification of a forward plan of regulation can be beneficial in broadening awareness of forthcoming policy issues that members of the public may have an interest in (this is linked to forward planning which is addressed in Chapter 4).

Another key issue is how to ensure that there is consistent use of good practice across the administration. Although some ministries appear to be at the forefront of good practice, there are, for example, concerns that the conclusions drawn through consultation are not routinely made available to stakeholders. There is a demand for feedback about the results of consultation, in particular to understand how the information has been used, including from the Social Partners. In this respect, it appears that binding guidelines are required to give a clear direction to ministries as to what approaches should be followed. Apart from selected specific requirements there are no administration wide binding guidelines for public consultation. General standards have been developed but these have not been translated into enforceable formal requirements on institutions. Under the auspices of an inter-ministerial committee, *Standards for Public Consultation* applying to policies and programmes were developed. These were "noted" by the Council of Ministers in 2008, but regulatory bodies are not obliged to follow them. As a result, they tend to vary among institutions and could be improved through the establishment of more formalised arrangements applying across government. There are no committees in the parliament specialised on Better Regulation to make an assessment of whether consultation processes are being followed.

To be effective, guidelines need to be collectively agreed, and provisions made for monitoring and enforcement. The Federal Chancellery appears best placed to follow up on this as it already maintains and publishes a list of stakeholders that could be consulted in the preparation of rules. Current guidance, so far as it exists, extends to consultation on EU related matters. This should continue so as to ensure that the public administration is aware of procedures to be followed.

Austria's success in integrating its administrative procedures for rule-making with IT systems through the legal information system could be extended to public consultation. The spread of good practice can be encouraged by the use of IT tools. There appears to be considerable potential to make use of existing systems, to expand public access to early information about policy proposals. For example, other OECD countries have developed single consultation portals which enable government agencies to post notice of all forthcoming regulatory/policy initiatives at the one

site including links to related background materials. This single portal approach reduces the transaction costs for government, business and citizens and can become the primary site for soliciting comment from all interested parties including citizens and organised groups. A portal of this type can also be used to manage the effective targeting of consultation to interested persons by allowing them to self select to be automatically notified when an issue falling within a category that interests them arises.

There are effective channels for the communication of regulations using electronic databases. The parliament plays an innovative role in promoting awareness of changes in the law. Austrian parliamentary practices involve the publication of material relating to all laws under consideration, including comments received from the public and interest groups. This is a good example of parliament taking the initiative to communicate with the public about regulation. However, it is more of a communication than a consultation facility, as it is remains the responsibilities of the Ministries to use the information collected by the parliament to influence the scope of legislative proposals. The requirement that all regulations have to be published on the Legal Information System of the republic of Austria (RIS) to have binding effect is a good example of using legal procedural requirements to ensure that the body of law is up to date, transparent and accessible to the public.

The development of new regulations

There is sustained use of regulation to achieve government policy goals, but no suggestion of regulatory inflation. Austria does not record changes in the overall quantum of the regulatory stock, but the review heard no evidence either of regulatory inflation or of significant trends in the decline in the use of regulation. Available data provided by reference to the publication of new laws in the federal gazette each year generally indicates consistency in the use of primary laws and subordinate regulation over the past decade, with a slight decline in the number of new laws published in the period from 2003 to 2007.

The forward planning processes for law making are somewhat fragmented in Austria but shows an intelligent use of electronic systems for maintaining standards and quality control in the production of legislation. Cross ministerial co-ordination of rule-making is weak in Austria, with regulations being autonomously conceived within each responsible ministry. As a result forward planning policies vary from ministry to ministry. The proponent ministry is also responsible for initiating consultation with affected ministers, according to its own priorities. When notified, the Ministry of Finance reviews the assessment of the budgetary implications and administrative burdens of the legislative proposal and the federal chancellery checks the legal quality of the draft proposal, the Court of Audit assess compliance with the requirement to report the financial costs and administrative burden.

In this decentralised system, the e-Law system is intended to manage the quality control aspects of rule-making and promote the efficient management of the drafting of laws through a continuous electronic production channel, from the initial drafting to promulgation of the law. The e-Law system ensures that ministries remain consistent with the guidelines issued by the Federal Chancellery through the use of a template approach. The e-Law system is only accessible by password to staff of the federal ministries. This is an innovative approach to the electronic management of rule-making that is not yet in widespread use across the OECD. There is likely to be the potential to extend this electronic tool further in the legislative process to include amendments introduced in parliament and apply compatible tools for use at the level of the *Länder*.

While Austria reports that forthcoming regulation can be anticipated to be consistent with the published overall programme of the federal government, there is no consolidated legislative plan. The Austrian government reported selected cases of forward planning of rule-making, including examples from ministries which published planned legislative projects, and internal planning tools used by the Federal Chancellery to manage legislative projects. This suggests fragmented practices

across the government that could be improved through the application of a consistent planning discipline and notification procedure. The use of a consolidated forward planning schedule would aid transparency and the effective management of legislative drafting, and be useful for monitoring that other policy processes such as consultation and the preparation of impact analysis are being organised in a timely way. A forward planning schedule does need to be binding on agencies to be useful, and it should not be an impediment to the timely development of unanticipated but necessary legislative responses. A planning framework could build on the internal planning tools used by the Federal Chancellery and be linked to proposed regulatory measures identified in the forward budget estimates of agencies.

In spite of the existence of important administrative provisions and signals of an emerging awareness of the importance of the tool, Austria has not developed integrated and formalised systems for the *ex ante* analysis of the impacts of proposed regulation. The procedural requirements include an obligation on officials to assess the financial economic, environmental and consumer effects of new legislation. Technically, officials are required to provide an account of these elements in the *Vorblatt*, a statement of effect that accompanies a legislative proposal. In the recent past, moreover, promising initiatives have been taken that signal an increased attention of the government to enhancing the RIA tool. The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Particular mention deserve the debate on introducing the so-called Climate Impact Test and, more significantly, the new provisions included in the 2009 Federal Budget Law, which requires that from 2013 all "essential" impacts of future legislative proposal be assessed.

In practice, there are no effective systematic mechanisms for ensuring that officials formally undertake *ex ante* analysis of regulatory impacts during the development of a regulatory proposal. Notable areas of weakness include an absence of systematic guidance material on the calculation of costs and benefits of regulatory alternatives, and no effective oversight of the process to ensure compliance with RIA requirements. OECD analysis has found that RIA is unlikely to be effective in improving the quality of regulatory proposals unless it is supported by these systemic elements as well as training and political commitment. Simply having a procedural requirement for RIA will not produce the benefits of improved regulatory design that are expected from regulatory impact analysis. A potential deficiency of RIA that has been observed in practice in OECD countries is that it is often relegated to a check box exercise. To be effective RIA has to be incorporated early in the policy process and have the potential to influence policy outcomes.

The current arrangements are unlikely to ensure that officials have undertaken a thorough economic assessment of the costs and benefits of alternative regulatory proposals. Where there is a stronger focus on *ex ante* analysis is in respect to the calculation of the financial impacts of policy proposals. The Federal Minister of Finance has issued an ordinance on presenting and assessing financial impacts and the ministry appears to be alert to the proper assessment of financial impacts. This role is aided by the Court of Audit which examines regulatory proposals for compliance by ministries with the requirement to assess financial impacts. Similarly, with respect to environmental impact assessment, Austria has incorporated formalised practices including an innovative mechanism for assessing the carbon output of government programmes.

The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Further to the new Federal Budget Law of 2009, ordinances as well as guidelines are planned to be issued by the Federal Chancellery and the respective Ministries to address threshold issues such as what impacts are to be considered and what methodology should be used. This is however, an area that requires further work in Austria. The current Handbook on Better Regulation (2008) does not provide an effective tool for guiding policy analysts on how to undertake RIA. Accordingly the construction of a clear and practicable framework for undertaking RIA and carefully assigning responsibility for assessing the quality of RIA will be critical to its effective contribution to policy development in the future.

Responsibility for oversight of the conduct of RIA in the rule-making process should be assigned to a function within the Federal Chancellery, with the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals. It is important that the regulatory oversight role is located at the centre of government to ensure that it has the necessary political authority to promote the effective contribution of impact analysis to policy development, and that it is integrated procedurally in the law making process. The Federal Chancellery seems to be the single best authority to take on this role, however, the skills of analytical staff allocated to the task cannot only be based in an assessment of legal quality, but must also include staff skilled in economic analysis and in particular the economics of regulation.

Some of the issues that will confront the Austrian administration are ensuring that all regulatory proposals with the potential for significant economic, environmental or social impacts are captured, and also balancing the use of scarce policy resources. One way of addressing this chosen by a number of OECD countries, is through the use of a two stage process, including a screening assessment to identify if a policy proposal requires a more elaborated RIA; a compliance cost calculator can help to streamline this process. It is likely to take some time to embed a RIA system in the rule-making process. Accordingly, the preparation of draft guidelines should be commenced without delay. The draft guidelines should be prepared in consultation with ministries to engage them with the scope and application of the guidelines and to encourage their use. However, at their root the guidance should draw on the OECD and EU best practices for RIA and relevant examples from other OECD jurisdictions. Critical aspects include a clear focus on defining the nature and extent of the problem to be addressed (risk analysis).

Another important methodological aspect is the consideration of potential of any regulatory proposal to impact positively or negatively on competition. The OECD Economic Survey of Austria identified that "the rules governing market entry and the creation of new corporations, as well as various sectoral regulations are not sufficiently supportive of competition, innovation and productivity growth". (OECD 2009:12). This has undermined productivity growth in the services sector. The RIA system can assist in preventing the development of regulations that are welfare reducing restrictions on competition.

A further element is the integration of RIA with public consultation, as transparency and the incorporation of a diverse range of perspectives are integral to the credible use of RIA to ensure its effectiveness and legitimacy in evaluating alternative options. This will require officials to move beyond informal modes of consultation to use a more systematic inclusion of interests external to the government. Experience across the OECD demonstrates that implementing a system of RIA is not straightforward. It is a long-term endeavour requiring cultural change and capacity building. Accordingly, Austrian officials should anticipate that this project will require the reform of some existing practices and modes of working. To be effective it will be necessary that the procedural elements of RIA are clearly defined, integrated with the rule-making process and made mandatory by formalising the requirements of the guidelines.

Austria has considerable experience with the use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the Social Partners. However, as currently formulated, the RIA processes do not appear to be effective in ensuring that alternatives to regulation are considered in the development of regulatory proposals. Formally, the *Vorblatt* requires ministries to consider alternatives, including the do nothing option in evaluation of the effectiveness of regulatory proposals. In general this is an area of regulatory quality where all governments find it is difficult to encourage rule makers to give serious consideration to alternative approaches once a policy decision has been made to use regulation. It is advisable to provide guidance and training on the use of alternatives in building the capacity of officials to use RIA effectively. The use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the Social Partners is a potential strength of the Austrian system. While this may

create some risks of compromises to competitive efficiency, there is obviously potential for these measures to reduce regulatory costs and promote economically efficient outcomes which should be fully explored in RIA.

There is no formalised policy on the adoption of risk-based approaches. There is likely to be considerable potential for improving the contribution of risk-based approaches to improving the efficiency of compliance and enforcement practices. This is particularly the case at the administrative level of the *Länder* through the identification and sharing of good practices (see the recommendation in Chapter 6 on the development of a principles based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies).

The management and rationalisation of existing regulations

The Austrian government has undertaken various general simplification initiatives to keep the stock of regulation up to date. These have been mostly for the purpose of removing outdated provisions and repealing ancient regulatory stock and have been applied across the ministries. Co-ordinated approaches include the first Federal Repeal Act (1999) guillotined rules dating before 1946, the Deregulation Law (2001) which requires federal authorities to examine the relevance existing law and the effect of any proposed amendment, and the Deregulation Law of 2006 which repealed legal provisions made obsolete by the accession to the EU. The use of sun-setting provisions is not routine in legislation although there are cases of its use among agencies.

The fuller use of *ex post* processes to evaluate adopted regulations and to ensure that the regulatory stock is kept fully up to date should be considered. This can be achieved for example, through the incorporation of sunset clauses in legislation and targeted regulatory reviews. It is noted that the new Budget law foresees a compulsory internal evaluation of regulations and projects which when implemented could also provide a basis for systematic review.

The identification and reduction of administrative costs is a strong feature of the Austrian system. The administrative burden reduction programme is sensibly based on the achievement of a *net target* of 25% of administrative burdens on business. The programme demonstrates a good balance of central oversight and devolved responsibility. It is managed from within the Ministry of Finance, and each individual ministry has been assigned the responsibility for achieving its own reduction. The design of the programme has been intelligently informed by a review of similar European programmes. Like a number of these programmes it included a baseline assessment of the regulations in force (not including the *Länder*). The programme commenced in 2006, initially focusing on business. In September 2007, *ex ante* assessment was introduced of the burdens of new regulatory policies above a certain threshold. In 2009, the programme was expanded to include the 100 most burdensome obligations on citizens (in conjunction with the Federal Chancellery). It is estimated that achieving the target will bring about more than EUR 1 billion in savings by 2012.

The goal of reducing administrative costs is aimed both at ensuring the efficient operation of the Austrian administration and reducing administrative burdens on business. The first objective is reflected in a requirement on ministries to calculate and report the costs to government of any new administrative activities as a consequence of regulation. These requirements are likely to have aided the performance of the administrative burden programme by avoiding the hidden problem of ministries meeting their administrative burden target objectives by bringing administrative functions in house, instead of removing or reducing them.

Austria has been progressive in the use of ICT solutions to support its administrative burden reduction programme. Since September 2009, the administration of the programme has been supported by the use of sophisticated ICT tools for the calculation of administrative burdens using the standard cost model and integration with the "e-Law" system. General guidelines have been provided and training is offered by the Ministry of Finance. The ordinance on the use of the standard cost model is binding on ministries and provides the methodological and procedural rules for ensuring

that the burden is calculated and reported in the introductory remarks (*Vorblatt*) of the regulatory proposal. Austria has also implemented a number of ICT solutions that have reduced the transaction costs of administrative requirements. This includes the integration of information and transaction services for all levels of government in a single portal for business, which is being progressively implemented from 2010 to 2013.

The programme is apparently on track to achieve its net target. The Ministry of Finance regularly monitors new burdens and reduction measures by Ministries and publishes them in an excel table on the programme website. Future budget materials are planned to contain a performance report on the status of burden reduction by all Ministries. Being held to account against performance targets sharpens the incentives for achieving burden reductions. Effective reporting on the outcomes of the programme also helps to assess its overall performance and identify areas of success, and allows the merits of the programme to be fully communicated to business. To a large extent the merits of administrative burden reduction programmes can be expected to come from ministries achieving their targets by imitating and adapting the successful reform experiments of other ministries. Sharing experience therefore can be potentially very helpful. Finally, the functional role of the Ministry of Finance in combining budget discussions with a consideration of measures for reducing the burden of regulatory proposals could be explored, following the experience of other EU countries.

An evaluation of the effectiveness of the programme against the original goals and the scope for broadening its reach to cover full compliance costs would be timely. Part of this assessment should be to assess perceptions of business of the effectiveness of reductions in administrative burdens. Related to this, the merits of the burden reduction strategy including its aims and aspirations should be strategically communicated to business to secure support. There appears to be potential for expanding the use of the existing ICT tools used for calculating the SCM, as well as to calculate broader compliance costs. This could be combined with better use of reporting frameworks (the *Vorblatt* in particular) in accounting for an analysis of the economic impacts of regulatory proposals. An expansion of the programme to this effect should build on the collaborative relationship that is in place between the Ministry of Finance, including the role of staff currently overseeing the administrative burden reduction programme, and the Federal Chancellery to provide support to ministries in assessing and reporting on the design and costs and benefits of regulatory measures. It is noted that the future assessment of compliance costs is part of the discussion of the new impact assessment procedures being planned for under the current budget reforms.

The administrative burden reduction programme measures do not extend to the information obligations imposed by the *Länder*. The potential for a co-ordinated programme including the *Länder* could be explored to take advantage of the opportunities for shared practices and lessons among the *Länder*, in particular this would be expected to address the burdens imposed through the enforcement of federal laws.

A number of e-Government programmes have been developed in response to demands for improving internal administrative efficiency. However, there is no co-ordinated administrative burden reduction programme to counter the growth of regulation inside government.

Compliance, enforcement, appeals

Some regulatory agencies have coherent strategies for compliance and enforcement that are well managed. The OECD review heard of examples of good practice; for example the comprehensive risk-based strategy employed by the Austrian tax office. It was also suggested that fiscal constraints limiting the resources for compliance and enforcement have provided an incentive for the *Länder* to develop risk-based approaches and apply efforts in the most effective way. In addition it is reported that the *Länder* have already engaged in a discussion of the establishment of national uniform quality standards for maximum waiting times for citizens and as well performance targets for satisfaction with service standards.

Austria could benefit from the development of a framework approach to compliance and enforcement. A focus on improving compliance and enforcement strategies is a relatively new field for the Better Regulation agenda. However, it has considerable potential for reducing the burden on business of regulatory activity and improving the effectiveness of the design of regulation and its implementation, thereby resulting in improved outcomes for citizens and lower costs for the state. A comprehensive and strategic approach to improved compliance and enforcement can help to improve efficiency. This can be achieved in part through sharing good practices among ministries, agencies and jurisdictions with regulatory missions. Furthermore, by focusing on those activities which presents the greatest risk to the achievement of policy objectives, and on those businesses that present the greatest risk of non compliance, the resources required for enforcement by the government and for compliance by business can be allocated more efficiently.

The enforcement of regulation is a principal responsibility of each Land, which allows for wide variance in practices and resultant inefficiencies. This suggests that there is considerable potential for sharing information on new strategies for improving compliance taking account of technical innovations and potential synergies from common practices across the *Länder*. There is no suggestion that the rates of compliance in Austria are low, but Austria does not collect and report statistics on general compliance rates. Accordingly, as a starting point it would be prudent to collect information on compliance problems across the *Länder* to develop a strategic picture of any underlying trends and difficulties, based on the information already collected by regulatory agencies.

The *Länder* Courts of Audit would benefit from having a principles based framework for assessing the quality of enforcement practices and draft guidance for agencies on the adoption of risk-based approaches (see Chapter 8). This should be supported by a survey of the range of compliance problems across the *Länder* and be grounded in the experiences of regulatory agencies at the level of the *Länder*. Reference to practical examples from within the EU and other countries from within the OECD also merits study as a basis for comparative approaches (in particular, examples from the Netherlands, Denmark, the U.K. and Australia).

The institutional arrangements of the Austrian appeals system are comprehensive and appear to function well, supported by a system of arbitration tribunals and the independent ombudsman's office. In addition Austria has developed an extensive IT network which promotes the efficient administration of the judicial system and electronic access to the records of legal proceedings free of charge on the Internet, as part of the Federal Legal Information System (RIS).

The interface between member states and the European Union

As in other EU countries the influence of EU regulations in Austria is significant and a well structured institutional framework is in place to co-ordinate EU affairs. Austria appears to have established wide-ranging and effective co-ordination mechanisms for the management of EU affairs including the transposition of EU directives, with leadership from the federal government but also allowing for the *Länder* to take responsibility and exert influence within their sphere of administrative competence. Austrian officials are conscious of the need to have an effective influence in the negotiation stage of EU legislation. Within the federal government the internal co-ordination of EU affairs is led by the Ministry of Foreign Affairs (MFA) and the Federal Chancellery, but each ministry within the government leads on EU dossiers within its area of responsibility.

Binding guidelines for all federal ministries and the *Länder* relating to the negotiation, transposition and infringement phases have been in place since 2003. In 2003, the Ministry of Foreign Affairs (MFA) and the Constitutional Service of the Federal Chancellery produced binding guidelines. The 2008 Better Regulation handbook references the EU Better Regulation programme. The system appears to work well as regards transposition deadlines. In general the speed of transposition does not appear to be an issue.

Transposition procedures may not be dealing effectively with the issue of unnecessary administrative burdens. In general, Austria practices the incorporation of directives into the existing stock instead of creating new implementation laws. Despite this, EU regulations are considered to have a potential negative impact on the quality of national regulations through the burdens they cause. An internal network of officials from each of the ministries meets regularly to discuss issues that arise with transposition. However, there is no specific procedure for supervising the consistency of Austrian legislation with EU law. The relevant ministry is responsible for ensuring transposition and the removal of inconsistencies and there is no mechanism established to evaluate the burdens that may be caused by EU regulations. It seems clear that there should be a procedure for supervising the consistency of EU law with Austrian national regulation, and a process to consider the costs and benefits of alternative means of incorporating EU directives without creating unnecessary regulatory burdens. The Ministry of Finance anticipates that the regime of the Budget Law of December 2009 – coming into force in 2013 – will strengthen the financial impact assessment of draft EU law.

The *Länder* are also closely involved in the process of consultation and negotiation. The *Länder* have a constitutional right to comment on legislative drafts, and if they have implementation responsibility at the federal level, they also co-ordinate and represent Austria at the EU in Brussels. The ministries and the *Länder* have to inform the Chancellor on a regular basis about their progress with transposition. If a state fails to comply punctually the federal government may acquire responsibility for the implementation of a transposition obligation.

However, the rapid evolution of EU legislation is a particular challenge for federalist countries and Austria is no exception. First, the Austrian authorities (Federation and *Länder*) have to organise themselves in order to enable them to participate actively and effectively in the preparatory stage of the EU legislative process. Second, they have to take into account that that the often short deadlines fixed for the transposition of EU legislation necessitates an optimal co-ordination between the authorities at the federal and at the *Länder* level. In practice, the involvement of the *Länder* authorities could be more systematic and, take place earlier in the legislative process. It would benefit from clearer institutional arrangements providing the necessary time for legislative and administrative measures at the *Länder* level. Furthermore, there seem to be different practices and rules with regard to the formal legal drafting procedures of the integration of EU legislation into national law.

The interface between subnational and national levels of government

The Austrian Constitution contains the basic rules relating to the allocation of legislative powers. The Constitution identifies where the Federation has the exclusive responsibility for legislation and execution, where the execution of federal legislation is left to the *Länder*, and where the *Länder* have their own legislative and executive powers. However, not all provisions concerning the allocation of legislative powers between the Federation and the *Länder* are integrated into the Constitution, leading to some apparent difficulty in delimitating the legislative powers of the Federation from those of the *Länder.*

The *Länder* have a critical role in regulatory management in the federation as they are responsible for the execution of most federal law. In Austria, the execution of federal legislation is in many fields left to the *Länder*, and in the fields where the legislative powers of the Federation are limited to the principles, the *Länder* are also responsible for the enactment of secondary regulations as well as the application and enforcement of federal laws. More broadly, two thirds of public employment is at the *Länder* and municipal level, and the *Länder* are responsible for delivering significant programme activities including the delivery of health and education services. The OECD 2009 Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria (OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading

arrangements (OECD 2009:45). Given their size and influence, further investment in efforts to improve the development and delivery of regulation by the *Länder* are therefore warranted.

The implementation of federal legislation by the *Länder* can involve the enactment of secondary legislation by the *Länder*. This creates an institutional distance between the preparation of legislation and its execution. This distance is possibly one of the reasons why Austrian legislation is quite detailed: in order to achieve a more or less uniform interpretation and application by the *Länder* authorities, the federal legislator tends to be rather precise. On the other hand, this distance makes it more difficult for the federal authorities to know what happens once legislation is enacted. In other words, they lack the information necessary to know if federal legislation proves to be implementable and achieves its goals or if it needs to be adapted.

Their significant regulatory responsibilities mean that the *Länder* should in practice be closely associated with the preparation of new legislation at the federal level. The participation of the *Länder* in the legislative process at the federal level fulfils two important functions: it contributes to the quality of legislation and it strengthens the *Länder* as constituent element of the Federation. In addition, the consultation of the *Länder* permits them to better co-ordinate their own legislative activities (in fields falling within their residual powers) with the legislative activities at the federal level. In this sense it may also contribute to the overall coherence of national legislation. The *Länder* are consulted before legislative decisions are taken in policy fields where they are responsible for the implementation (in a broad sense) or for the execution (in a narrow sense) of legislation, because federal legislation must take into account problems of practicability which are best assessed by the authorities at the level of the *Länder* or even the municipalities.

However, in spite of its practical and institutional importance, the participation of the *Länder* in the legislative process at the federal level is not regulated in a comprehensive way. There are some fragmentary provisions, partly in the Constitution (for example, Article 14b, Para. 4), partly in primary legislation (especially in the context of Austria's membership in the EU), partly in administrative instructions, but the modalities are essentially governed by administrative practice and may vary from case to case and from ministry to ministry. Various inter-governmental bodies set up to facilitate the horizontal (among the *Länder*) and vertical (between the *Länder* and the Federation) co-operation play a major role in this context.

Legal and administrative arrangements that guarantee a minimum level of reporting about implementation and effects should also be strengthened. They are particularly important in federalist countries to ensure the quality of legislation. This may be done in various ways (setting up of organs with special monitoring or reporting tasks, introducing evaluation clauses in federal legislation, using the existing inter-governmental bodies in order to get more reliable and relevant information about the implementation of federal legislation, etc.). Monitoring implementation and evaluation of the effects are the necessary complements to regulatory impact assessments (RIA) or prospective evaluations undertaken in the preparatory stage of the legislative process. At the moment, a clear institutional responsibility is missing and the resources are insufficient.

There has been a change in culture over that last decade to improve the quality of customer services that the *Länder* governments provide. This review has not had the benefit of a comprehensive survey of Better Regulation initiatives at the *Länder* level, but in interviews officials reported a change in culture, and a sample of activities shows evidence of a focus on administrative efficiency and improving the delivery of services to citizens. There appear to be examples of good practice; programme responses vary across the *Länder* and some have developed impact assessment requirements and administrative burden reduction programmes. Overall, however, these are not comprehensively applied. The *Länder* are not linked to the federal administrative burden reduction programme and implementation of impact assessment, for example, has tended to follow from the initiative of individual civil servants. The relatively few resources specifically dedicated to RIA in a few *Länder* is considered to be one of the underlying reasons why it has been difficult to sustain

efforts to introduce the tool. While the impacts of regulatory proposals on administrative costs are often assessed, broader cost benefit analysis is not routinely undertaken.

Austria needs to ensure that the effect of different administrative and regulatory arrangements within *Länder* does not impose barriers to entry or high transaction costs impeding the efficient operation of businesses across the federation. In principle, this suggests the need for an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, and an analysis of the number of such businesses. This could be best performed by the national statistical agency.

The vertical and horizontal co-ordination arrangements between the federal government and the *Länder* appear to be a notable strength of the Austrian federation. Co-ordination mechanisms are usually a particular challenge for multilevel governance. In Austria's case, conferences are regularly convened between representatives of the nine *Länder*. These conferences (*Landeshauptleutekonferenzen*) are informal meetings of the nine state governors and have important political impact. The nine state governors discuss common positions and develop common strategies – the chair alternates. They are supported by a permanent liaison office of the *Länder*. Besides the *Landeshauptleutekonferenzen* there are also informal preparatory meetings at technical level: the *Landesamtsdirektorenkonferenz* Representatives of the federal government are regularly invited to both of these conferences (political and expert level respectively).

Austria should use its sophisticated co-ordination mechanisms to promote a common strategy for Better Regulation at the sub-federal level. This should include the incorporation of impact assessment principles for improving enforcement and compliance and sharing of good practices among the *Länder*. The *Länder* Courts of Audit already play an important role in assessing the efficiency of *Länder* programmes. There appears to be considerable potential for expanding this role to include the sharing of good practices among the *Länder* and promoting improved regulatory performance. This could be done for example, through the various *Länder* Courts of Audit jointly developing a principle-based framework for assessing the quality of enforcement practices, particularly risk-based approaches, and drafting guidance for regulatory agencies, such as has been done by the audit offices of a number of OECD governments (see for example, Australia and the United Kingdom).

A special feature of Austrian legislation is its rather detailed content, which makes normative density of primary federal legislation rather high. This may be due to legal requirements (quite a strict conception of the principle of legality); the specifically Austrian legal drafting culture or style, and; the endeavour of the Federation to guarantee a uniform or at least a largely harmonised implementation (secondary legislation enacted by the *Länder* and execution) at the subnational levels by leaving only quite a small margin to the implementing authorities. This may favour legal security and make state action more easily foreseeable, but it can also make legislation more rigid and more difficult to understand. If legislation is too detailed, the need grows to change it frequently, potentially compromising its stability. In addition, the very detailed character of many pieces of Austrian legislation contributes to the overall quantity of norms. Reducing normative density would have positive qualitative and quantitative effects.

Key recommendations

Strategy and policies for Better Regulation	
1.1.	Establish a comprehensive policy on Better Regulation taking full account of its potential to improve the design and administration of new and existing regulation, set within a clearly articulated policy framework for meeting the government's policy aims and strengthening the overall competitiveness of the Austrian economy.
1.2.	As part of this, define an institutional framework for its delivery, setting out clearly the roles of key stakeholders within and outside government, and a timetable for implementation. The policy should be given political endorsement by the Council of Ministers.
1.3.	To secure its relevance and effectiveness, prepare the policy through an iterative consultation process with input from government ministries, the Social Partners and the wider community.
1.4.	Following the establishment of a comprehensive policy on better regulation, develop a communications strategy to ensure that it is well known and its benefits are understood by stakeholders within and outside government.
1.5.	Include, in the establishment of a comprehensive policy on better regulation, terms of reference and a schedule for the review of the effectiveness of that strategy in achieving its policy objectives.
1.6.	The strategic framework for e-Government should be examined for its potential to further support Better Regulation processes, including promoting transparency, public consultation and reducing the transaction costs for officials engaged in preparing impact assessment on regulatory proposals.

Institutional capacities for Better Regulation	
2.1.	Establish a core working group of Better Regulation champions, at both ministerial and official level, chaired by the Federal Chancellery, and including the Finance ministry, the Court of Audit and any other key and committed player in the central Federal administration (for example, the Economy ministry), to develop and promote a Better regulation strategy.
2.2.	Consider how to secure an effective gatekeeper function to co-ordinate and monitor minimum Better regulation standards across the administration, especially as regards impact assessment, but also with regard to public

	consultation and other important issues such as forward planning of legislation. Ideally, the Council of Ministers should formally invest the Federal Chancellery with this role.
2.3.	Undertake a Better regulation training needs assessment including methods of delivery and existing forums that could be adapted, such as the Court of Audits programme, to improve the capacity of the public administration to design and implement better regulation.
2.4.	Give responsibility to the Federal Chancellery, as part of its Better regulation functions, for developing comprehensive training programmes on Better Regulation for the Austrian administration. Ensure that this is supported by the development of guidance documents and IT tools to assist with undertaking impact assessment (including competition analysis), the evaluation of regulatory alternatives, and consultation.
2.5.	Consider the development of more systematic and permanent legal drafting training for those persons involved in legislative work at the federal and at the *Länder* level.
2.6.	Consider whether the Social Partners should be asked to undertake further studies on the *ex post* effectiveness of regulation in specific areas, taking care to ensure that any process remains transparent and takes in all relevant views.
2.7.	Encourage the Parliament to play a more active role in Better regulation, including by fostering political debate on the benefits of broader strategy of Better Regulation. The parliament should support the Government in developing and achieving its Better Regulation agenda.
2.8.	Undertake an audit to centrally record the names and functions of all regulatory agencies, including budgetary, staffing and reporting relationships. Identify which of these agencies have coercive or rule-making powers. Once established the database should be maintained and updated, and made available for public access. The goal should be to identify how they can be involved in the Better Regulation agenda, through for example, the inclusion by the parent ministry of requirements for Better Regulation initiatives in the mission/objectives statement of the regulatory agencies.

Transparency through public consultation and communication	
3.1.	Draw up and adopt (through the Council of Ministers) comprehensive guidelines on public consultation, to set minimum good-practice requirements on ministries in the development of new regulations. These guidelines should address planning, timing and methods of consultation as well as feedback to stakeholders on. Minimum requirements should also include publication of a

	summary of the results of consultation, and making this summary a part of the explanatory memorandum attached to a proposed bill. The guidelines should continue to address consultation on EU related matters.
3.2.	Establish how the guidelines will be promoted, monitored and enforced. Consider putting the Federal Chancellery in charge, including giving it the authority to return a draft regulatory proposal to the ministry if the minimum requirements have not been followed.
3.3.	Expand the use of existing IT systems in the preparation of regulation including a clear link between public consultation and the drafting process. Develop a single consultation portal for use by all ministries to enhance citizen participation in the legislative process.
3.4.	Ensure that all related policy materials, including all guidelines and instructions that may be required by a civil servant preparing draft legislation, are available electronically from a central repository linked to the e-Law system (or the new consultation portal – the portal should be accessible from outside the public administration, but the facility could provide that material that is relevant only to officials is able to be accessed separately).

The development of new regulations	
4.1.	The Federal Chancellery should co-ordinate an annual formal plan of forthcoming legislative projects, as a communication and planning tool both for internal government use and to promote public transparency as well as better structure public consultation. This should include lists of all projects which Ministries have under preparation, even before they have reached the (pre)consultation phase.
4.2.	Develop administrative mechanisms to support the incorporation of *ex ante* analysis in the development of regulatory policy including formal administrative requirements, the development of RIA guidelines and training and capacity building involving the ministries. Many OECD examples and models exist for the guidelines, but the implementation of the system is an opportunity for an interactive discussion with ministries and the establishment of a network of officials informed on how to use the RIA process effectively.
4.3.	Establish a two stage process for impact assessment including clear minimum threshold criteria to identify when a RIA is required and the use of compliance cost calculators to simplify the process of determining the extent of regulatory impacts.
4.4.	Establish institutional oversight of compliance with RIA processes in the Federal Chancellery including economic analysis skills to assess and comment

	on the quality of the RIA documents, the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals.
4.5.	Guidance and training to build the capacity of officials on the use of RIA should also address the use of alternatives in designing regulations, including an analysis of the most effective roles for the Social Partners having regard to the potential risks to competition.

The management and rationalisation of existing regulations	
5.1.	Develop a policy framework for the *ex post* review of regulation drawing on the RIA methodology to ensure that the regulatory stock is kept up to date, and meets policy objectives efficiently and effectively. Relevant programme features for consideration should include: the systematic use of sunset clauses; the use of review clauses in primary and subordinate legislation; scheduled reviews of regulation in sectors, targeting those areas of high economic value, and; the use of external reviewers (independent of the ministries administrating the regulation) to conduct periodic reviews.
5.2.	Promote the success of ministry activities at achieving their individual net reduction targets, to include providing information on the performance of ministries against their targets and sharing of information about practical measures that can be implemented and adapted among ministries. Consider the use of incentives for compliance by associating performance with budget decisions (for example, rewarding the achievement of burden reduction targets with discretionary budget measures, or requiring an evaluation of regulatory costs in conjunction with budget bids).
5.3.	Establish a framework to evaluate the success of the administrative burden reduction programme in reducing burdens on business. Include an assessment of the perceptions of business of the most successful burden reduction initiatives.
5.4.	Consider how processes may be adapted, expanded or joined up more closely with *ex ante* impact assessment processes to improve the evaluation of substantive compliance costs of regulation in the future.
5.5.	Develop collaborative programmes with the *Länder* to extend the administrative burden reduction programme, including sharing good practices and common ICT tools for the calculation of administrative burdens on the basis of the standard cost model. Consider the use of central reporting of overall burden reduction measures achieved at the federal level and at the level of the *Länder*.

5.6.	Consider whether there is a need for a distinct policy to address administrative burdens inside government.

Compliance, enforcement, appeals	
6.1.	Undertake a survey using the records already compiled by agencies to develop a strategic assessment of the underlying trends and difficulties with compliance and enforcement practices.
6.2.	Engage the *Länder* Courts of Audit to jointly develop a principle-based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies, with reference to good practices within Austria and examples from other jurisdictions.

The interface between member states and the European Union	
7.1.	Produce guidelines to apply impact assessment to EU regulations at the transposition stages, to ensure that the incorporation of EU directives does not duplicate Austrian law or create unnecessary burdens.
7.2.	Consider formalising the processes by which the representatives of the *Länder* are informed about and involved in the early stages of the legislative process at the EU level. Establish clear and uniform legal drafting techniques regarding the integration of EU legislation into national law at the federal and the *Länder* levels.
The interface between subnational and national levels of government	
8.1.	Set up clear legal rules concerning the participation of the *Länder* in the legislative process at the federal level in order to determine which organs participate, when in the process and how the results are communicated.
8.2.	Improve monitoring of the implementation of federal legislation by the *Länder* and the evaluation of the effects of legislation.
8.3.	Undertake an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, either because of unnecessary transaction costs or possible barriers to entry.
8.4.	Use co-ordination mechanisms with the *Länder* to encourage a Better Regulation strategy for the *Länder* governments, including a focus on

	developing and sharing best practice to improve enforcement and compliance strategies. Encourage the *Länder* courts of audit to develop a principles based framework to assess enforcement practices.
8.5.	To reduce the overall normative density of federal legislation in Austria, make efforts to avoid unnecessary details and to limit provisions to the essential normative content in primary federal legislation.

Better Regulation in Europe: Belgium - *Executive Summary*

Economic context and drivers of Better Regulation

The need to strengthen the economy and its competitiveness is reflected in policies to promote effective regulatory quality and management. The General Policy Statement of the federal Minister for Economy and Administrative Simplification of April 2008 specifies the modernisation of regulation as one of the actions to be undertaken to promote the competitiveness of the economy, and defines the elimination and simplification of regulations as strategic objectives. The Flanders, Wallonia, and Brussels governments have also linked Better Regulation to their efforts to sustain economic competitiveness and development. Belgian enterprises have lent their strong support to these objectives. The Federation of Belgian Enterprises has underlined that tackling the volume, as well as the quality of regulations, is an "absolute necessity" for competitiveness.

The pursuit of Better Regulation in Belgium is also linked to the challenge of regulatory inflation. Belgium's federalisation process of the last few decades has generated considerable institutional and regulatory developments, qualified by many Belgians as inflationary, and now in need of simplification. Political commitment to simplification has been expressed in successive government policy statements. Simplification is also a priority across the regions and communities. In Flanders, the government agreement of 2004 included a chapter on Better Regulation. The new government agreement, concluded in July 2009, notes that administrative simplification and regulatory quality are key instruments for a more efficient government, and this is emphasised again in the most recent policy paper of the Flemish Government on Administrative Affairs. In Wallonia, the government set specific objectives regarding the improvement of regulations in its Regional Policy Statement of June 2005. It spelt out a number of actions which associate administrative simplification and e-Government. Developments in the Brussels-Capital region began later but are gathering momentum, with the launch in October 2009 of a Brussels Plan for Administrative Simplification.

The European Union is another factor in Belgium's pursuit of Better Regulation. Belgium was a founder member and geographically, it stands at the crossroads of Western Europe, which has important implications for its economic relationships with neighbouring economies and the importance to its economy of developing a single European market. EU initiatives such as the Services directive and the EU's programme to reduce burdens on businesses have encouraged Belgium to take action, building on its own initiatives.

Public governance framework for Better Regulation

The Belgian public governance system is characterised by the following features:

- *Autonomous governments.* Belgian governments have complete responsibility and autonomy within their area of competence. The exclusive character of competences allocated to each authority, which cannot be challenged, sets formal and technical constraints on the extent to which the different authorities can share the development of policy and tools for regulatory management, where this is needed.
- *Autonomous ministries within governments.* Ministries within each government are highly autonomous. This generates challenges for the effective

development of shared policy and rule-making tools and processes within governments. This issue is not unique to Belgium.

- *Coalition governments and consensus-based decision making.* The electoral system produces coalition government, and as a consequence, the political framework for policy making is characterised by a search for consensus among coalition parties, acceptance of compromise and institutionalised power sharing.
- *Federalism in a state of evolution, based on an asymmetric division of competences.* Belgium is a relatively "young" federal state, and Belgian federalism continues to evolve. The Belgian institutional framework is made up of regions and communities which do not have exactly the same competences (some other states based on federal principles have a more homogeneous structure).[1] The institutional framework for policy and law making has adapted and continues to adapt to reflect developments.
- *Pragmatism and informality in decision making.* Consensus building within formal and often highly politicised structures, combined with the formal constraints imposed by the strict division of competences, tends to slow and complicate the decision making process. To counter this, a strong tradition of pragmatism and informal dialogue is in place.
- *A number of centralising elements.* The federal state has retained certain powers, and a number of important institutions have a nationwide reach (including the Constitutional Court, the judiciary and the *Court of Cassation*, the Council of State, the *Court of Audit* and the *Inspectorate of Finance*).

Federalisation started in 1970 (Box 0.1). The process and the structures which have emerged are complex, reflecting a deep rooted desire for a negotiated transformation of Belgium from a unitary entity to a federal structure which respects the aspirations of the different communities. Federalisation has raised significant challenges for public sector efficiency and policy coherence. In principle, the devolution of federal responsibilities to regions and communities helps to better tailor public services to the needs and preferences of users. It also enables some benchmarking between jurisdictions, providing an incentive for improving public sector efficiency. In practice (and as tends to be the case in federal states), federalisation and the division of competences has created shared policy responsibilities in areas such as employment, R&D, training, energy and environmental policies.[1]

The Government agreement of March 2008 sets out 6 major challenges for Belgium, one of them being state efficiency: "In Communities and in regions, as much as at the level of the Federal State, citizens are entitled to expect efficient services and modernised administrations from each level of power".[1] This objective has already been picked up through reforms of the public administrations of each government (notably the federal government's *Copernicus* reform, and the Flanders government "*Beter Bestuurlijk Beleid*" or Better Governance Policy).

The federalisation process thus raises challenges for effective, efficient and timely policy and rule-making. Better Regulation is especially important in this context, as a means of controlling the bureaucratic effects of federalisation (including regulatory inflation). Officials in the federal state and in the regions and communities are especially conscious of this need. Better Regulation has close potential links with public sector efficiency and reform, which could usefully be exploited further.

Belgium's federal structure and the powers of Belgian governments

Belgium is a federal constitutional monarchy. It was a founder member of the European Union. It became a federation in 1993 as the result of a negotiated decentralisation process aimed at consolidating national unity, which started in 1970 with the establishment of three communities. It involved a succession of state reforms the first of which, in 1971, established the three regions. The

most recent set of reforms, in 2001, transferred further competences to the regions and communities and addressed a range of funding and taxation issues. It can be said that, nearly 40 years on, the structure has reached a certain level of maturity, although further adjustments are envisaged (and provided for in the constitution, which for example provides for some further competence transfers). Further institutional reforms are currently under discussion, based on the March 2008 Government Agreement.

Belgium comprises the federal state, three regions (Flemish Region, Walloon Region, and Brussels-Capital Region), and three communities (Flemish Community, French speaking Community, and German-speaking Community). There is a further subdivision into 10 provinces (five Flemish, and five Walloon),[1] and 589 municipalities.

Belgian federalism has the following important features:

- *There is no hierarchy*. Its main component authorities (the federal state and the federated entities – the regions and the communities) are on an equal footing. This means that no authority (for example, the federal state) has precedence over another, and no authority can impose requirements (including regulatory requirements) on another. Legislative texts issued by each authority are on an equal footing.

- *Competences are exclusive to the different authorities.* Competences are distributed across the federal state and federated entities with no overlap competences, at least in principle. Each authority has its own legislative and executive powers for its field of competences, and its own parliament and government to exercise these powers. Flanders has, however, opted for combining the parliament and government of both the Flemish Region and the Flemish Community into a single parliament and a single government. Beyond this, there are no shared government or parliamentary structures.

- *The structure is asymmetric.* The three regions do not have exactly the same responsibilities (nor do the three communities). Dividing lines of competences are complex and "lacework" like, the result of negotiations in the federalisation process. The responsibility for a given area generally depends on the subject at stake. Broadly, the regions have powers connected with their territory (for example environment and transport), and the communities have powers more specifically relevant to individuals (for example education and health).

- *Whilst competences are exclusive, a large number of policy areas are shared.* A large number of policy areas are covered by several entities (see Annex A). This is the case, for example, for the economy, the environment, employment, energy policy, which are shared between the federal state and the regions as well as, in some cases, the communities. Different competences relating to these policy areas have been allocated to the federal state and federated entities. For example, in the field of energy, tariffs and national market regulation are with the federal state, whilst energy efficiency is with the regions.

- *There are also a number of centralising elements*. Although significant competences have been devolved to the regions and communities, the federal state has retained some important powers including national defence, justice, aspects of economic policy and finances, and social security. Federal state powers cover everything that has not been expressly devolved to the federated entities. Furthermore, it is ultimately responsible for Belgium's obligations (including those of the federated entities) in respect of the European Union. The centralising "glue" is also evident in a number of important institutions which have a nationwide reach (including the Constitutional Court which controls conformity of all laws with the constitution *ex post*, the judiciary and the *Court of Cassation*, the Council of State which is the supreme administrative court and advises on all draft laws *ex ante*, the *Court of Audit* and the *Inspectorate of Finance*). The federal state retains control over several state-owned companies, such as Belgian Railways, the Post Office and federal scientific and cultural institutions.

- The *Concertation Committee* is responsible for preventing conflicts of interest between the federal state, the communities and the regions. It consists of the head of each government, and examines all issues requiring co-operation between governments and issues relating to competence sharing.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

There have been considerable developments and achievements in recent years, driven by a growing awareness across Belgium of the need to address regulatory inflation, administrative simplification and improve regulatory quality. Belgian governments have launched a large number of initiatives in the area of Better Regulation in recent years, which tackle the reduction of administrative burdens on citizens and businesses, including promotion of e-Government as a tool for simplification, codification and modernisation of existing regulations, and impact assessment.

Widespread concern in Belgium over regulatory inflation is an important driver of Better Regulation initiatives. For some time now, Belgian governments have been conscious of the upward trends in production, and the negative effects of this for regulatory quality and the complexity of the regulatory framework. Regulatory inflation is partly the result of the federalisation process, but there are other reasons which are not specific to Belgium. These include a tendency to respond to any issue or crisis with a regulation, and regulations prepared at short notice under "urgency" procedures which are of poor quality and need subsequent revision, as well as the weight of EU origin regulations in the system. Is there adequate awareness of the important contribution of Better Regulation policies in tackling these issues?

Policies cover a rich mix of projects shared between Belgian governments, and initiatives specific to each government within its area of competence. Shared initiatives are a particularly striking feature of current projects, underlining the fact that Belgian governments are not always compartmentalised on their own projects. Shared projects are supported by a 2003 co-operation agreement signed by the federal, regional and community governments. Important initiatives in this category (not exhaustive) include the *Kafka* contact point where citizens, businesses and public servants across Belgium can propose ideas for cutting red tape, and the Crossroads Bank for Enterprises.

Regulatory quality in all its dimensions is rising up the agenda. In particular, Belgian governments have taken steps to integrate *ex ante* impact assessment in the development of regulations. *Ex ante* impact assessment is a relatively new policy in Belgium, and still a work in progress. Although steps have been taken to enlarge the scope of impact assessments, for most Belgian governments these are still largely confined in practice to evaluating administrative burdens and environmental impact. A variable geometry is at work, with different governments sometimes adopting different versions of the same processes.

Important challenges need to be addressed if *ex ante* impact assessment is to make a real difference. The simplicity of the *Kafka* Test limits its influence, as it only addresses administrative burdens. The highly ambitious objectives set for the federal Sustainable Development Impact Assessment, combined with significant exemptions, could complicate efforts to make progress. All the different initiatives suffer, to a greater or lesser extent, from a range of problems including timeliness, limited coverage, and weak institutional frameworks. The involvement of politicians in rule drafting makes the implementation of impact assessment particularly difficult. Strengthening impact assessments will require strong high-level commitment and further culture change.

There remains a strong emphasis on administrative simplification, and all Belgian governments are putting considerable efforts into this, with measurable success. Administrative simplification is a political priority and common denominator across all governments, backed up by successive ministerial policy statements. Each government has defined its own strategy. Policies extend well beyond programmes to reduce burdens in specific regulations, and include a mix of broad long term structural projects as well as short-term projects aimed at "quick win" results; target citizens, businesses and non-profit organisations (the programmes do not particularly distinguish between burdens for business and citizens); make strong use of ICT; tackle (to a greater or lesser

extent) both the flow and stock of regulations; and integrate efforts to improve transparency and easier access to the administration (portals, websites, etc.). The biannual surveys of the Federal Planning Bureau indicate that administrative burdens on businesses decreased from an estimated 3.5% of GDP in 2000 to 1.72% of GDP in 2008. These programmes are deserving of continued support.

Public consultation policy has a number of fundamental strengths but needs further reform. Belgium's current institutionalised system of consultation is based on fundamental principles of representative democracy. Public consultation of stakeholders has a number of strengths, is comprehensive in coverage, and is fundamentally adapted to the Belgian situation. The system has the broad support of most stakeholders. It is in the process of development and reform in some domains. Further reforms of the advisory board system are needed in order to address the complexity resulting from a comprehensive and detailed advisory board structure, which would boost transparency. Greater use of more direct forms of consultation with businesses and citizens would also be desirable, where appropriate and as an adjunct to the advisory board system. The strength and visibility of consultation processes and structures would be boosted by establishing consultation guidelines, covering all domains.

The management of EU aspects of Better Regulation displays both strengths and weaknesses. The management of EU origin regulations (negotiations and transposition) is well-organised and an area where co-ordination between Belgian governments is especially strong. Belgium has recently reached the 1% deficit target for timely transposition of internal market directives set by the European Commission.[1] Policies for transposition would benefit from a strategic review (a review was launched after the OECD peer review mission). The interface with the EU's own Better Regulation policies appears to be underexploited. Belgium's Presidency of the EU in the second half of 2010 should be a good opportunity to influence developments, and put Belgian priorities on the agenda.

There is a strategic gap: it is hard to distinguish a clear and compelling overall Better Regulation strategy linked to public policy goals. How do current and planned initiatives come together to support public policy goals? How can the policies of the different governments be brought together in a shared vision, without compromising each government's autonomy? Initiatives for Better Regulation are not explicitly framed within an overarching and visible policy strategy and objectives against which progress can be monitored and communicated, and which links Better Regulation to broader public policy goals. Yet there are powerful underlying drivers at work, including the need to boost competitiveness and support a stronger public administration.

The range of Better Regulation work and its importance deserves greater visibility. Belgium's institutional and regulatory environment is complex, which means that special attention needs to be paid, on an ongoing basis, to transparency and visibility of the work carried out to address regulatory management issues. This is important both for internal stakeholders (officials in the administration of each government, given the tradition of substantial ministry autonomy, so that they can buy-in to the process); and external stakeholders (businesses and citizens who need to feel the benefits of Better Regulation, to support the efforts which are being made, and to contribute ideas for further development). How much is known of policies and achievements beyond simplification by those who need to know?

There is a linked need for visible leadership. The rapidly shifting political environment means that officials need to be in the front line, as well as their political leaders. How well-known are the Better Regulation units? Greater visibility and transparency would help to spread good practices and successful initiatives across the different governments. The different governments appear to be at different stages in the communication process. Effective communication and clearly visible leadership is especially important for the Administrative Simplification Agency (ASA), given its Belgium wide mission. There is a special need to highlight effectively the major initiatives that have been taken in recent years which involve shared work across Belgian governments, and through this, to highlight the role and importance of the ASA as facilitator. The establishment of shared portals and databases

on regulations and related issues (see e-Government below) is a major success of the Belgian Better Regulation experience so far, and these achievements should be widely communicated.

As in many other OECD countries, *ex post* evaluation of Better Regulation policies is (with some exceptions) not well-developed. Strategic *ex post* evaluations of policies to assess the need for major adjustments (for example, policies for impact assessment) are largely absent, with the notable exception of Flanders where efforts have been made to take stock. Annual progress reports on simplification are not a substitute for a more strategic review of the underlying programmes.

Strong use is made of e-Government in key areas of Better Regulation, but there are some issues. E-Government is an integral part of Better Regulation strategy. Generally, strong and effective use is made of e-Government to support a range of Better Regulation policies, including Belgium wide initiatives such as databases on the stock of regulations and specific data banks such as the Crossroads Bank for Enterprises, and the Crossroads Bank of Social Security, the databank on vehicles (DIV), the data bank for VAT, and Tax on the web. Large parts of the administrative simplification programmes make significant use of e-Government. A more strategic vision of the areas and issues where ICT developments need to be shared would be helpful, and with this, a stronger identification of the technical aspects which need a co-operative approach. What further issues could be shared?

Institutional capacities for Better Regulation

There has been a steady development of Better Regulation institutional structures across Belgium, linked to a growing awareness of the need to address issues such as regulatory inflation. By EU standards, Belgium has a well-developed set of centrally located structures across the different governments, whose purpose is to drive forward the Better regulation agenda. These structures, which started with the decision in 1998 to establish the federal Administrative Simplification Agency (ASA), reflect a strong awareness that Belgium's rapid federalisation process and the Belgian federal model require special efforts to secure effective regulatory management. Shared aspects imply that there is considerable scope for governments to learn from each other.

In the Belgian context, Better Regulation units play an especially important role in support of Better Regulation and in the search for creative solutions to the issues raised by federalism and its continued evolution. Another shared and very positive feature of the Better Regulation structures that are now in place is that they have become a source of expertise, support, ideas and spread of good practice for overcoming the difficulties of regulatory management in Belgium. The Better Regulation structures use persuasion rather than constraint. This, however leaves them short of sanctions to ensure that Better Regulation good practices and processes are respected. They are "helpful" but not "policemen".

The sustainability of many Better Regulation institutions across the political cycles (and sometimes within them) is an issue, which is not unique to Belgium. There are few easily definable high- level political champions of Better Regulation. An issue of concern is that there is often weak political buy-in for Better Regulation.

The difficulties of developing Better Regulation are aggravated by the often strong role of cabinets in rule-making processes. In all governments (federal, regions, communities), ministerial cabinets (referred to as "strategic cells") are large, contain a mix of both civil servants and political nominees, and are often involved in law drafting (a task usually reserved for civil servants in other countries). A number of stakeholders voiced their concern to the team that this weakened the application of Better Regulation processes such as effective consultation, because the cabinets did not or could not (for example, under political pressure or in an emergency) automatically apply the processes when they drafted laws.

Federal government

The Administrative Simplification Agency (ASA) has an important dual mission, not only to promote simplification with regard to federal regulations, but also to promote regulatory co-operation across the federal, regional and community governments. The ASA's institutional foundations (1999) are strong and a necessary support for its often delicate – but crucial – mission to promote Better Regulation across all the Belgian governments. The ASA's mission to frame, encourage and promote Better Regulation across governments is an essential support for Belgium's Better Regulation needs.

Some federal ministries play an important but currently somewhat separate role in regulatory management and the development of Better Regulation of relevance to the whole of Belgium. Key federal ministries in this regard are the Federal Public Service (FPS) for Economy which has engaged a major initiative to upgrade the quality of the economic regulatory framework; the FPS for Sustainable Development which has developed an *ex ante* impact assessment process for sustainable development; and the FPS Justice which maintains a near complete jurisprudence database used by the Belgian courts in their analyses and recommendations. FPS Finance has recently launched an important initiative to improve the regulatory framework underpinning the modernisation of financial systems. The modernisation of the social security framework was another key area. The significant autonomy of ministries, however, means that relevant initiatives are not clearly associated with the ASA's work. For example, the project for a sustainable development *ex ante* impact assessment is not yet linked up with ASA initiatives to encourage use of the *ex ante Kafka* Test for administrative burdens.

A range of other institutions play a Belgium wide role, which could be further exploited. A number of authorities have Belgium-wide responsibilities which help to counter the centrifugal forces of federalisation, as well as providing a country-wide perspective on regulatory management issues. These include the Council of State, the *Court of Audit, the Inspectorate of Finance*, as well as the Constitutional Court and the judiciary as a whole. Are these underused assets in Belgium's regulatory management landscape?

Regional and community governments

Significant Better Regulation structures have also been set up in other Belgian governments, including the Walloon region's EASI-WAL, the Flemish region's Regulatory Management Unit, and the French community's unit for Internet and Administrative Simplification. *EASI-WAL* sits at the centre of the Walloon government, reports to the Minister President, and is charged with implementing the 2005-09 Action Plan for Administrative Simplification, e-Government and readability. Flanders' Regulatory Management Unit sits at the centre of the Flemish government, covering all aspects of Flemish Better Regulation including simplification and Impact Assessment. It has set up and encourages a network of regulatory quality units and contact points across the Flemish administration. The French community's unit for Internet and Administrative Simplification covers projects for administrative simplification and e-Government. These units, however, to a greater or lesser degree, share issues of long-run sustainability and resourcing.

Co-operation on shared policy and regulatory issues

In the Belgian context, it is important to find effective ways for governments to work together on shared policy issues where competences (and hence rule-making) are split across the different governments. The institutional structures supporting Belgian federalism generate major challenges for the effective, efficient, and timely development and implementation of coherent policies and regulations which have a country-wide relevance. In particular, some important policy and regulatory issues engage the competences of the different governments.[1]

Further co-operation on Better Regulation can help to promote policy coherence, in areas where this is needed. Federalisation has created some overlapping policy responsibilities in important policy areas such as employment, energy and the environment, and policy fragmentation. The Chancellery of the Prime Minister would need to play a pivotal role on the policy front, to get this started. The many formal co-operation agreements for Better Regulation could then be usefully activated to support policy coherence, through the development of regulatory coherence.

There is already significant co-operation for Better Regulation, using a mix of formal and informal approaches. Co-operation on Better Regulation is formally anchored in procedures established by law. Co-operation agreements have been successfully established for administrative simplification (fleshed out with concrete projects), as well as on e-Government and the development of a shared portal for access to regulations. Informal co-operation and networking (between officials) is used extensively to pave the way for decisions and exchange ideas and practices. Too much reliance on informal networks, however, could be inadequate in the long-run as it relies on a network of relationships and goodwill between officials.

Role of parliaments

The role of the parliaments in the promotion of Better Regulation should not be neglected. Belgian parliaments are concerned about the need to improve regulatory quality in the rule-making process, and may even be prepared to invest further in the "cleaning" of existing legislative texts. A starting point for further co-operation is already in place with the 2007 law which set up the parliamentary committee responsible for following up on the evaluation of existing laws.

Transparency through public consultation and communication

Public consultation on regulations

Belgium's current institutionalised system of consultation is based on fundamental principles of representative democracy. The system covers a very wide range of sectors and issues. The Belgian system draws a large part of its strength from high participation rates. Union membership is high (between 60 and 70%), and 80-90% of companies are members of an employer's federation.[1]

Belgian governments have a well-established and well-supported practice of consulting external shareholders when preparing new regulations, which is based on institutionalised bodies ("advisory boards") set up by each government. Consultation is considered not only by governments but many stakeholders as an essential instrument for reaching consensus and overcoming tensions. Stakeholders are generally consulted through a dense, highly structured and extensive network of advisory boards. The system has the broad support of most stakeholders.

Belgian governments are deploying or testing a number of new approaches alongside the traditional structures (without abandoning the latter). Belgian governments have also been developing new forms of consultation, including more open "notice and comment" procedures using the internet to reach out directly to citizens, round tables, and large scale *ad hoc* consultations for difficult issues such as the transposition of complex EU directives. Administrative simplification programmes have encouraged the use of the internet and direct interviews with stakeholders to gather views.

There have been significant efforts to simplify the advisory board system, particularly in the regions. The network of advisory boards is traditionally very extensive, comprising around 600 boards at federal level, 23 commissions in Wallonia, and 13 strategic advisory boards together with subsidiary bodies in Flanders (after rationalisation). The regions have taken steps to streamline their systems, reducing the number of bodies and setting common rules, but the structures remain significant and it is not yet clear that the reforms have yet had a positive impact in terms of enhanced

transparency and meeting stakeholder needs. The federal government (which has the largest number of boards) has yet to engage a reform of its system.

Despite these important developments, the overall approach to consultation would benefit from an updated and clearer policy to guide the process and reinstate transparency. Transparency as a basic principle of consultation has become compromised over time by the growing size of the advisory board system. Belgian governments have a commitment and a large number of requirements to consult. Stakeholders are generally strong supporters of the advisory board system and they want to improve it. Three related needs can be distinguished (relevant for all the Belgian governments): further reforms of the advisory board system; further development (in parallel, where it is appropriate to integrate them) of new forms of consultation; and a clearly articulated consultation guidance to cover all domains.

Consultation structures and processes are for the most part intra-governmental. Although there are some specific advisory bodies that co-ordinate consultation on policies and related regulations across governments, this does not appear to be an established feature of the system. This aspect, however, is of critical importance for policy areas where competences and rule-making powers are split among the different governments but where there may be a shared interest in developing an effective policy and regulatory response (environment, for example).

Public communication on regulations

Belgian governments have developed numerous initiatives to ensure access to regulatory information, which is guaranteed by legal texts, making strong use of ICT. Significant and impressive initiatives have been taken, including a range of Belgium wide initiatives. These efforts are essential for the citizens' and enterprises' understanding of regulations given the underlying institutional complexity of Belgium and the use of several languages. Citizens' right of access to administrative information is guaranteed by the constitution and detailed in a 1994 federal law.[1] The federal government has established a portal for accessing all official Belgian websites, including those managed by regional and community authorities, and for providing guidance on administrative procedures to all citizens and enterprises.

The development of new regulations

Procedures for making new regulations

At the federal level and in the Walloon Region, the misplaced use of programme laws undermines regulatory quality. An agreement exists between the federal government and the parliament to limit the use of programme laws to budgetary issues. In principle, only urgent and technical issues can be included in programme laws. The federal government recognises that in practice these laws can be unhelpful to transparency and the general quality of the legislative process.

Whilst each government has defined its own procedure for making new regulations, there are strong unifying elements. The Council of State reviews the draft regulations of all governments (legal check), as does the *Inspectorate of Finance* (legal and budget check). This nationwide aspect is backed up *ex post* (after enactment), by the Constitutional Court (for primary regulations) and the *Court of Cassation* (secondary regulations), which may check conformity with the constitution.

A useful development has been the trend in Flanders and Wallonia to merge legal and broader regulatory quality processes. The divisions that often exist between the different procedures for reviewing draft regulations on their way to adoption (legal quality checks, constitutional checks, impact assessments etc.) mask the fact that the overall objective is to make an efficient and effective regulation, fit for its purpose. Strategic oversight of these different processes by a single entity is helpful.

Apart from Flanders, visibility of the forward planning agenda is limited. In all governments, policy statements and ministerial policy notes, at the beginning of the legislature, outline the upcoming programme of work. The Flemish government has established more specific forward planning and monitoring mechanisms through an online regulatory agenda.

The efficiency of the scrutiny process can be significantly reduced in a number of ways. Issues include a tendency for ministerial cabinets to be heavily involved; the scope for some important regulations not to be subject to a sufficiently rigorous process; short deadlines and lack of prioritisation; and insufficient publicity for the Council of State opinions.

- *There is a tendency for ministerial cabinets to be heavily involved.* Shared among governments is a tendency for draft texts to be prepared by the ministerial cabinets. This means that procedures to secure quality can be circumvented as officials are less involved.
- *It is not clear whether all significant regulations are well-covered by the process.* This applies in particular to programme laws, significant secondary regulations, and collective agreements (which are significant in labour regulations). Parliamentary proposals account for about 25% of (federal) laws.
- *Short deadlines and lack of prioritisation limit the extent and efficiency of the ex ante scrutiny system.* This affects two distinct processes. First, the advice of the Inspectorate of Finance is requested on a large number of decisions but there is no prioritisation of cases to define the most important ones. Second, a large number of draft regulations are submitted to the Council of State under the "urgency procedure" which severely limits its capacity to carry out effective checks.

The Council of State plays a particularly important role in *ex ante* scrutiny of draft regulations, but its opinions are not widely publicised. The Council of State is the main body responsible for ensuring legal quality. It must be consulted on all draft laws, decrees and ordinances as well as orders initiated by a Belgian government. The Council of State is currently considering how to give its advice greater publicity.

Ex ante impact assessment of new regulations

Belgian governments have taken important steps to integrate *ex ante* impact assessment in the development of regulations. *Ex ante* impact assessment is a relatively new policy in Belgium, and still a "work in progress". Although steps have been taken to enlarge the scope of impact assessments, these are still, for the most part, confined to evaluating administrative burdens. In 2004, the federal government introduced the *Kafka* Test to detect administrative burdens in new regulations. The governments of the Walloon Region and the French Community have also adopted the *Kafka* Test. Other impact assessment procedures, with a broader scope, have also been established by the Flemish government in 2005 and by the federal government in 2007. A variable geometry is at work, with different governments sometimes adopting different versions of the same processes.

The federal government's Kafka Test has proved a good starting point for raising awareness of impact assessment and its potential. It has forced officials to consider the impact of their proposals on citizens and businesses with respect to administrative burdens. More practically, it has made a real contribution to the reduction in administrative burdens. Factors for success have included a simple structure based on a short questionnaire, and a gatekeeper role for the Secretariat of the Council of Ministers in the Federal Chancellery, which ensures that tests are included in dossiers sent to the Council of Ministers.

The experience of the Walloon government and the French Community government with their version of the Kafka Test has also been positive, supported by significant efforts to set a

strong operational context for the test. These governments have taken and adapted the federal government *Kafka* Test, with a similar objective of building up experience in impact assessment. The Walloon Better Regulation unit *EASI-WAL* sees the Test as an initial step to change mentalities in the administration. *EASI-WAL* has made a significant effort in supporting the Test, with a methodological guide, training courses, and additional criteria for improving the quality of the regulation such as abrogation of obsolete texts.

The simplicity of the Kafka Test is a strength, but also a limitation, and there are other challenges. The test only considers administrative burdens, and does so in a very simple way, via a relatively undemanding questionnaire. Quantification of burdens is not explicitly required or encouraged. Another issue is that the *Kafka* Test, which was designed to start at the very beginning of the rule-making process and continue up to presentation to the Council of Ministers, may only be completed just before the meeting of the Council of Ministers. The institutional challenge function prior to the adoption of a regulation in practice is limited compared with many other countries, as the decision has been taken to put the most significant work into checking regulations *ex post,* once they have been adopted, through an *ex post* measurement process for administrative burdens. There is no consultation of stakeholders, and no external publication of the *Kafka* Test (which could add another perspective on the system). The test needs to evolve, become more robust, and consider a larger range of impacts. At the federal level at least, this last point means finding a way of associating the future evolution of the test with the roll-out of the Sustainable Development Impact Assessment (see below).

The federal government has also launched a Sustainable Development Impact Assessment (SDIA), but this is still at an early stage of implementation. The Sustainable Development Impact Assessment is an ambitious initiative. It covers economic, social and environmental impacts, evaluates short and long-term effects, and seeks to address the full-range of spatial effects (from impact on the local levels within Belgium to impact in other countries). It sets a two-stage process to allow for an initial screening of regulations through a set of indicators, and for an in-depth analysis of selected regulations. The federal government made it a formal requirement in early 2007 and the FPS for Sustainable Development has produced a range of guidance materials. However, so far the process has been applied in practice only to a limited number of draft regulations.

The highly ambitious objectives set for the Sustainable Development Impact Assessment, combined with significant exemptions, could complicate efforts to make progress. The Belgian federal government has identified the important strategic need to develop processes in support of sustainability. There is no clear evidence that the process has yet changed the course of a draft proposal. In essence, the federal government is seeking to establish a process (a form of "super impact assessment") which is highly sophisticated by international standards, on a culture and administration which has so far only had the modest experience of a limited test for administrative burdens. This is not to question the objective of broadening the scope of impact assessment, but to caution that this needs to be developed in proportion with capacities to cope, and with a much more developed support system.

Another issue for attention is that the federal government now has two separate institutional anchors for impact assessment. The Sustainable Development Impact Assessment process is overseen by the FPS for Sustainable Development (one of the horizontal ministries), and the *Kafka* Test is overseen by the ASA in the Federal Chancellery. There is no formal link between the two processes, apart from the fact that the SDIA is (like the *Kafka* Test) attached to draft proposals going to the Council of Ministers. Both require the co-operation of (highly autonomous) other ministries. It does not make sense to continue, at least over the longer term, with two separate processes.

Flanders has opted for a different and broader approach to *ex ante* impact assessment. The Flemish government has established a "comprehensive" *ex ante* impact assessment with some quantification and consideration of options, together with a quality control system, and a compensation rule for administrative burdens arising from new regulations. The system has "teething

problems" typical of what is often encountered in other OECD countries. It is proving difficult to change attitudes and persuade officials (and ministerial cabinets) to take the assessment seriously and carry it out at a sufficiently early stage in the development of regulations (it is often treated more as an *ex post* note of justification for a decision which has already been taken). This initiative will only be effective if efforts to encourage the administration upstream to carry out higher quality and timely impact assessments are sustained over time. The review of RIA completed at the end of 2008 emphasised the need for stronger political support and further guidance to officials.

All the different initiatives suffer, to a greater or lesser degree, from a range of problems including timeliness, limited coverage and weak institutional frameworks. Reflecting the often limited reach of general procedures for the development of regulations, many draft regulations are currently exempted from any form of impact assessment. The involvement of politicians in rule drafting makes the implementation of impact assessment particularly difficult. Impact assessment is often done late and which means that it risks becoming an *ex post* justification for decisions which have already been reached. This often causes implementation problems downstream and requires revisions to the law in the worst cases. Institutional frameworks are weak and generally unable to challenge poorly implemented assessments. Quantification is limited, although this is a work in progress. Transparency is also weak with often limited efforts to consult with stakeholders and little effort at publication. Strengthening impact assessments will require strong high-level commitment and further culture change.

Where to next in the development of Belgian impact assessments?

Impact assessment is a relatively new process in the Belgian Better Regulation landscape and needs more time to mature. The problems with the current systems are typical of the experiences of many other OECD countries, and sharing experiences with European neighbours would be a useful exercise, both for reassurance that Belgium is not alone and also to identify solutions to the practical challenges that could be applied in the Belgian context. Belgian governments should certainly not give up on setting an objective of a more developed impact assessment. They must evolve progressively towards a large range of impacts.

As a first step, there is a need to fix the various problems which weaken the effectiveness of the current processes. This includes (see above) the issues of timeliness to ensure that assessments influence final decisions, exemptions to ensure that processes cover all significant regulations, and the need to strengthen the institutional challenge function so that assessments are of high quality. Resource constraints on Better Regulation units also mean that processes need to be as efficient as possible, notably by applying the principle of proportionality (capturing all significant regulations but letting the insignificant ones go, for example through pre-checks).

The different approaches to impact assessment across Belgian governments are a rich source of experiences which need to be shared. This has already happened, with the shared deployment of the *Kafka* Test by the federal, Walloon and Brussels-Capital region governments. Sharing experiences also minimises the risk of fragmentation of processes over time, as governments can re-use the successful approaches deployed by their neighbours. The existing general co-operation agreement between the federal government and the federal entities could be a starting point for this, provided that this provides sufficient focus for this important issue.

Where policy issues are shared or overlap, co-ordinated impact assessments for the underlying regulations would add value to the process. Impact assessment processes currently reflect the division of competences between governments - they are applied to the regulations flowing from the competences specific to each government. With the exception of the sustainability impact assessment, which is a work in progress, the processes do not seek to take a Belgium wide view.

Consideration of alternatives to regulation is included in some but not all of the impact assessment mechanisms. Against the background of significant regulatory inflation, it is in Belgium's

interest to ensure that alternatives to regulation are given maximum attention at an early stage in the development of policies.

The management and rationalisation of existing regulations

Simplification of regulations

Belgian governments have engaged significant efforts to consolidate or simplify the regulatory stock. Simplification of the stock of regulations is a key part of Better Regulation programmes. For example, since the early 1980s the legal information technology service of the Justice FPS is responsible for feeding and managing the Belgium wide "*Justel*" database. Belgium legislation includes a number of codes. The Economy SPF has recently launched a major codification project to assess and modernise economic law. Significant efforts have been made in the 1980s to develop a social security code, which have led to major improvements in the legal texts for this sector. Codification, however, seems to take place *ad hoc*, with some difficulties in co-ordination when a chosen sector cuts across different ministries, and without adequate long term vision and backing from the political class.

The need for more systematic *ex post* review of regulations generates considerable support, but initiatives appear to be generally slow to get off the ground. The parliamentary committee for Legislative Monitoring established in 2007 only started work in February 2010. Another area for increased attention is the need to strengthen the assessment of implementation upstream, when regulations are being developed, rather than wait for them to become a problem once adopted. Mechanisms for *ex post* evaluation of new laws, taking account of their broader legal context, would also help the codification projects.

Administrative burden reduction for businesses and citizens

All Belgian governments have now committed to reducing administrative burdens of regulations and are putting considerable efforts into this, with measurable success. Policies extend well beyond programmes that reduce burdens in specific regulations, and include a mix of broad long term structural projects as well as short-term projects aimed at "quick win" results; target citizens, businesses and non-profit organisations (the programmes do not particularly distinguish between burdens for business and citizens); make strong use of ICT; tackle (to a greater or lesser extent) both the flow and stock of regulations; and integrate efforts to improve transparency and easier access to the administration (portals, websites, etc.). The biannual surveys of the Federal Planning Bureau indicate that administrative burdens on businesses decreased from an estimated 3.5% of GDP in 2000 to 1.72% of GDP in 2010.

Policies range from projects shared between Belgian governments, to initiatives that are specific to each government within its area of competence. Shared initiatives are a particularly striking feature of current projects, underlining the fact that Belgian governments are not always compartmentalised on their own projects. Shared projects are supported by a 2003 co-operation agreement on administrative simplification signed by the federal, community and regional governments. Important initiatives in this category include the *Kafka* contact point where citizens, businesses and public servants across Belgium can propose ideas for cutting red tape, and the Business Crossroads Bank which is a register of business identification aimed at connecting different databanks of the administrations and thereby allowing re-use of data across administrations. Institutional support is provided by the ASA whose annual action plan covers not only initiatives to reduce burdens in federal regulations, but also long term projects shared with the other Belgian governments.

Belgian governments have been especially active in the development of programmes to reduce burdens in specific regulations. Important initiatives have been taken by the federal government, and the Walloon and Flemish governments, to establish and develop administrative

burden reduction programmes. Different approaches have been used. The federal government and the Walloon region have taken a selective approach, preferring to test and encourage a gradual evolution. The Flemish region has opted for a more systematic approach. Variants on the SCM methodology are deployed to carry out measurements. At the same time, there is increasing adoption of a user-centric approach to improve the experience of citizens and businesses with the administration. The Brussels Capital Region has been catching up, and in 2008 it launched a pilot for SCM, with a view to creating an SCM procedure. With the "Brussels Plan for Administrative Simplification" launched in October 2009, this will be developed into a full programme, with the objective of a 25% reduction in administrative burdens. From 2010 a selective measurement approach will be launched, the first target being Economy and Employment legislation.

There is scope for further cross-government sharing of best practice. The fact that different approaches are being taken can be viewed as an asset, as this provides a laboratory of ideas for moving forward. Steps have already been taken to develop co-operation between the federal level and the regions with regard to measurements, where experiments are underway to find cost efficient approaches. These experiments are of potential interest not only across Belgium but to other European countries (for example, Portugal and Finland have also decided not to adopt a full-blown SCM approach). It is important that databases evolve as far as possible on the same principles, to facilitate best-practice exchange and co-operation. Shared platforms of this kind can be "held in reserve" for the possibility of sharing reduction programmes in policy areas of common interest at some future date.

Significant efforts have been put into communicating developments and achievements with respect to administrative simplification. The *Kafka* brand, for example, has been a useful instrument for communication, both within the administration, and to the external public. This is a well-known initiative, which has also gained visibility outside Belgium. This contrasts with the lack of communication on other important Better Regulation policies.

The federal level has intensified its administrative simplification programme, which has a number of strengths. The federal programme is developing in stages. The establishment of the Measuring Office in 2007 within the ASA, which has the mandate to capture the changes in administrative burdens caused by the adoption of new or changed regulations in selected areas, was an important staging post in the development of a more systematic policy. It supports a rolling simplification programme which brings together the simplification projects of the different ministries. The *ex post* measurement results highlight the effect on administrative burdens of the regulatory actions of ministries.

The policy is delivering concrete results and needs to be supported and sustained, with attention to certain points. The focus on *ex post* measurement and analysis puts some pressure on ministries to deliver results, but in order to ensure maximum effect, the *ex ante Kafka* Test may need to be reinforced, so that regulations which contain administrative burdens can be the subject of a stronger approach before they are adopted, to minimise the adoption of unnecessary new burdens. Ensuring that the *ex ante* and *ex post* parts of the policy remain firmly and visibly linked up is also important if effective control is to be exerted over burdens in the long-run, linked to the clear establishment of a net target or objective. Public consultation over the issues to be covered and the selection of priority areas could benefit from more direct interaction with businesses, to complement the feedback from the *Kafka* contact point, and the work of the Steering Committee.

The Walloon Region has also intensified its administrative simplification programme, which has a number of strengths. The Walloon government has decided that the first priority is to raise awareness and understanding of objectives (it is necessary to walk before you are able to run). It has made efficient use of experiences and best-practice elsewhere (at the federal level and also at EU level) to build its own approach. Significant efforts are going into the measurement of administrative burdens, using the SCM methodology and other approaches. Progress is measured through quantitative and qualitative criteria defined at the start of the simplification process for each measure.

EASI-WAL publishes regular progress reports, which are available on its website. These criteria are then used in progress reports to highlight achievements against plans.

Nevertheless, a number of issues need to be addressed, as the programme matures. The programme raises issues similar to those at the federal level. Burden measurement is not clearly linked up with simplification plans, and is not used as a baseline to strengthen current targets for simplification. Little attempt is made to link up the policies to evaluate existing and new regulations (the *Kafka* Test), which is important if effective control is to be exerted over burdens in the long-run. Third, there is a need for more robust public consultation to capture the views of the widest range of stakeholders possible, not just the views of the administration and selected interviews with business in the measurement process.

The Flemish government has taken a different and more systematic approach compared with the other governments, which also has a number of strengths. An initial pilot has now been expanded to cover all policy areas. Baseline measurements have been made for the policy areas, and an action plan must be prepared for each policy area. As well the regulatory management unit established an overall action plan. Regular progress reports are made to the Flemish government and parliament, which indicate the extent to which the reduction target for 2012 has been achieved. Efforts have been made to address the effect of new burdens via a compensation rule.

The main issue facing the Flemish approach is resources. Better Regulation is a long-term goal which takes time to achieve, and it is important that resources are adequate to the task. The Regulatory Management Unit has relatively few staff and there is a risk that lack of resources will slow the pace of an ambitious but necessary programme.

Interesting approaches to measurement and identification of priorities are being deployed in Flanders. SCM measurements by interviews with a group of stakeholders instead of individual businesses is a potentially cost efficient approach, although its real effectiveness needs to be evaluated (there is the risk that important details are missed and that businesses might be reluctant to express their views freely in a group). The 20/80 rule risks that some important administrative burdens remain invisible. In order to avoid this, or to test the hypothesis, a study could measure all legislation in one of the policy areas.

Administrative burden reduction for the administration

The issue of administrative burdens affecting officials is particularly important for Belgium given the "inflation" of institutions from the federalisation process. Reform of the public administration with the objective of improving the efficiency of the state might usefully be more closely associated with Better Regulation. Unnecessary regulatory burdens inside government, for example, excessive paperwork that needs to be handled by officials on the frontline of public services, implies unnecessary costs to the administration. The Flemish government has established initiatives which link Better Regulation with efficient government and the cost of regulation for the government.

Compliance, enforcement, appeals

Inspections and enforcement, which are the responsibility of the different governments according to the allocation of competences, do not appear to raise any major issues. The review was not able to go into depth on this issue, but the system appears to be well established, with the development of co-operation between inspection bodies and the use of risk analysis.

The appeal structure, by contrast, is a largely Belgium wide system, is equally well-developed, but raised a few issues. The first concerns duplication of procedures (litigants pursuing administrative appeals simultaneously with judicial review). This may need attention. The information gathered by ombudsmen could be more effectively used, and their work suggests that access to information on regulatory procedures is not as easy as it should be.

The interface between member states and the European Union

There is a reasonably robust process and regulatory framework for the management of EU origin regulations. This area provides an especially strong test of Belgium's capacities to co-ordinate in areas where this is necessary, and the outcome is encouraging overall. The structures that been put in place include the recent establishment of a network of "euro-co-ordinators" – one per ministry in the federal government and one per region and community – to act as the contact point within their administration, for the cross-government network.

Timely transposition of EU directives, however, remains an issue. Belgium has only reached the EU target of 1% transposition deficit very recently. A new working group has been established to increase synergies between the political level (cabinets) and administrative levels. The OECD peer review team heard numerous comments to the effect that this was an area needing a boost. Whilst the euro-co-ordinator network had been an excellent initiative, it probably represents more than one full-time job if important issues are to be addressed (for example, time should be set aside to evaluate infraction dossiers to see what lessons might be learnt).

The interface between the subnational and national levels of government

The local government landscape is large but significant in terms of direct interaction with business and citizens. There are 589 municipalities, most of them small. Local governments are important actors in the areas of social regulation as well as permits and planning, and play a major role in the enforcement of higher-level regulations. Regional governments are a key player, sharing tutelage of provinces and municipalities with the federal government. It was suggested that supervision might be simplified.

There is a well-established network of consultation between the national and local governments, but some issues need attention. The national governments (federal, regions and communities) consult local governments in the development of regulations through the advisory councils, in which the provinces and municipalities are represented. The regional governments have established specific bodies to interact with local governments. Nevertheless, local authorities have raised concerns about the burdens imposed by higher levels of government. The OECD peer review team heard specific concerns about unfunded mandates and the administrative burdens generated by higher-level regulations. Some initiatives have been taken to address these concerns, for example, an initiative of the Flemish government to reduce administrative burdens on local governments. Another issue raised was the need to put more effort into sharing databases and data re use between levels of government.

Local governments have started to participate in Better Regulation initiatives of higher-authorities as well taking some steps of their own. The Flemish government has called on its municipalities to take part in its administrative simplification policy. Various initiatives have recently been developed by municipalities themselves aimed at making municipalities "simple" and to promote a more dynamic environment for entrepreneurs. The EU services directive is proving a useful lever of change as regards one-stop shops.

Key Recommendations

Better Regulation strategy and policies	
Federal government, all governments	
1.1.	Identify and disseminate a shared strategic vision of what Better Regulation is seeking to achieve, both in terms of curbing regulatory inflation, but also for the broader contribution which it can make to economic and other public policy goals. Co-operate on the development of a common communication strategy for shared work and achievements, as well as for overall Better Regulation strategy. Develop a global agreement to sustain a shared approach and shared goals. Confirm and strengthen the commitment to sharing experiences and best practices, and to identifying those areas where it makes sense to work together. Ensure that policies that address the stock of regulations are joined up with policies to address the flow. Flesh out the strategy through a set of agreed principles to which each government would commit, thus contributing to the durability of key Better Regulation institutions and projects.
Federal government	
1.2.	Reinforce communication and visibility. Define and put in place a communication strategy which highlights the work being carried out, the achievements so far, and which promotes the identity of Better Regulation and its leader(s). If necessary, engage the services of communications experts to determine what approach might work best.
All governments	
1.3.	Co-operate on the development of common communication strategy for shared work and achievements, as well as for overall Better Regulation strategy. The co-operation agreement on administrative simplification between the federal government, regions and communities could be the platform to start this necessary co-ordination.
1.4.	Consider how to ensure that *ex post* evaluations of major Better Regulation programmes are carried out on a systematic basis, in order to secure an effective feedback loop which can be used to further strengthen the programmes.

Institutional capacities for Better Regulation	
All governments	
2.1.	Ensure the durability of important Better Regulation institutions and projects. Flesh out the Better Regulation strategy through a set of agreed principles to which each government would commit, thus contributing to the durability of key Better Regulation institutions and projects.
2.2.	Consider how best to secure more effective links between the administration and political units, for shared "buy-in" on Better Regulation processes.
2.3.	Consider whether any of the structures and processes set up to deal with the management of EU regulations provide any inspiration for the handling of domestic issues.
Federal government	
2.4.	Ensure that the ASA keeps its institutional distinctiveness (location in the Federal Chancellery, autonomous agency, strong link with the stakeholders), which has allowed it to promote, often with great success, Better Regulation initiatives of Belgium-wide relevance. Ensure that its Better Regulation advocacy work continues to receive effective support in line with the enlargement of its missions.
2.5.	Encourage greater co-operation between the ASA and the federal SPFs with regard to those initiatives which appear to be the most promising in support of stronger regulatory quality. For example, consider how *ex ante* impact assessment processes can be more effectively linked up with the *Kafka* test.
2.6.	Undertake a review, associating the ASA and the Better Regulation structures of the other Belgian governments, of whether and how any or all of the Belgium wide bodies with a role in regulatory management could be associated more closely to the Better Regulation processes.

Regional and community governments	
2.7.	Ensure that the significant institutional assets for Better Regulation which are now in place are preserved and enhanced. Consider whether resources are adequate to the tasks carried out, and ensure that professional capacities and competences are further enhanced, in order to meet the needs of a maturing Better Regulation agenda in support of more effective public administration and economic competitiveness.
Federal government- Chancellery of the Prime Minister, ASA	
2.8.	Consider the development of a more strategic perspective on policy co-operation, which identifies the issues that may need to be shared (the environment, for example), not least because they involve significant regulation by the different governments. Review and monitor Better Regulation co-operation agreements so that they can play an appropriate supporting role in streamlining the regulatory framework to promote policy coherence across Belgium.
All governments	
2.9.	Continue to promote further co-operation and information exchange on Better Regulation with the parliaments, whilst respecting the division of powers and responsibilities between the executive and the legislature.

Transparency through public consultation and communication	
All governments	
3.1.	Engage further reforms of the advisory board system, to simplify the structure; develop further new forms of consultation, for use where appropriate as a complement to the traditional system; reinforce inter-governmental consultation; and to frame the overall approach, establish consultation guidelines for all domains.

Advisory boards	
3.2.	Evaluate the advisory board system, with a view to (further) rationalisation, and streamlining of the supporting rules. Consider a guillotine system to prune the number of boards when they come to the end of their mandate. Eliminate boards that are not found to be efficient. Establish mandates with a limited timeframe, and systematically review the functioning of the board before renewing the mandate.
3.3.	Ensure that consultation exercises are launched at an early stage in the decision making process, before political commitments have been made, and in time to provide useful feedback to the government as an aid to decision making. Make use of the forward planning mechanisms to secure this.
3.4.	Enforce the rules regarding deadlines where necessary, and check that these provide adequate time for stakeholders to prepare effective responses.
3.5.	Check that all regulations are captured by all the relevant stages of the consultation process (including for example review by the relevant advisory board). Consider, in discussion with parliaments, how and to what extent laws initiated by parliaments can be the subject of equivalent robust procedures.
3.6.	Check that the process and the criteria for the establishment and nominations to advisory boards are clear and easily accessible for all those who may wish to put themselves forward.
3.7.	Consider the establishment of a consultation portal (covering all governments) in order to ensure that the work and opinions of the largest advisory boards are published and easily accessible to all interested parties, including the general public.
3.8.	Ensure that systematic feedback is provided on significant stakeholder contributions, including where consultation is non-obligatory. Consider providing more complete feedback on important legislation than is currently provided in the explanatory memorandum to draft bills.

New forms of consultation	
3.9.	Without endangering the traditional advisory board system of consultation, develop a framework for the selected use of new approaches, building on experiments that have already worked well. For example, when would it be useful to consult on the web, perhaps as part of the advisory board process? What issues would benefit from this approach?
Framework consultation guidelines	
3.10.	Develop, agree and publicise an enforceable consultation policy and supporting code of good practice that covers all the key elements set out in the more detailed recommendations above (scope, timing, methods, feedback etc). This could be done by setting up a reflection group made up of the representatives of the Better Regulation units, representative stakeholders, the most important consultations boards, and the Council of State. Consider whether there is a need for further sanctions for non-compliance with consultation rules and procedures.
Inter-governmental consultation	
3.11.	Consider whether there is a need to boost and systematise inter-governmental consultation and shared approaches to public consultation in areas where governments agree on the need for co-ordination.

Development of new regulations	
Procedures for the development of regulations	
Federal government, Walloon government	
4.1.	Consider action to limit the use of programme laws to their intended purpose. Ensure that these laws are processed transparently.
Governments apart from Flanders	
4.2.	Consider setting up a more visible and regularly updated forward

	planning process for regulations, to promote transparency.
All governments	
4.3.	Consider how law drafting can be more firmly established as the responsibility of officials in the administration, subject of course to political and ministerial oversight and direction.
4.4.	Ensure that all significant regulations are covered by the same process. Consider, in discussion with parliaments, how and to what extent laws initiated by parliaments can be the subject of equivalent robust procedures.
4.5.	Consider preliminary internal reviews by officials in the administration to relieve the load on the formal control bodies. Establish criteria for prioritising cases. For example, in the case of the Inspectorate of Finance, this could be thresholds to identify regulations with the most important budgetary consequences. Consider how use of the urgency procedure can be minimised, in order to allow time for the Council of State and Inspectorate of Finance to carry out effective checks.
All governments, Council of state	
4.6.	Systematically publicise (at least in part) the opinions of the Council of State on its website. Consider also systematically publicising the government's response to Council of State opinions (as happens in some other countries with similar structures such as the Netherlands).
Ex ante impact assessment of new regulations	
All governments	
4.7.	Identify the issues that stand in the way of a more robust impact assessment process, and take steps to deal with these, drawing on international best practice.
4.8.	Ensure that experiences are systematically shared, starting with the 2003 co-operation agreement on administrative simplification.

Federal government	
4.9.	The federal government should re-assess its ambitions in respect of the SDIA test and take stock of how to evolve toward a broader, integrated and realistically achievable approach.
Flanders government	
4.10.	Flanders should stick with its ambition of a broadly based process. It should not be discouraged by the challenges of setting up a full impact assessment process, and decide to confine itself to a more limited version that only covered administrative burdens.
Walloon government	
4.11.	The Walloon government should set itself the objective of moving toward a broader process, beyond administrative burdens.
Brussels Capital Region government	
4.12.	The government of Brussels-Capital Region should formally introduce *ex ante* impact assessment in the procedures for making new regulations.
All governments	
4.13.	A long term goal which could start to be discussed now between governments is the identification of policy areas where there is a shared interest in the outcome, and hence the need to combine efforts on impact assessment for regulations linked to these policies.
4.14.	Ensure that part of the upgrading of impact assessment processes includes a clear and enforceable commitment to reviewing alternatives to regulation.

The management and rationalisation of existing regulations	
Simplification of regulations	
All governments	
5.1.	Consider how the important work of codification, carried out for the most part by civil servants, can be drawn to the attention of governments and the political leadership in order to ensure their full backing over the long-run.
Federal government, all governments	
5.2.	Encourage and track the work of the parliamentary committee for Legislative Monitoring, and the work of other parliamentary committees (for example, the Flanders committee). Share the results of this work in the spirit of a global approach. Consider how implementation issues can be captured more effectively and at an earlier stage (for example, providing for review clauses in draft regulations; ensuring that implementation is one of the issues to covered in *ex ante* impact assessment; and generally making a stronger link between *ex ante* RIA and *ex post* implementation and review).
Administrative burden reduction for business and citizens	
All governments	
5.3.	Strengthen the existing Belgian SCM network to share ideas on the development of methodologies. Ensure that information is exchanged between governments regarding the development of databases, to facilitate exchanges of best practice and co-operation.
Federal government	
5.4.	Confirm a clear net target or objective for burden reduction so that benefits from work on existing regulations is not cancelled out by burdens in new regulations. Consider how the *ex ante Kafka* Test might be strengthened and continue to ensure that *ex ante* and *ex post* parts of the policy are firmly linked up. Consider the further development of direct consultations with businesses, as an adjunct to the input from the *Kafka* contact point and the

	ASA Steering Committee.
Walloon government	
5.5.	Strengthen the current targets and criteria for burden reduction so that work on existing regulations is not cancelled out by burdens in new regulations. Make stronger use of the measurement work to inform simplification plans and in support of a clear target or objective. Examine ways of linking up the evaluation of burdens in draft regulations (the *Kafka* Test) with the policy for existing regulations. Develop and implement a more broadly based public consultation policy which will capture the direct views of stakeholders in a more systematic way.
Flemish government	
5.6.	Consider how the Regulatory Management Unit can be further supported in its work. One idea would be to outsource the measurement process. Consider evaluating the approaches being taken to assess burdens to confirm that no important details are missed.
Administrative burden reduction inside the administration	
All governments	
5.7.	Consider whether it is appropriate and necessary to establish more focused actions to deal with unnecessary burdens inside government.

Compliance, enforcement, appeals	
All governments	
6.1.	Consider whether there are issues related to the duplication of procedures, and more effective use of the information gathered by ombudsmen, that require attention.

The interface between member states and the European Union	
7.1.	Establish a strategic review of the framework for transposition of EU directives. Consider whether resources for the euro-co-ordinator network need to be boosted. Consider carrying out a full impact assessment for EU directives as part of the transposition process. Review the role of the Council of State (should they intervene at an earlier stage as regards competences?). Consider how the processes of negotiation and transposition can be brought closer together in practice. Promote the interest of high-level officials and politicians in the management of EU regulations.

Note: Large parts of this recommendation – review of transposition, role of the Council of State – were given effect after the OECD peer review team mission.

Better Regulation in Europe: Denmark - *Executive Summary*

Drivers of Better Regulation

Regulatory reform has been on the agenda of the Danish government for over two decades. Initial policies for regulatory quality and simplification were established in the early 1980s as part of a comprehensive deregulation programme to modernise the economy. They aimed at removing regulations harmful to the competitiveness of the business sector. Over the years the focus of policy moved from "deregulation" to "regulatory quality".

Better Regulation policy today is part of Denmark's set of forward-looking reforms to sustain the positive economic and social performance of recent years. The government's current reform programme aims to address upcoming social and economic challenges, and puts fiscal sustainability as the overarching objective. Improving public services is another central element of the government's strategy. The aim of the Quality Reform launched by the government in August 2007 is to create a more efficient administration and unlock resources which can be used to improve welfare services. The importance attached to Better Regulation reflects these aims, and Better Regulation is seen as a means of contributing not only to the competitiveness of the economy, but also to meeting social and quality of life goals.

The public governance framework for Better Regulation

Denmark's coalition-based political system is characterised by a search for consensus, acceptance of compromise, widespread participation in decision-making, and institutionalised power-sharing. The political culture also relies on informal approaches and structures, which is widely regarded as having allowed for flexibility and the adoption of pragmatic solutions. This has shaped Denmark's approach to the development of institutional structures and processes for Better Regulation. A major institutional initiative relevant to the deployment of Better Regulation policies has been the reform of municipalities and region structures which came into force in January 2007, leading to substantially fewer municipalities and a redistribution of responsibilities across levels of government.

Developments in Better Regulation

Since the end of the 1990s and the publication of the OECD's multidisciplinary review in 2000, Better Regulation policy in Denmark has integrated efforts at improving the law-making process as well as the simplification of existing regulations, in particular through the reduction of administrative burdens. This shift has been maintained and reinforced by successive governments. Recent developments underline a commitment to the extension and deepening of processes for managing both the stock and the flow of regulations, across all the levels of government. There is a real interest in the promotion of Better Regulation, and high-level political support for its development at this stage. Specific recent initiatives include the De-bureaucratisation Programme for the local level, and a reinforcement of the programmes to reduce administrative burdens for businesses, including new communication strategies.

Main findings of this review

Denmark's well-functioning economy has not reduced interest in promoting further reforms. Recent initiatives to further strengthen and develop the administrative simplification programme

highlight a continued search for innovative solutions to regulatory management issues and improvement, which had been highlighted in the 2000 OECD report as a major strength. The Danish agenda for Better Regulation has also broadened to cover new aspects of regulatory quality such as risk based enforcement and is now directed towards all stakeholders, including local levels of government. Many of the elements for a complete and coherent strategy are now in place. There is an effective and well-managed co-ordination system for EU affairs. The maturity and scope of Better Regulation policies in Denmark now calls for a more systematic approach to their evaluation, both strategically and programme by programme.

While ministries have retained a significant autonomy in the implementation of the policies, co-ordination has been strengthened, through the government committee framework and through enhanced guidance to officials. The formulation of targets for some projects has increased accountability for reforms and sustained attention on the policies and their outcomes, both within and outside the administration. Leadership is however not clearly visible, and there is a need at this stage to devise a stronger strategic direction for the optimal future development of Better Regulation policies.

Developments in consultation practices are boosting transparency and the engagement of a wider range of stakeholders. This is reinforcing a tradition of deeply anchored consultation with key stakeholders, as well as extending the reach of consultation to a broader audience. Communication on new regulations is especially strong.

Requirements for *ex ante* impact assessment have been significantly reinforced since the 2000 OECD 2000 report. The development of new regulation is carried out within a well-organised framework. The Danish impact assessment system could benefit from a streamlined institutional monitoring framework, a more comprehensive interaction with public consultation, and further methodological developments.

The action plan to reduce administrative burdens on business is a substantial, well-run policy that has already delivered results. Denmark has successfully used the experience of its business administrative burden reduction programme to launch a new initiative aimed at reducing burdens on frontline public sector workers (the De-bureaucratisation Programme), which also engages the local level in Better Regulation.

Strategy and policies for Better Regulation

Interest in Better Regulation has been sustained and developed over time. Denmark's well functioning economy has not reduced interest in promoting further reforms, and many new initiatives have been taken in areas such as administrative simplification, consultation, the development of new regulations and multi-level governance. Denmark has maintained its capacity for innovation and continuous improvement, which had been highlighted in the 2000 OECD report as a major strength. Recent initiatives to further strengthen and develop the administrative simplification programme highlight a continued search for innovative solutions to regulatory management issues.

The Danish agenda for Better Regulation has broadened to cover new aspects of regulatory quality and is now directed towards all stakeholders. The competitiveness of the economy has remained a very important driver of Better Regulation policies, but other policy issues have gained prominence. The need to address the issues raised by an ageing population, growing labour shortages and expectations that high levels of social welfare can be sustained is reflected in the current agenda, which targets not just business but also frontline public sector workers as well as citizens.

Better Regulation policies rest increasingly on well developed and consistent methods, as well as improved co-ordination. This has been reflected in the development of the administrative reduction programme for businesses, and now with the De-bureaucratisation Programme, which tackles regulation inside government. The approach has been to set general objectives, define action

plans with targets and timelines, and develop a co-ordinated approach to the plans. Ministries have retained a significant autonomy in the implementation of the policies, but co-ordination has been strengthened, including through enhanced guidance to officials. The formulation of targets for some projects has increased accountability for reforms and sustained attention on the policies and their outcomes, both within and outside the administration.

Many of the elements for a complete and coherent strategy are now in place. There have been significant improvements in the tools and processes for the development of new regulations. Transparency in public communication on regulations is high, and has improved as regards public consultation. There is a well developed project for reducing administrative burdens on business, and the newly established De-bureaucratisation Programme for frontline public sector workers looks promising. Important initiatives have been taken to improve multi-level regulatory governance, with the identification of shared priorities and targets for Better Regulation based on the annual financial agreement between central government and the municipalities, and with the introduction of a specific procedure for assessing the impact of new regulations on local government. The EU dimension is well handled and Denmark is active in seeking to ensure that Better Regulation policies are effective at the EU level.

To secure an optimal performance, some aspects of Better Regulation policies could be further strengthened. While significant progress has been made to develop the framework for *ex ante* impact assessment, there is still a large potential for improvement of the framework if Denmark wants impact assessment to have a sustained positive impact on the flow and quality of new regulations. Public consultation on the development of new regulations would benefit from a more consistent approach to ensure that the same standards are systematically applied, building on the growing transparency of the past few years. Policies to simplify the stock of existing regulation may need more systematic attention. Effective monitoring of the De-bureaucratisation Programme needs to be put in place.

To sustain momentum, Denmark must now show clearly how Better Regulation policies combine and can be further developed into a strategy that supports long-term public policy goals. Denmark's approach to Better Regulation is founded on a collection of policies, with a large scope but with no clear "big picture" bringing the different policies together and linking them to overarching policy goals or a vision for the future. The 2000 OECD review had already pointed out this lack of strategic overall approach. The Danish civil service has a positive attitude, but the OECD team picked up worries about the possible underperformance of Better Regulation processes compared with potential. Is the government underperforming, compared with what it could achieve? How can public sector workers be motivated to sustain and enhance their efforts? How can the business community – which is also looking for reassurance and a vision – be persuaded to continue supporting Better Regulation efforts in a positive way?

Public communication of Better Regulation strategy and policies needs to be boosted. There is a need to package and communicate reform proposals to promote more enthusiastic support by stakeholders and ensure that the more controversial proposals are not rejected by the parliament simply due to a lack of understanding of government objectives. Beyond the communication that takes place on the administrative burden reduction programme for business, there does not appear to be any sustained or co-ordinated effort to promote or explain the government's work on Better Regulation. This creates a knowledge gap which can lead stakeholders to underestimate progress made and discourage support to reform. In this more mature phase of Better Regulation policy development, there is a need to move away from the separate presentation of policies and towards a more integrated approach, which will clarify for stakeholders the overall government objectives and Better Regulation's link with the achievement of economic and societal goals. The government's capacity to communicate on its agenda within the administration, to external stakeholders and to the parliament, would benefit from a clearly visible leadership for the overall Better Regulation agenda.

***Ex post* evaluation of Better Regulation has gained significant ground over the past few years, and could be boosted further through a more systematic approach.** The maturity and scope of Better Regulation policies in Denmark now calls for a more systematic approach to their evaluation, both strategically and programme by programme. Some important evaluations have been carried out, not least the 2007 evaluation by the National Audit Office of Denmark (NAOD) on the impact of Better Regulation and simplification. Monitoring reports on the programme for the reduction of administrative burdens on business have helped to shape and develop the action plans. Evaluation, however, is not systematic across all the relevant programmes. Evaluation is important in order to develop and strengthen all Better Regulation tools and processes. What are the benefits of specific policies? How much do they cost? What is the opportunity cost? Against the background of sustained Better Regulation initiatives over more than two decades, an overall strategic evaluation may also be useful, not least to point directions for the future.

Denmark is an OECD leader in e-Government development and implementation. The 2005 OECD review of e-Government in Denmark showed it to be among the OECD front-runners in e-Government. E-Government is rightly considered to be a key support tool for Better Regulation. A full evaluation of e-Government is beyond the scope of this review. Interviews highlighted the progress made as well as some indications that the potential in support of Better Regulation could be further developed (for example some ministries appeared considerably more advanced than others).

Institutional capacities for Better Regulation

Strong traditions of autonomous ministries have encouraged the development of a generally successful institutional framework adapted to these traditions. A number of formal inter-ministerial committees have responsibility for monitoring and developing Better Regulation policies and are involved in vetting draft regulations. This formal co-ordination co-exists with informal co-ordination between officials in ministries. Officials – especially those who form the « inner circle » for Better Regulation development – work well with each other, as evidenced by steady progress to develop Better Regulation policies and learn from each other. For example the De-bureaucratisation Programme has drawn its inspiration from the more mature business burden reduction initiative. The establishment of a Better Regulation unit in the Ministry of Finance, combined with the establishment of a unit for business burdens in the Danish Commerce and Companies Agency (DCCA) of the Ministry of Economic and Business Affairs, has reinforced the framework and its capacities to deliver an increasingly demanding agenda. The OECD team found considerable interest among government officials in the further development of Better Regulation.

The current institutional structures fall short, however, of providing a fully effective strategic motor for the optimal future development of Better Regulation policies. Although the Danish institutional set up is in many ways strong and effective, leadership is not clearly visible. Yet there is a need at this stage to devise a stronger strategic direction. The Coordination Committee is the hub of Better Regulation policy management. It carries significant responsibilities (approval of the Law Programme, approval of draft laws, approval of action plans for the business administrative simplification programmes, and reporting hub for both this programme and the De-bureaucratisation Programme).The Economic Committee is responsible for economic aspects (it must approve proposals affecting public spending or with a significant expected impact on business). The Steering Group for Cross-National Initiatives (STS) officials' committee is another key player, coordinating with local governments, including on e-Government. These committees are efficient in carrying out their allocated tasks. As the main hub, the Coordination Committee might be more visibly engaged in articulating and developing strategy for Better Regulation, based on its existing range of tasks.

Management of the Better Regulation agenda raises day-to-day challenges of coordination, coherence and communication across government. There are currently at least two poles of responsibility. The Ministry of Finance plays a key role across all the relevant committees. Its ministerial responsibilities cover many (not all) of the key policies for Better Regulation. The Ministry of Economic and Business Affairs, together with the Business Better Regulation unit of the

DCCA, plays a crucial role in the development of Better Regulation in relation to businesses. This division of responsibilities may be a comfortable fit for Denmark's institutional traditions, but it reduces the visibility of Better Regulation policy.

Ownership of Better Regulation is developing across ministries, and needs further reinforcement, in particular with regard to impact assessment. As in most other OECD countries, ministries are responsible for implementing Better Regulation policies (such as administrative burden reduction), but are also accountable for results through regular reports to the Prime Minister. Individual ministries decide on how to take forward the action plans in their sector. This has helped to spread ownership and promoted culture change. This constitutes significant progress compared with the assessment of the 2000 OECD review, which called for increased accountability for reform results of individual ministries. Interviews indicated however that performance could be uneven across ministries, particularly for impact assessment.

The role of the parliament in Better Regulation processes is also important. As in other OECD countries, the role of legislature is a cornerstone of the development and enactment of legislation. Reflecting this, some other countries' executives are taking steps to strengthen their dialogue with the parliament. Processes such as *ex ante* impact assessment are especially relevant in order to secure the best possible outcome in terms of clear and effective legislation. Some Better Regulation programmes such as the administrative burden reduction increasingly engage the parliament. This makes it all the more important that Better Regulation proposals are presented in the wider context of what the government is seeking to achieve, so that the parliament has a fully informed perspective for its own debates.

Transparency through consultation and communication

Denmark has a tradition of deeply anchored consultation with key stakeholders as well as within government. Consultation has evolved to combine formal and informal processes. The approach takes advantage of the small size of the country and small closely connected ministries. It relies on Denmark's political culture of a search for consensus among coalition parties, acceptance of the need to compromise, and trust between government and external stakeholders. Informality remains a key feature, but there are major elements of formal consultation as well. Apart from the institutionalised framework of collective bargaining in the field of labour regulations, the standard procedure for making regulations includes prior formal public hearings and public consultation before a draft law is tabled before the parliament. These procedures are described in the Ministry of Justice's Guidelines on Quality of Regulations and on an online law-making guide.

Important developments in the approaches deployed for consultation are boosting transparency and the engagement of a wider range of stakeholders. There has been a significant evolution since the 2000 OECD review, which cautioned against the insider/outsider problem. In recent years Danish ministries have opened up consultation with the development of new procedures to stimulate public debate and engage stakeholders. This has included public hearings and notice for comment on dedicated websites in preparation for larger reforms. Greater transparency has been supported by the establishment of the Consultation Portal in 2005, which has provided a large amount of information on consultation processes. More generally Danish ministries have leaned towards broader and earlier participation in consultation processes. For example, the development of the business administrative burden reduction programme has been supported by very open arrangements to gather views and information. The basic frame of reference is changing, from seeking to establish a consensus on the way forward within a somewhat closed circle, to an active search for views from as many relevant stakeholders as possible.

Progress in ensuring transparency needs to be consolidated. While significant progress has been made in recent years, some issues need further attention. Informal consultation procedures may still create some uncertainty as to whether all stakeholders have had a chance to be heard. They may also lead to different standards of transparency between ministries. Informal consultation traditions

have the advantage of legitimising policies, but can restrict openness for some key areas such as labour regulations. Ministries have to provide information on consultation (including the comments received and how they were dealt with) when sending a draft bill to the parliament. However several interviewees mentioned the lack of direct feedback in some cases. Securing effective and consistent feedback is important if the interest of stakeholders is to be sustained for the next round of consultations, as a major input of time and effort is often needed to respond to consultation exercises.

Communication on regulations is a particularly strong element of the Danish regulatory system. The communication of new regulations is well managed, making it possible to find out easily what regulations apply to specific activities. This is partly because of a simple underlying regulatory structure. Transparency of the regulatory system is also supported by strong ICT tools. This includes a comprehensive system for accessing laws and regulations on the Internet and well developed business and citizen portals for access to information and services. Denmark has developed a joint government/parliament database with a shared search facility, which is ahead of what is offered in most other countries.

The development of new regulations

The development of new regulations is carried out within a well organised and carefully orchestrated framework. A key element of this framework is the annual Law Programme, which is a detailed list of all bills that the government plans to send to the parliament during the year. The Law Programme has the dual objective of acting as a steering instrument for the government's work, and of engaging the parliament early and closely in forward planning. It includes all draft bills to parliament, makes the schedule public and sets a timeframe for ministries. The information provided by ministries must identify expected secondary regulations which will be needed to implement the laws. The process is supported by two important ministerial committees (the Coordination Committee and the Economic Committee). Last but not least, the process for making new regulations benefits from clear and comprehensive procedural guidelines established by the Ministry of Justice for the development of regulations, and a specific website on the law-making process. All these documents are publicly available. However tools in place focus on the production of primary regulations, with less attention given to secondary regulations.

Requirements for *ex ante* impact assessment, which go back to the early 1990s, have been significantly reinforced. The 2000 OECD review drew attention to the need for improvement. Many of its recommendations have been acted on, including greater rigour and strengthened guidance, and a stronger commitment to tackling economic effects. Ministries evaluate the consequences of their bills at an early stage, when they make proposals for the Law Programme. They need to refine the evaluation in a second stage, before the bill can be tabled before the parliament. The initial impact assessment also serves to identify proposals which require a more thorough impact assessment regarding business administrative burdens (done by the DCCA) and local government (VAKKS procedure, established in 2006). In addition, any regulatory proposal (primary or secondary), which would lead to significant administrative burdens on business requires the approval of the Economic Committee. Reflecting the broader scope and detail of impact assessment processes, guidance material has been developed and brought together on the online law-making guide. This is an important step for helping ministries to digest and understand what they need to do, and when. It also contributes to a more unified approach. The OECD team was told that the expanded guidance and online availability have contributed to improving the development of regulations, and making impact assessment more consistent and thorough. Transparency at the end of the impact assessment process is strong. The full impact assessment is accessible both to the parliament and to the wider public, once a bill is tabled before the parliament.

As in most other OECD countries, however, controlling the flow and complexity of new regulations remains a challenge. There are concerns among external stakeholders and local governments that the flow of new regulations shows no sign of abating, and in particular, that new regulation produced by some ministries can be increasingly detailed and complex. Some inside central

government also remarked on the growing number of new regulations. In the specific Danish context, there appears to be two sets of issues. There is a tension between pressures for higher levels of safety implying more regulations, and efforts to reduce regulatory burdens. There is also a tension between efforts to move towards more outcome-based regulations and the consequent need to provide documentation to government which is, in effect, another form of regulation.

The complex and dispersed institutional framework for monitoring the application of impact assessments needs to be strengthened and streamlined, in order to promote quality control, and to embed the process as part of evidence-based decision making. Although impact assessment procedures are well known throughout the administration, evidence from interviews by the OECD team suggests that they may not be applied evenly across ministries, and are often applied too late in the decision making process. This finding is supported by the report of the NAOD, and undermines the likely usefulness of the process as an aid to evidence based decision-making. The OECD team heard that it was important not to create excessively bureaucratic processes for ministries to implement. However the current dispersed approach may in fact represent a sub optimal use of resources by the administration on impact assessment, which is also likely to yield sub optimal results for decision-making. Dispersed institutional responsibilities weaken overall management and monitoring, and slow the spread of further culture change among ministries.

The Danish impact assessment system could benefit from a more comprehensive interaction with public consultation. The current public consultation processes imply that ministries must consult on draft regulations. Many ministries publish the impact assessment done in the first stage of bill preparation when they post the draft for comment on the Consultation Portal. This is often done for laws, but not for secondary regulations. The specific assessments on business administrative burdens (done by DCCA) and local governments (VAKKS) also make an integral use of public consultation. These are positive developments, which need to be applied across the whole impact assessment process. In particular more attention could be given to using public consultation in the development of second stage impact assessments.

The progress achieved in developing impact assessment could be further consolidated with action in other areas. First, there is a need to consolidate and extend methodologies (including the necessary guidance and training for ministries) for quantification of costs and benefits, building on the significant elements which are already in place for some key parts of the processes. The 2000 OECD report emphasised the need to increase the rigour of analysis for important regulations. This has not yet been fully achieved. Second, the links between the different parts of impact assessment need to be clarified. For example the guidance material does not provide a clear view of the overall process and its different elements. Finally it is not clear to what extent the current system covers secondary regulations. It is important that *ex ante* impact assessment capture all significant regulations. At the same time the principle of proportionality should be observed (not all regulations will need the same in-depth treatment).

Alternatives to regulation are among the tools of Better Regulation policy in Denmark, but it is unclear to what extent they have been used in practice in recent years. The 2000 OECD report noted that Denmark has for some time deployed various alternatives policy instruments to "command and control" regulation. It has made significant efforts to integrate the consideration of alternatives to regulation into the rule making process, and provided officials with thorough guidance. It was beyond the scope of this report to assess how these efforts have translated in increased use of alternatives (including the option of not regulating).

The management and rationalisation of existing regulations

Policies to simplify the stock of existing regulations need more systematic attention. This issue was already picked up in the 2000 OECD report. Denmark has some initiatives in place to promote simplification of the regulatory stock. These include, in particular, *ex post* implementation

reviews of specific regulations, as well as *ad hoc* codifications of amendments to specific laws. The approach, however, is not systematic.

The action plan to reduce administrative burdens on business is a substantial, well run policy that has already delivered results. The Danish government is one of the front runners in the area of administrative burden reduction for business. It has used the Standard Cost Model (SCM) to measure administrative burdens, and has committed to a reduction of 25% within a timeframe of eight years, between 2001 and 2010. A reduction of 15% was achieved by mid-2008. The reduction is net (it takes account of expected burdens from new regulations as well as existing regulations). The DCCA is well organised to carry forward the practical aspects (delivery of the business action plan, burden measurement supported by consultants, advising and chasing ministries). Setting an ambitious target and regular monitoring has helped create momentum and sustain pressure for progress. The project has had positive external effects and has been an efficient and necessary motor for developing Better Regulation policy in Denmark. It has demonstrated that significant change can be made both in regulation and in the interface between the civil service and businesses. It has promoted co-operation across the government, brought forward initiatives from within the administration, and stimulated knowledge-sharing between the Ministry of Economic and Business Affairs and line ministries. It has also paved the way for new Better Regulation policies such as the De-bureaucratisation Programme.

Further progress in meeting the target does raise challenges which need to be addressed. While an important reduction was achieved by mid-2008, the government now needs to deliver the remaining 10% reduction by 2010. Interviews revealed some doubts among stakeholders as to the capacity of the government to reach this target. Meeting the actual target may matter less than the process and specific outcomes. Nevertheless, making progress needs to take account of a number of factors. These include a negative perception by business of achievements so far (which may, at least in part, signal that substantive issues that matter to them are not yet effectively addressed, as well as a relative failure of communication on achievements); the fact that the process faces an ongoing flow of new regulations; and the need at this stage to tackle substantive changes to regulations as the "low hanging fruits" no longer exist. The government has recently developed two new projects (the "Burden Hunters" project to address irritants, and the "Ten Business Flows" project) to match its administrative burden reduction policy more closely to real business needs. Denmark has also developed new initiatives on communication since the OECD review took place, in particular with the release of the De-bureaucratisation Plan for Business Regulation, which explains how the government intends to meet the 25% reduction target.

Denmark appears to have successfully used the experience of its business administrative burden reduction programme to launch a new initiative aimed at reducing burdens on frontline public sector workers (the De-bureaucratisation Programme). A particularly positive feature of this programme is that it links central and local governments in a shared effort, in a way that is not found in many other OECD countries. It is also an important programme for sending a signal to public sector workers that their needs are being considered, and for encouraging new entrants into public sector work. Challenges are however considerable, not least because of the scope of the project. Municipalities, which are in charge of delivering public services, have their own organisation and processes. It can be difficult to isolate tasks related to the delivery of specific services, as these tasks are often part of the core tasks of civil servants. Effective monitoring is needed to secure progress and ensure that policy objectives are matched with practical outcomes. The action plans being developed are binding, but what this means in practice is not yet clear. There are currently no obvious burden reduction targets because a bottom-up approach, based on identifying needs in specific situations, is favoured. Beyond the need to report to the Co-ordination Committee on progress, there is a need to improve structures to secure effective monitoring and quality control.

Compliance, enforcement, appeals

A risk-based approach to enforcement has gathered momentum and needs further encouragement. Denmark has made compliance and enforcement a greater priority over the past

years and has been developing new approaches. Enforcement authorities have started to roll out a risk-based approach, and a number of inspection bodies now use risk analysis in enforcement. The small size of the country and the concentration of enforcement responsibilities within central government inspection agencies have facilitated the development of the new approach as inspection agencies have accumulated a thorough knowledge of companies. Experiences such as that of the Veterinary and Food Administration show that the involvement of front line enforcement workers can encourage acceptance of new approaches.

The appeal system rests on administrative procedures and complaint boards within ministries, with the general courts as last resort, and this seems to work well. The creation of boards is considered a generally effective tool for addressing and resolving complaints, and avoids overcrowding the courts. The boards are subject to control mechanisms and transparency rules. Their decisions can be appealed to courts. The parliamentary ombudsman also plays a significant role in the development of good administrative practices. The publication of its conclusions can give it significant power. These structures appear to avoid the complications of some other countries systems, which leave greater scope for judicial review and litigation. Denmark understandably wants to keep it that way. However the diversity of complaint boards and differences in their legal framework may make it difficult for citizens to get a clear view of the complaint system.

The interface between member states and the European Union

The government has an effective, well managed and highly institutionalised internal co-ordination system for EU affairs. This not only minimises internal conflict, including with the parliament, but also ensures that Denmark always speaks with one voice in EU affairs. Internal and external unity is considered essential to maximise the influence of a small country. The government consults the parliament, which gives it a mandate for negotiation. Although it can be time-consuming, the scrutiny system ensures parliamentary control and involvement of stakeholders at an early stage of rule making, as well as coherence and a strong position for the ministry going to Brussels.

Denmark has a very good performance as regards transposition but may need to pay closer attention to gold plating. The procedure for discussing EU rules facilitates the transposition of the rules into the Danish system, as building a consensus at the negotiating stage – including the parliament – removes later obstacles to transposition. There is no clear evidence of gold plating in transposition, although there were several comments to the effect that Denmark wants to keep its high standards, and a significant share of administrative burdens on business stems from EU-origin regulations. A broader perspective is important on the issue of standards, given that the smooth functioning of the EU internal market is also important for the competitiveness of Danish companies in that market. Differences may however sometimes be justified to give effect to the subsidiarity principle. The issue of where administrative burdens originate is a complex one, and may reflect a restricted choice in the method of transposition. It may, however, also reflect an over-detailed implementation that could be avoided.

The interface between subnational and national levels of government

The De-bureaucratisation Programme engages the local level for the first time in a specific Better Regulation policy. Alongside implementation of the VAKKS procedure to assess the impact of new regulations on municipalities, the De-bureaucratisation Programme reinforces the process of developing multilevel governance. The means by which it was agreed is noteworthy. The annual framework agreement between the central government and the two sub national umbrella organisations for municipal and regional interests appears to be an effective instrument for taking both central-local and local Better Regulation initiatives forward. Municipalities are invited to participate actively in developing ideas for de-bureaucratisation (while central government will remain responsible for the delivery of the programme). There is also a commitment to the shared development of e-Government between local and central levels of government (through the STS Committee). The common citizen portal is an example of this. As in many other countries some

municipalities will be better equipped than others for these tasks. A clear assessment at this stage is difficult because the major recent mergers and restructuring need time to settle.

Local governments express concern over increased "documentation" requirements. One of the challenges of Denmark's current policies on Better Regulation is to combine the objective of less burdensome regulations within government and the objective of greater decentralisation in the implementation of regulations. The government aims to shift from detailed process-based regulations to performance-based regulations. Some interviewees expressed concerns that this approach may, perversely, give rise to increased requirements on municipalities to document their results. The risk would be to increase administrative burdens for local civil servants, and undermine the underlying "lighter touch" objective of the De-bureaucratisation Programme. Denmark intends to address this issue as part of its De-bureaucratisation Programme.

There seems to be effective and regular co-operation between the central and local levels of governments. *LGDK*, the association of municipalities, plays an important role in this co-operation, both through the negotiation of the annual framework agreement, which includes discussing priorities and targets for Better Regulation, and through regular informal consultations with ministries. Along with Danish Regions it is also part of the STS Committee, which plays a key role in the development of e-Government policy and strategy. The establishment of *KREVI* is an important further development in the co-operation between local governments and central government. *KREVI* was set up in 2005, as an independent local evaluation agency. It is charged with mapping local capacities and funding streams. It is also responsible for conducting the *VAKKS* assessments (*ex ante* evaluation of burdens from national regulation on municipalities. *KREVI* seems to have established itself in a short time as an effective independent body and partner for both central government and local governments, providing support to local governments and promoting coherence of regulations between central and local levels of government.

Key recommendations

Strategy and policies for Better Regulation	
1.1	Give consideration to strengthening the institutional framework for impact assessment monitoring and quality control, further promoting quantification as well as qualitative analysis, and ensuring that public consultation is fully integrated into the process. (The recommendation is detailed in Chapter 4). Denmark should also consider whether further action is needed to strengthen public consultation practices, to ensure systematic simplification of the regulatory stock, and to establish effective monitoring of the De-bureaucratisation Programme (see Chapter 3 and Chapter 5).
1.2	Consider whether it would be helpful to develop a White Paper on Better Regulation to promote a clear purpose and vision. A White Paper could serve a number of purposes. First, it would trigger an evaluation of achievements so far, and the value of the different projects and processes that have been launched. Second, it would be an effective vehicle for wide ranging consultation with stakeholders (within and outside government) to gather views and ideas for the future, and validate current efforts. Third, it would put an integrated public face on Better Regulation, providing an opportunity to demonstrate joined up government and the respective responsibilities of different players.
1.3	Consider how to make communication an integral part of Better Regulation strategy and policies.

1.4	Ensure that, where this is not already done, adequate *ex post* evaluations of Better Regulation tools and processes are carried out. Consider whether this is an appropriate time to carry out an overall evaluation of Better Regulation, in order to help set directions for the future (for which this OECD report could be an initial contribution). The White Paper mentioned above could be a way to take this forward.

Institutional capacities for Better Regulation	
2.1	Consider whether the current framework in the government is adequate to the task of consolidating progress and developing future strategy. The role of the Co-ordination Committee could be further developed as a cross-ministry political driver for Better Regulation policy. Consider whether there is a need to review the relationships between the different committees in order to ensure that relevant policies are well articulated with each other.
2.2	Consider whether there is a need at this stage to strengthen and rationalise institutional support for Better Regulation at officials' level in order to enhance co-ordination, coherence and communication. One option might be to consider bringing together the two key ministries responsible for Better Regulation (the Ministry of Finance and the Ministry of Economic and Business Affairs together with the DCCA).
2.3	Consider how to consolidate further a durable ownership of Better Regulation across ministries. Ensure that that there is effective communication on Better Regulation policies and results across the whole administration. Consideration should also be given to identifying and implementing specific processes to encourage further culture change. This could include integrating a Better Regulation dimension into performance evaluation for officials (an extension of the current system of Better Regulation bonuses for permanent secretaries for meeting the business burden reduction target); encouraging ministries to prioritise their work on Better Regulation (identifying key issues where progress is important for their policy goals); and not least, taking steps to reinforce monitoring and quality control of *ex ante* impact assessment (see Chapter 4).
2.4	Consider whether there is scope to strengthen the dialogue between the government and the parliament with respect to efficient development of legislation and the implementation of Better Regulation policies. This could draw inspiration from the existing well-functioning mechanisms to establish a consensus between the government and the parliament on negotiating positions for draft EU - origin regulations. The government may wish to emphasise that it wants to promote Better Regulation, not deregulation. The role of the National Audit Office, which reports to the parliament, is important and its reports on Better Regulation could be used to engage a stronger dialogue with the parliament on Better Regulation. Finally, the time may be ripe for another parliamentary conference of the kind organised by the Ministry of Finance three years ago.

Transparency through public consultation and communication	
3.1	Consider whether guidance to ministries should be strengthened in order to secure greater consistency of approach, including the more systematic provision of feedback on the use made of important contributions.

The development of new regulations	
4.1	Consider carrying out an evaluation of the overall effectiveness of its current impact assessment processes, with particular attention to the more detailed issues set out below.
4.2	Consider the following actions to strengthen its institutional framework for impact assessment.
4.3	Consider how public consultation could be made an integral and systematic part of the process of impact assessment (and just not for some parts of it), with particular regard to timing, so that stakeholders' views can be taken into account as part of evaluating impacts.
4.4	Consider promoting the use of quantitative methods alongside qualitative methods, further improving guidance material on impact assessment, and establishing appropriate training in assessment techniques. The online *Lovprocessguide* could be further improved to give impact assessment higher visibility, outline the process in a comprehensive way, and provide methodological tools. Denmark should also consider whether the current impact assessment system adequately covers all significant regulations, including significant secondary regulations.
4.5	Consideration could be given to evaluating the actual uptake of alternatives and the use made of the current guidance, which dates back to 2001.

The management and rationalisation of existing regulations	
5.1	Consider the establishment of a more systematic codification policy over time, targeting selected areas that other Better Regulation policies such as the administrative burden reduction programmes have identified as problematic.
5.2	Ensure that the new projects are evaluated for their effectiveness, by seeking feedback from stakeholders on how they have affected the relevance and quality of ministry action plans for

	burden reduction. Consider whether any of the initiatives being taken by other countries to respond more closely to real business needs might provide useful insights for the development of the Danish approach.
5.3	Consider whether further action is needed to ensure that the parliament has a full understanding of the government's objectives
5.4	Clarify the targets and requirements on ministries and others involved in the programme. Establish a strong monitoring framework, based on what has been put in place for the programme to reduce administrative burdens on business. Provide support and guidance to municipalities for their role in the programme's implementation.

Compliance, enforcement, appeals	
6.1	Communication on the new approach should not be neglected, in order to highlight the positive effects, and also provide reassurance, where needed, to sometimes risk averse citizens and parliament.

The interface between subnational and national levels of government	
8.1	It will be important to monitor capacity and competence issues at the local level.
8.2	Concerns raised with the OECD team about increased documentation requirements should be investigated with a sample of municipalities.
8.3	Ensure that the annual budget agreement continues to include Better Regulation discussion and priority setting, for so long as this is relevant.

Better Regulation in Europe: Finland- *Executive Summary*

Economic context and drivers of Better Regulation

Finland has been one of the best performers of the OECD, with high levels of income and quality of life. The impact on the Finnish economy of the global slowdown following the 2008 financial crisis has been felt acutely, hitting Finnish exports and production disproportionately hard. Weakening competitiveness, and exposure to the hard-hit ICT and capital goods sectors, has contributed to a faster and deeper drop in GDP than in most comparable countries. At the same time, and in common with many other European countries, Finland faces the need to sustain a high standard of public services when financial resources for the public sector are under strain. The public sector is large by OECD standards. This challenging context implies, among other actions, raising productivity and efficiency, and the government has committed to reducing numbers within the public service.

Against this background, internal demand for Better Regulation has acquired momentum, which can be expected to grow further. The Better Regulation strategy document adopted in 2006, and developed since then, for the first time made an important link between Better Regulation and public policy goals. It states that innovation, productivity, competitiveness and public finances will benefit from a more effective approach to regulatory management. The Government Programme states that the Finnish government will step up its efforts to improve the conditions necessary for entrepreneurship and create a more favourable entrepreneurial environment.

There remains, however, an overall a lack of understanding as to how Better Regulation can make a difference, and until the global financial crisis, the continuing strength of the Finnish economy deflected attention from policies which could contribute to Finnish competitiveness. The mainstreaming of Better Regulation is not complete. The recession induced by the financial crisis may help to “lift” Better Regulation into a more central position, and is an opportunity for buy in. The mid-term review of the Government Strategy Document suggests that this is happening. It sets a promising framework for further mainstreaming of Better Regulation by underlining the need for effective evidence based evaluation to underpin decision making, implementation and follow up processes.

EU initiatives are a motor for Better Regulation in Finland. The EU Services Directive, for example, has encouraged a review of issues such as one-stop shops for small to medium-sized enterprises (SMEs). The recently adopted programme for reducing administrative burdens on business was encouraged by the EU programme. A significant and increasing proportion of Finnish law (perhaps up to 80% in some areas) derives from EU origin legislation.

Post crisis, it may prove easier for Finland to sustain momentum on Better Regulation policy as a key contributor to a sound economic environment and the international competitiveness of Finnish firms. The link between Better Regulation and efforts to reform the public service and sustain high-quality services could also be exploited. More effective regulatory management could bring a significant contribution to these reforms.

The public governance framework for Better Regulation

The Finnish public governance context has a number of distinctive features. There is acceptance of a strong role for the state, which is seen as the main guardian and defender of society. The government owns substantial economic assets, the public expects high standards of social, environmental and consumer protection and is ready to finance an extensive social welfare system. Finnish governance and regulatory practices are characterised by consensus building, informality, collegiality, gradualism and often corporatist attitudes. The rule of law has been an ideal in Finland's history and culture and explains a heavy reliance on laws to this day. The Finnish culture does not make a clear distinction between policy-making and law drafting. The government works through a decentralised executive, where regulatory powers are devolved to ministers, official bodies and municipalities. This has important implications for the design of overarching regulatory policies. It also has implications for policy co-ordination and coherence.

There is a growing acceptance of the fact that changes to longstanding traditions are necessary if Finland is to sustain its quality of life and competitive edge. Some important reforms in recent years underscore this evolution. Constitutional reforms have strengthened the parliamentary features of the public governance system, and have given the courts an enhanced role, to exercise judicial review of primary laws for their conformity with the constitution. Reforms to the public administration have also been taken forward. The government has progressively moved away from its former role as substantial producer and owner of services towards a framework that allows more competition. Public administration reforms have also been a major feature of the last few years. These include, notably, the Action Programme on Public Sector Productivity, to raise productivity across all ministries and their agencies by reducing numbers, led by the Finance ministry.

A "whole-of-government" approach to strategic thinking and management is also being promoted, with an enhanced role for the Prime Minister's Office (PMO) in overseeing the roll out of the policy programmes. Efforts are also being deployed to look ahead. The Government Foresight Network, an inter-ministerial network, aims to take a long term view of policy development, beyond the policies set out for the current legislative term, and in the process, promoting a more horizontal approach to policy development. Parliament's Committee for the Future is engaged in a similar exercise. Last but not least, two major reforms of subnational levels of government are underway – the ALKU project for a more effective regional state administration focused on citizen and customer needs, and the PARAS reform project for streamlining the municipalities.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

Finland's policy for Better Regulation has evolved significantly since 1996. Early reform initiatives focusing on deregulation and the technical quality of law drafting started giving way to a broader emphasis on regulatory quality and regulatory management. In 1996, the government issued a formal regulatory policy for the first time. It has since been refined and extended. Finland is one of a growing number of countries to have an explicit Better Regulation Strategy, a significant step forward from the situation recorded in the OECD's 2003 review.

Important tools and processes supporting good regulatory practice are now in place. These include longstanding processes such as the forward looking legislative plan, the *HELO* instructions on effective law drafting, the procedures for defining negotiating strategy at the EU level, and the well established traditions for consulting and reaching consensus on key issues, as well as more recent developments such as the Government Strategy Document principles and activities for Better Regulation,

e-Government initiatives, the government's integrated new Guidelines for Impact Assessment, and a consultation code.

The government's integrated new guidelines for *ex ante* impact assessment, bring together in one document previous fragmented guidance, and support this with training. *However challenges remain*. In particular, the nature of policy development/law drafting in Finland which has not yet integrated the importance of early efforts in the process to collect clear evidence and data for a robust analysis of the likely consequences (positive, negative) of a proposal. The mid-term policy review of the Government Strategy Document in February 2009 re-assessed the situation and launched new initiatives for the second part of the government term. One of these is to strengthen the impact assessment of policy measures.

EU aspects of Better Regulation policy are fundamentally strong and help to drive the domestic agenda. This is an aspect of Better Regulation for Finland that needs special emphasis and attention. A more pro-active EU stance is identified as an objective in the Government Strategy Document. Further attention needs to be paid to the way in which Finland seeks to exert influence in EU negotiations, in order to avoid some of the problems which appear in transposition.

Strong traditions of trust and consensus building continue to frame the Finnish approach, to public consultation and communication. These have helped Finland to reach consensus on how to address major policy challenges in the past. This approach does present challenges for developing a more strategic approach to policy making and to identifying what may be the best – as opposed to the least contentious – solution to regulatory or policy challenges. The system may be losing valuable inputs and the innovative views and ideas which outsiders can bring to policy making. Finland has, however, been taking a number of initiatives to broaden the approach. Timing is critical: those who wish to participate must be able to do so before a decision is well advanced.

An important gap was recently filled with the establishment of a programme for the reduction of administrative burdens on business. This new programme, which aims to reduce administrative burdens on business by 25% by 2012, is part of the efforts to address competitiveness issues. The roll out of the programme will need to be carefully monitored. It is not yet clear whether effective supporting processes and institutional structures are in place.

The Better Regulation Strategy covers a lot of ground but there are still gaps. There is no common approach to enforcement policy, with individual ministries and agencies making their own policy. Given the pressures on public spending and the efforts to increase productivity in the public sector, it makes sense for Finland to review whether enforcement and inspection processes could be made more efficient, for example by encouraging the adoption of risk based approaches, at the same time minimising burdens on companies. Municipalities appear relatively untouched by Better Regulation processes.

For now, there are no explicit programmes to address burdens on citizens or inside the administration. Such initiatives could well make sense in the Finnish context. A programme for the reduction of administrative burdens on citizens could be linked with efforts at encouraging citizens into a stronger engagement with the government in policy and regulatory development. In the same way, a programme to address burdens on public sector officials could be a very helpful adjunct to the public sector productivity programme. Significant efforts are underway to make it easier for citizens to access services, but there does not appear to be a distinct simplification programme for their benefit.

The practical framework for applying Better Regulation processes needs strengthening. The principles set out in the Government Strategy Document are excellent. None of the current processes, however, looks likely to provide a strong enough framework in practice for addressing the regulatory stock, or the flow of new regulations, or for ensuring that all relevant stakeholders have a clear and timely

opportunity to make their views heard. Some of what the 2003 OECD report had to say remains relevant: Better Regulation instructions contain few concrete criteria, and implementation of Better Regulation policies is poor.

Although Better Regulation is now part of the Government Strategy Document, it is not yet well integrated into government policy thinking. Many in the government still appear to see it as an expanded (and resource intensive) form of legal quality in law drafting, missing its real potential. Alongside the Better Regulation Strategy, the Finnish government has launched significant programmes for strengthening public governance, notably the productivity programme, and major initiatives to promote a stronger democratic basis for policy making through the engagement of citizens. These are obvious policies for "joining up" with the Better Regulation strategy. Mainstreaming also requires ongoing efforts to link Better Regulation with broader goals of public policy, such as competitiveness, innovation and public finances. There also remains an underlying culture and perception issue. Policy and law drafting are often synonymous, with a presumption that a law is needed. Better Regulation is largely seen as a "legislative" issue – primarily of interest to those involved in drafting legislation. Finland might benefit from marketing the use of the tools of Better Regulation (such as impact assessment, consultation), as policy-making tools.

Communication on the Better Regulation Strategy appears to be somewhat *ad hoc* and undeveloped. A notable exception is communication by the MEE of the measures to reduce administrative burdens on business. This misses the opportunity to better sell the advantages of Better Regulation to improving policy-making and service delivery process, and the contribution it can make in achieving greater efficiencies.

***Ad hoc* evaluations of policies need to be deployed more vigorously and systematically.** As in many other countries, the approach to evaluating policies and programmes tends to be *ad hoc*. It also relies too much on the decisions of external bodies such as the National Audit Office to carry them out. The recent mid-term review of the GSD was a positive step in checking progress on Better Regulation tools and processes. Examples of where evaluation could be beneficial at this stage are public consultation, *ex ante* impact assessment, and the programme to reduce administrative burdens on business.

Making more explicit the linkages between e-Government and Better Regulation could help to increase awareness of Better Regulation as an important policy. Finland started on e-Government initiatives early and successfully, compared with most other European countries. It recognises the need now to address the fragmentation of approaches and develop a more joined up central strategy.

Institutional capacities for Better Regulation

Institutional capacities for Better Regulation have improved since the last OECD report, but remain quite weak. The Justice ministry, in particular, has made considerable efforts to co-ordinate, encourage and spread best practice. Still, there is some way to go. The backdrop of autonomous ministries, no clear political leadership and a dominant legal culture in the civil service has not fundamentally changed. It has proved impossible, for now at least, to establish a central monitoring and challenge unit, and a networked approach has emerged instead.

At the same time, there is a growing awareness of weakness combined with a desire on the part of many officials for a stronger, more coherent and horizontal approach. The gap in interest appears to be mainly at the top, politicians certainly, some permanent secretaries also. Concern about the resource implications of deploying Better Regulation policies more strongly is balanced by a growing perception that more effective co-operation and sharing of best practice could achieve much, without more staff.

Advancing Better Regulation is probably less an issue of inadequate resources, and more an issue of the more efficient use of available resources through shared effort.

Will the current networked approach be adequate? A cross ministry expert group, the Better Regulation Consultative Committee, set up in November 2007, represents an effort at developing a networked approach to Better Regulation management. It is too soon to say to what extent the current arrangements will be effective, but it is already clear that some further changes will be needed.

The Justice ministry cannot, in the long run, be left alone to spearhead Better Regulation. For now the Better Regulation ministerial group and official level consultation committee are both chaired by the Justice ministry. Other key institutional actors at the centre of government are the Prime Minister's Office (which as in other countries, has a strategic view of policy making and co-ordinates the Government Strategy Document), the Finance ministry (which is responsible for the public administration and performance measures, budget allocations, and co-ordination of local government), and the Economy and Employment ministry (which runs the recently established administrative burden reduction programme and promotes competitiveness). The Ministry of Economy and Employment (MEE) is promising as another option if the underlying focus is competitiveness, but may lack the leverage and influence of the first two. Finland is more effectively organised, via a strong PMO presence, for EU regulatory affairs than it is for domestic issues. Could the well-functioning co-ordination process for the EU be adapted for the national Better Regulation policy?

Effective monitoring and some "teeth" are also essential, to ensure that policies such as public consultation and *ex ante* impact assessment are properly applied. It is difficult to do without an officials unit to flank the ministerial and networking activity. As well as the (very small) Justice ministry resources for Better Regulation, the MEE has recently established a (slightly larger) Better Regulation unit whose functions include taking forward the administrative burden reduction programme for business. In order to make the most of limited resources and to share ownership, it makes sense to bring these two centres of activity closer together.

An external advisory board would add further weight to the institutional set up and help to challenge ministries to perform better. For now, Finland relies on external think tanks and the National Audit Office to provide a challenge function. But challenge is not their primary role, effective though they have been in helping to put Better Regulation on the map.

The Finnish parliament is quite engaged, compared with some other European countries, and this is an asset. Four committees: the Audit Committee, the Constitutional Law Committee and more broadly the Future Committee, as well as the Grand Committee for EU matters, are regularly involved in issues related to Better Regulation. The parliamentary committees in general pay careful attention to the drafting of bills and take an interest in impact assessments. This relationship needs to be nurtured.

Transparency through public consultation and communication

Finland's longstanding and broad commitment to an open democracy has traditionally been given expression by extensive consultation with established groups. Finland has a well anchored tradition of participative decision-making which includes a wide range of groups, including NGOs. Strong traditions of trust and consensus building continue to frame the Finnish approach, and have helped Finland to reach consensus on how to address major policy challenges in the past. The approach does present challenges for developing a more strategic approach to policy making and to identifying what may be the best – as opposed to the least contentious – solution to regulatory or policy challenges. Post financial crisis, the need to ensure that effective consultation is in place to identify the best way forward is all the more important.

Alongside the traditional approaches, Finland has for some time also been making use of the Internet for the dissemination of information, and to engage the general public. There is, for example, a widespread practice of posting draft legislation on the Internet. Renewed efforts are being made to expand the use of the Internet through new portals aimed at encouraging a wider participation by citizens in policy issues.

Despite these developments, some of the issues raised in the 2003 OECD report are not yet fully resolved. That report noted that consultation still favoured organised groups, that consultation requirements were not monitored and there were no sanctions, and that the consultation-impact assessment relationship remained weak.

There is now a code of consultation, but consultation requirements are not monitored and there are no sanctions. Since the 2003 OECD report, there has been significant progress with the establishment of a code of consultation in 2005. This is now being renewed and strengthened. But there continues to be a lack of monitoring or sanctions for non- compliance. For example, there are no sanctions if a consultation is poorly organised. There is a tendency to disregard – or lack awareness of- the consultation code. Also, the tradition of ministerial autonomy stands in the way of sharing best practices. Autonomous policy development work means that opportunities are lost to share good practice.

The participative system of consultation may be blocking efforts at a more inclusive approach. The system is based on a strong network of relationships between ministries and key stakeholders, works very effectively at one level, delivering agreement on policies and protecting policies from unravelling when adopted and implemented. But it may be blocking efforts at a more inclusive approach to rule making, and it loses valuable inputs and the innovative views and ideas which outsiders can bring to policy making.

Those who wish to participate must be able to do so before a decision is well advanced. It may be necessary to change from a reactive gear to a more pro-active one for citizens. It is not enough to make information available: they must be encouraged to use it. This does require culture change on a large scale. Consultation with citizens and other broad stakeholder groups will need to become a more embedded part of the daily life of public servants. Traditional approaches to consultation (such as organised hearings and written statements with established groups) will need to be complemented with alternative and broader approaches such as workshops, public meetings, and the use of web 2.0 technologies.

The relationship between public consultation and *ex ante* impact assessment remains weak. Consultation is carried out more with the aim of building consensus than to gather evidence and assess potential impacts of proposed new regulations. This explains in part why it is difficult to make headway with a strong *ex ante* impact assessment policy: it is not in the culture to think of regulatory development in this way.

Access by the public to regulations is transparent and clear, aided by longstanding efforts to promote e-Government. Finland stands up well in this regard compared with many other OECD countries. The principle of free access to information prevails, backed up by a number of provisions, including several primary laws, publication of laws and secondary regulations by the Ministry of Justice, and online information services.

The development of new regulations

Procedures for the development of new regulations appear to be generally well established and work smoothly, with the possible exception of forward planning. The process for forward planning of

primary legislation is well structured compared with some other European countries. Forward planning of secondary regulations may need attention.

Sustaining the quality of legal drafting is an issue that appears to need continued attention. There appears to be variability in the performance of ministries and the Justice ministry has difficulty keeping up with the demands made on it as "guarantor" and checker of legal quality. An important part of the objectives for Better Regulation contained in the Government Strategy Document seeks to reinforce the processes for ensuring legal quality. This is clearly necessary.

Efforts have been made since the 2003 OECD report to strengthen the approach to *ex ante* impact assessment, and there is now an awareness of the need for action. Significant efforts have been engaged by the Justice ministry to raise consciousness of the importance of this process. With its integrated guidelines issued in 2007, and enhanced training, prepared and organised in co-operation with other ministries, the ministry has succeeded in generating some momentum for a change in attitudes among ministries. There is widespread awareness of the new guidelines, and a generally positive attitude to their use. The training offered has been taken up enthusiastically. This is a good start for building stronger performance.

But there remains room for considerable improvement, and the main recommendations of the 2003 OECD report continue to be relevant. The last OECD report highlighted a range of issues that needed attention including weak institutional capacities for quality assurance and support, undeveloped used of the benefit-cost principle and lack of analytical rigour, and a failure to use public consultation in support of the process. The issue remains of how to give *ex ante* impact assessment greater rigour, substance and teeth in the Finnish decision making system. Policy making and law drafting tend to be synonymous in the Finnish system, with decisions taken on a legislative text which is well advanced, rather than on a policy proposal where the options are still open (such as no action, or alternatives to regulation). At the same time, however, there is evidence of some change in attitudes.

Changing habits and promoting a new culture calls for new organisational arrangements. Will the new expert network chaired by the Justice ministry be enough? The Justice ministry can only go so far, given its limited resources and legal orientation. It also lacks authority to act as a gatekeeper. It reviews the legal and procedural aspects but not the policy substance. Effective and "joined up" impact analysis- not just collections of different assessments -demands a real co-operation between ministries and sharing of skills and competences, making best use of scarce resources, together with a system that can weigh up the substantive aspects of what is presented.

The methodological approach to developing effective impact assessments needs considerable strengthening. There is a particular need to strengthen the support for more quantitative and economic assessments. Most Finnish officials engaged in impact assessment have a legal background. Guidance and methodology remain too vague. Some of what is required is relatively simple to put in place, for example "model" impact assessments, best practice examples and a clear template. Some aspects will need a more substantial approach, aimed at providing officials with no real experience of handling numbers a means by which they can be supported in the quantitative aspects of the work. Many other countries face a similar problem.

Public consultation is not yet an automatic part of the process. Finland has a strong tradition of consensus building, but this is not the same as active consultation on a specific proposal aimed at ascertaining likely impacts and collecting data to this end. A different mindset needs to be vigorously promoted. This is not yet evident. The guidelines define consultation as an essential part of the process but do not go much further than this. The importance of consulting early, before it is too late to alter the course of a decision, is not sufficiently emphasised. Going out to public consultation would also help to reinforce

the process – external stakeholders acting as an alternative form of watchdog to encourage quality work and raise the political profile of the process. Use of the SCM for assessing administrative burdens automatically requires interactive consultation with stakeholders to gather data so this too can be a lever for change.

There are only weak links in the Finnish system between law drafting and downstream compliance and enforcement. Could systematic feedback on issues with the latter help to strengthen the system and even develop demand for more effective impact assessments? It seems that Finland could benefit from a closer relationship between drafters and those who will need to enforce regulations (as well as those who will have to comply).

So as not to overwhelm the system, and given increasing resource constraints on the Finnish public administration, Finland could benefit from introducing a threshold test. This would allow officials to prioritise efforts on proposals which are likely to have most impacts. Some countries, for example, have introduced a financial threshold to capture the more significant proposals for full analysis.

Continued efforts appear to be needed in order for alternatives to regulation to be taken seriously. There does not appear to be much change on the ground since the 2003 OECD report, which recommended that requirements to consider alternatives should be effectively enforced. It is not automatic to consider alternatives in a culture which carries the presumption that laws are the automatic solution to fixing a policy issue. This is frustrating for some external stakeholders who would like to see greater use made of alternatives. There is a need to move beyond statements of principle and to take practical actions to embed the idea of considering alternatives.

The management and rationalisation of existing regulations

Finland has strengthened its approach to simplification of the legislative stock since the 2003 OECD report. Legislative maintenance is highlighted as part of the Better Regulation Strategy. This is in contrast to some other European countries which have tended to neglect this important part of regulatory policy.

Since the 2003 OECD report, Finland has also adopted a promising national programme to reduce administrative burdens on business. The programme, which builds on previous initiatives, was launched in 2009 with a target to reduce burdens by 25% over the 2006 level by 2012, and is an important contribution to the Better Regulation Strategy. This initiative means that Finland has now caught up with other European countries and most importantly, now has a coherent and cross government approach to burden reduction which did not exist previously. Given that the cost of burdens on business has been estimated at some EUR 3.6 billion, a well run programme can be expected to make a significant contribution to the competitiveness of Finnish enterprises. There is a serious level of drive and commitment to make it work from the Employment and Economy ministry.

It is too soon to judge a programme which has only been in place for a few months, and certain issues will need careful management. These are: the need for effective carrots and sticks on ministries; the need for an effective challenge and support function; the need for robust methodologies for identifying and tracking burdens; the need for effective communication; and the need to extend the work to subnational levels of government. Effective communication is also critical. As the early starters around Europe have found, communication on progress and results is essential if the support of key-actors such as the parliament and the business community is to be sustained. In order to be fully successful, the programme, which is currently only a national plan, also needs at some point to cover burdens arising out of other levels of government.

There is no specific programme for the reduction of burdens on citizens. A growing number of European countries have established programmes to address burdens on citizens as well as businesses. This could make particular sense in the Finnish context at this stage. It could help to give substance and focus to the efforts to encourage citizens into greater participation in the development of policies and regulations, and support for Better Regulation, if they feel that they have their "own "programme, which addresses their specific concerns. As with the business programme, setting it up would require a structure for citizens to make proposals for what should go into the programme. A strong link with the local level of government would help to capture issues around the delivery of public services and social welfare support.

Also, there is no specific programme to address administrative burdens inside government itself. This could be a useful adjunct to the public sector productivity programme. It might help with buy in to a contentious policy if the government is also seen to be engaging in efforts to streamline requirements on officials which take them away from the "front line" of public service delivery.

Compliance, enforcement, appeals

A missing link in Finland's Better Regulation Strategy is a policy addressing compliance and enforcement issues. As might be expected in a system with autonomous actors, there is no common approach to enforcement policy, with individual ministries and agencies making their own policy. Some risk-based enforcement approaches have been adopted, for example in the area of food safety. Given the pressures on public spending and the efforts to increase productivity in the public sector, it makes sense for Finland to review whether enforcement and inspection processes could be made more efficient, for example by encouraging the adoption of risk based approaches, at the same time minimising burdens on companies. Some other European countries such as the UK, Denmark and the Netherlands have made this an important part of their Better Regulation strategy.

The interface between member states and the European Union

The EU is important for Finland both in terms of stimulating efforts to improve regulatory management, and the need to cope with EU origin legislation which has to be absorbed into the system. It is an aspect of Better Regulation for Finland that needs special emphasis and attention. This is recognised by the government: a more pro active EU stance is identified as an objective in the Government Strategy Document.

Against the background of an executive consisting of highly autonomous ministries, Finland has a remarkably inclusive and co-ordinated approach to the development and agreement of its negotiating positions on EU proposals. Ministries, the parliament and other stakeholders are consulted in a process which is carefully orchestrated from the Prime Minister's Office. The 2003 OECD report had already noted that the institutional structures and processes established to co-ordinate relations with the EU on regulatory matters appear to be consistent, coherent and functioning at a high level. This review confirms the previous analysis. Why does it work effectively? The institutional framework would appear to be a key ingredient: the strong role of the PMO; a strong Cabinet Committee on EU affairs that meets weekly (and other institutional support such as the Justice ministry's EU unit); and the pro-active engagement and support of the parliament in formulating negotiating positions, which helps to identify important impacts and issues to take into account in negotiation.

There are, however, some weaknesses in Finland's approach to the development of EU legislation which compromise the effective and straightforward transposition of adopted directives later on. Influencing the development of EU directives needs to start early, before formal negotiations begin. Finland may need to strengthen its presence at the early and informal stages of policy making in Brussels, as well as later when effective negotiation can help to prune back an over detailed draft or ensure

that needed flexibilities are built into the text. Finland may also need to put more effort into building alliances with like-minded member states. As negotiations within the Council evolve and amendments are proposed by the European Parliament, it is not clear whether the co-ordinated and inclusive approach to establish a negotiating position is re-engaged, or whether the responsible ministry is left to carry on alone.

The effective application and updating of impact assessment on draft EU proposals would help to secure a strong Finnish position as negotiations unfold. Responsible ministries already carry out a summary form of impact assessment on EU proposals. Improvements to this process could help to secure a more effective and durable negotiating position. If the initial impact assessment is well done, updates to take account of drafting developments would be relatively straight forward and less time consuming. The information could be used systematically to identify potential allies among other member states in negotiation. The European Commission's own impact assessments and the views of the EU Impact Assessment Board should be taken into account.

EU training and guidance for officials may not be adequate to cover all the (policy as well as legal) issues that it would be helpful to address. Finnish training on EU matters is offered to officials and appears especially strong for the judiciary. The Justice ministry has an EU unit which provides legal guidance and it has produced a legal drafter's guide to the EU. Training and guidance in some other EU countries is broad and significant (for example, a full policy as well as legal guidance document in the UK, and training in negotiating techniques in Ireland). The Justice ministry's initiative to integrate all the guidance for domestic impact assessments has been a hit. Could this approach be extended to the EU dimension?

The Finnish parliament plays a substantial role in the establishment of the Finnish position on EU matters. This is one of the strengths of the Finnish system. The considerable efforts that are put into the process by the government as well as the parliament to establish a shared position for negotiation needs to be carried through as negotiations unfold, taking account of the parliament's heavy legislative work load.

The transposition of EU directives needs attention. Transposition is left to ministries without any central guidance. The default option for transposition appears to be to transplant an adopted directive word for word into Finnish law, which complicates the latter. Improving Finland's capacities to influence and negotiate effectively for clearer and shorter texts would help to prevent at least some of the problems. Negotiators need to focus on implementation from the outset. Finland might also review how other countries with similar cultures and legal systems approach transposition as this could reveal flexibilities that have not previously been exploited, and reduce the costs and burdens associated with transposition. Impact assessment carried out at the transposition stage could also help to identify more effective approaches.

The interface between subnational and national levels of government

There appears to be little evidence of the application of Better Regulation to this important part of the institutional landscape. Subnational levels of government play a core role in planning, and in the interface with business through other responsibilities such as building regulations, environmental regulation and waste management. This is a key missing link in Finland's Better Regulation strategy.

The reforms underway to strengthen and rationalise regional and local government management and structures are probably a necessary pre-condition for addressing Better Regulation issues at this level. Significant reforms, not yet completed, will change the Finnish local government landscape, enabling it to function more effectively and efficiently. Regional state administration is to be strengthened and given a more strategic focus, and municipalities are being

encouraged to merge or join up for key services. These developments, when complete, look like providing a much sounder basis for implanting Better Regulation, as a second stage.

The reforms need to be complemented by addressing other important issues, such as the fragmentation and autonomy of ministry responsibilities for local government. Municipal affairs are overseen by a range of ministries: the Finance ministry (overall co-ordination); as well as the Environment; Transport and Communications; Employment and Economy ministries; the Education and Social Affairs ministries; and even the Justice ministry for some matters. This is not an issue so long as there is some co-ordination and exchange on the way in which each ministry goes about imposing requirements on municipalities, so as to avoid unnecessary burdens on municipal administrations and to promote a coherent approach. Two initiatives look promising in this regard and show that there is awareness of the issues. The Basic Public Services Programme, set up in 2008, aims to improve the horizontal co-operation and co-ordination between ministries, and between municipalities and ministries. It seeks to facilitate the management of local government services and their financing. Another important initiative seeks to address the issue of how central state legislation affects the municipal level. A joint task force for revising legal norms hampering the efficiency of municipal services was established by the government in June 2009.

The strong autonomy of municipalities and the decentralisation of responsibilities to this level also raise issues of co-ordination across local government itself. The review could not go into this in any depth, but this is likely to raise issues of variable treatment of the same issue across the country. In this context, the work of the Association of Finnish Local and Regional Authorities (for example, drawing up model ordinances) is important.

Key recommendations

Better Regulation strategy and policies	
1.1.	Ensure that the Justice ministry gets full support for its ongoing efforts to raise awareness of impact assessment. Take steps to address weaknesses in the current system.
1.2.	Continue the efforts at a more pro-active EU stance and consider a review of the issues related to transposition of EU legislation.
1.3.	Initiatives to broaden the scope of public consultation need to be encouraged. There is a need give real teeth to the code of consultation.
1.4.	Ensure that the business burden reduction programme is effectively monitored and evaluated.
1.5.	Consider expanding the Better Regulation strategy to cover enforcement policy. Take steps, in discussion with the subnational levels of government, to bring them into the Better Regulation programme.

1.6.	Consider the establishment of programmes for the reduction of administrative burdens on citizens and public sector officials.
1.7.	Take steps, systematically, to review the weaknesses of current processes and how they can be strengthened and enforced.
1.8.	Monitor the efforts to give Better Regulation a sharper profile in government policy making.
1.9.	Consider how Better Regulation can be more effectively promoted, so that it does not come across as a legalistic activity.
1.10.	Establish a clear communication strategy using different tools and aimed at both internal and external stakeholders (newsletters, annual report, presentations etc) taking inspiration from countries such as the Netherlands which have done this. Ensure that communications on broader government strategy and related programmes such as the productivity programme are used to convey the Better Regulation messages.
1.11.	Establish a clear policy to evaluate progress, strengths and weaknesses of key Better Regulation policies as they unfold.

Institutional capacities for Better Regulation	
2.1.	An early evaluation of the effectiveness of the current networked approach in strengthening Better Regulation in key dimensions such as public consultation and *ex ante* impact assessment is essential. Use the evaluation results to take the institutional structure a step further forward.
2.2.	Consider whether the Prime Minister's Office could play a stronger role by chairing the Better Regulation ministerial committee. If this is difficult, a rotation of the chairmanship over time across the core ministries could help to spread ownership and exert greater leverage than is currently possible via the Justice ministry. A minister to act as political champion is essential at this stage in Finland, and this task would automatically devolve to the chair.
2.3.	Take action to develop a closer relationship between the Justice and MEE Better Regulation units. If a merger is not appropriate, consider (as some

	other countries have done) whether there could be shared staff or activities, collocated offices, a rotating leadership, or a combination of these. In any event, take steps to connect individual Better Regulation units and other relevant units such as those attached to Permanent Secretaries, to the central structure.
2.4.	Consider establishing an advisory board independent of the government and of political cycles, to monitor, advise and challenge on Better Regulation progress, with particular reference to key issues such as *ex ante* impact assessment and the administrative burden reduction programme.

Transparency through public consultation and communication	
3.1.	Continue the efforts to encourage a wider range of stakeholders into the consultative process, including pro-active (not just reactive) processes to engage citizens. Ensure that the opportunities made available to do so are timely, so that comments can have a real influence on outcomes.
3.2.	Back up the code of consultation with a system that will put real pressure on ministries to comply.
3.3.	Identify and implement a process whereby best consultation practices among ministries can be identified and publicised within the government.

Development of new regulations	
4.1.	Arrange an external evaluation of the network approach to *ex ante* impact assessment within the coming year. If it fails, a more effective approach should be developed, drawing inspiration from the institutional framework that supports the management of EU affairs, or returning to the proposal of a central co-ordinating unit. A further idea that has proved effective in some other European countries is to establish an external watchdog, to add pressure for change (the UK provides a good example).
4.2.	Review thoroughly the current support structure for officials carrying out impact assessments, with a view to strengthening it through a range of actions aimed at facilitating the task and raising standards. Consider whether economic research institutes could be used to help fill the gap between the legally dominated civil service culture and the need for a more economic approach.

4.3.	Take steps to strengthen the requirement for early and timely public consultation as part of the *ex ante* imp act assessment process, and ensure that effective guidance and best practice examples are in place on how to do this.
4.4.	Require an *ex post* evaluation of regulations after they have adopted, to check real outcomes.
4.5.	Introduce a threshold test aimed at capturing the more important policy and regulatory proposals for a full impact analysis.
4.6.	Establish and implement an action plan to promote the use of alternatives. Some of the recommendations of the 2003 OECD report remain valid in this context, such as documentation of examples, special training and progress reports. Reinforce the requirement to consider alternatives (including no action) at an early stage in the impact assessment process.

The management and rationalisation of existing regulations	
5.1.	Arrange for an early evaluation of the administrative burden reduction programme to ensure that it is on track and that supporting structures are functioning adequately to secure success. Make sure that each participating ministry has a net target to meet as its contribution to the overall target. Consider whether other carrots and sticks for good performance should be put in place. Make sure that the business community has a full opportunity to contribute, and consider the establishment of sector or ministry specific structures for this. Develop and implement a reporting and communication strategy. Finally, make plans for the programme to be extended to the local levels of government.
5.2.	Consider setting up a programme for the reduction of administrative burdens on citizens, drawing on the experiences of other European countries. Link this to efforts aimed at encouraging citizens into a stronger engagement with the government in policy and regulatory development.
5.3.	Consider whether it would be useful to make focused efforts, as part of the public sector productivity programme, at reducing administrative burdens on officials.

Compliance, enforcement, appeals	
6.1.	Consider carrying out a review of the approach to inspections and enforcement, to identify and share best practices across ministries and agencies, and to highlight the scope for adopting the most efficient approaches.

The interface between member states and the European Union	
7.1.	Consider whether it is possible to transplant the successful ingredients of EU management in order to strengthen domestic Better Regulation management (for example, strong central co-ordination by the PMO).
7.2.	Improve capacities to influence the development of EU legislation: with the European Commission (at all levels) before proposals are published; and with like-minded member states (at all levels) to build alliances on key issues. Take the initiative in developing alliances. Ensure that back home the negotiating position is collectively reviewed and refreshed regularly to take account of developments. Do not leave the lead ministry alone in the process. Check that the officials carrying out key negotiations have the capacities (and if necessary seniority) to negotiate effectively.
7.3.	The Prime Minister's Office should review the current process for carrying out impact assessments on EU drafts with a view to strengthening it, particularly as regards the early consultation of the widest range of stakeholders, strengthening the analysis of potential impacts, and ensuring that updates are carried out when there are significant changes in the development of the draft in Brussels. Target priority legislation, where Finnish interests are most exposed, for full treatment of this kind. Ensure that the results are used in the development and update of the briefs used by Finnish negotiators.
7.4.	Review the current training and guidance offered to officials on EU matters with a view to broadening and strengthening this. Ensure that policy issues and negotiating techniques are covered as well as legal aspects.
7.5.	Review the arrangements for ensuring that the parliament is kept in touch with negotiating developments, based on priority dossiers, so as to avoid overload of the system.

7.6.	Ensure that negotiation briefs include issues that will be important for implementation later on, and if possible that negotiators are in direct touch with colleagues who will be involved in implementation. Review the approaches taken to transposition by like-minded member states. Ensure that impact assessment and as part of this, consultation of key stakeholders is carried out to inform transposition of significant directives. Monitor progress.

The interface between subnational and national levels of government	
8.1.	Review the scope for developing a Better Regulation strategy for the subnational levels of government. Review the co-ordination mechanisms to support dialogue between responsible ministries, and between the latter and municipalities. Encourage the municipalities to review what they can do to promote Better Regulation practices in their own activities. Consider whether the initiatives of other countries facing similar issues could be adapted to the Finnish context. For example, the UK's Local Better Regulation Office which provides a bridge between the central and local governments.

Better Regulation in Europe: France - *Executive Summary*

Economic context and drivers of Better Regulation

France is a major player in the world economy. It faces substantial challenges, including loss of business competitiveness on world markets. At the same time, France can boast a range of advantages which should help it to rise to meet these challenges. The implementation of certain necessary structural reforms partly depends on a further strengthening of regulatory governance policy.

In recent years, French policies for Better Regulation have underlined a political will, which has grown in strength since 2004, to undertake reforms in order to improve regulatory quality. A stronger and deeper understanding of the importance of effective regulatory management within the administration has helped to promote this trend. A number of public reports on the quality of the law have fuelled discussion, and contributed to a promotion of the principles of regulatory quality. The perception of what some have labelled the "French disease" (which is not confined to France, but can also be found in some other countries), meaning a proliferation of regulations which need to be controlled, has led to a reassessment of the changes necessary to improve the rule-making process.

French policy on regulatory governance is also strongly linked to the reforms undertaken to modernise the state, in the context of a deep seated use of legal instruments as the dominant instrument of state intervention. The current initiatives, with regard to impact assessment or the reduction of administrative burdens, also fall within the wider framework of the general review of public policies (RGPP), launched in June 2007, immediately after the presidential elections. The RGPP aims to achieve budgetary savings and improve the effectiveness of public policies, including the quality of the services provided to citizens and businesses.

The relevance of effective regulatory governance for economic performance is not absent from the debates, but is less visible compared with other European countries where economic considerations have provided the main driving force of regulatory reforms. One of the government's regulatory policies is the reduction of administrative burden on businesses. Even if the aim of this particular programme is to promote the competitiveness of French businesses, this consideration is not at the "core" of French regulatory governance policy. The fact that economic considerations play a relatively minor role in regulatory policy is somewhat surprising in the context of post-crisis recovery. The lack of a clear link with economic policies means that regulatory governance policy is not particularly visible beyond a restricted group of administrative and political institutions.

Public governance framework for Better Regulation

The organisation of public governance in France is structured around the following features: shared executive authority between the President of the Republic and the prime minister; maintenance of strong central government (even though France has embarked on a process of decentralisation over the last three decades); a public administration characterised by recruitment, based on competitive examinations and key role played by distinctive formal groups of public servants (*grands corps de l'État*); and a significant public sector.

A range of extensive reforms undertaken since 2007 is leading – or will lead – to changes in this institutional framework:

- The constitutional law of 23 July 2008, provided parliament with new mechanisms. It should be noted that the new provisions to strengthen parliament have limitations, not least the willingness of members to make use of them. They are also conditioned by the reality of a parliamentary majority.

- The territorial reform began following the debate prompted by the report of the "*Attali*" Committee (2008) which, amongst other things, advocated the dismantling of one of the main subnational levels of government (that of the department).

- The reform of the public service includes a reduction in the number of public servants and an overhaul of the regulations governing the public service, so that there is a better match between needs and jobs.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

Since the OECD Review of Regulatory Reform of France published in 2004, France has undertaken a set of ambitious measures to improve regulatory quality; these measures constitute a major quality change. Three substantial fields of action may be distinguished. Two are upstream: the first tackles the process of drafting regulations by strengthening *ex ante* impact assessment; the second is the overhaul of public consultation processes. The third field is downstream of regulatory production. The French government has conducted a simplification policy which combines legal simplification and a reduction in administrative burdens. Special efforts have also been developed to reduce the backlog of EU legislation to be transposed into national law, and to speed up the production of secondary regulations necessary for the implementation of primary laws, two weaknesses emphasised in the OECD 2004 report.

Upstream and downstream policies are tending to join up. A discussion has begun on how best to combine *ex ante* impact assessment and the *ex post* simplification policies. To date, there is no integrated strategy in the field, but an evolutionary process is underway to provide a framework for future developments. This trend is also relevant to other EU countries.

The expression "Better Regulation" does not always accurately reflect the nature of French regulatory governance policy. The term goes beyond simplification and legal clarity. Strictly speaking, there is no regulatory governance strategy in France, but rather a set of measures intended to improve regulatory quality, basically propelled by the perception of "French disease". In other words, an overproduction of regulations that needs to be controlled. The economic dimension and the economic cost of excessive regulation or of "poor" regulation have not yet been fully taken into account.

Continued progress in regulatory governance depends on maintaining strong political will. The progress achieved since 2004, for instance, on impact assessment, administrative simplification and the transposition of EU directives, has depended on a strong political will on the part of the government and parliament. It should be emphasised that many of these policies are "work in progress", and at a midpoint of implementation. Processes and tools need to be set up and implemented, a lengthy and exacting process. Regulatory governance is a long-term policy, with little immediate political gain, and subject to short-term pressures.

There is no clear communication which brings together the different strands of regulatory governance. This reflects the lack of any integrated policy and the dilution of certain initiatives in the RGPP. It is above all presented as an initiative in favour of "users" (citizens and businesses) and improved public services, rather than a support for economic recovery. The various reforms are the subject of separate internal communications within the administration in an *ad hoc* fashion (such as in February 2010 on progress with the simplification plan). This does not provide clear visibility for these reforms, either within the administration, or outside it (for stakeholders).

France stands out (positively) in terms of the large number of reports on regulatory quality. The reports by the *Council of State* and other *ad hoc* committee reports which focus on specific aspects, such as the *Balladur* report on local governments and the *Warsmann* report on regulatory quality, may be cited. These assessments, although not regular events, have given rise to substantial changes, which suggests strongly that it would be helpful to conduct these assessments on a more systematic basis.

France has several players who may be able to provide regular evaluations of regulatory policy over time. The *Cour des comptes* (*Court of audit*), independent of the executive, has not yet undertaken studies on regulatory governance, but could be very useful for general assessments. The programmes to reduce administrative burdens and impact assessment processes could be candidates for this approach, as can be seen in other countries. This approach could be envisaged as part of the development of public policy assessments outlined in the recent constitutional revision. The *Council of State* remains a major player. A new section (the administration section) was recently set up, enabling it to take a more in-depth cross-cutting view of state reform and its objectives.

Institutional capacities for Better Regulation

There has been real progress, based on structures firmly rooted in the French institutional landscape. Regulatory governance in France depends on several key-players, most importantly the *Council of State*, the prime minister's services and the General Directorate for the Modernisation of the State (DGME) in the Budget Ministry. It has been decided to develop the network around specialised units: the legislation and quality of the law service in the General Government Secretariat (SGG) and the General Secretariat for European Affairs (SGAE) within the prime minister's services; and the DGME within the Budget Ministry. The SGG deals mainly with the flow (production of regulations), the SGAE covers the transposition of EU legislation, while the DGME looks after stock management (administrative simplification). The *Council of State* remains a key element both upstream (through its consultative function for the government and its control of legal quality) and downstream (as the administrative judge of last resort).

The question is – on which actor should France now depend within the government to secure the long-term future of these reforms? The SGG appears to be best placed to tackle cross-cutting issues. It is emerging as a key-partner to ministries in their law making processes. It does not have any direct sanctioning powers, but its close relationship to the head of the government gives it a strong persuasive platform from which to encourage progress. However, as is the case of many of its counterparts in other countries, as a prime minister's service, it is more likely to play a co-ordination role than that of a powerful driver of a regulatory governance network. Furthermore, it has few resources (compared to the ministries). The French government decided to build regulatory quality policy on a network of correspondents throughout the ministries rather than to establish a single regulatory management body, which is difficult to fit in with the existing institutional structures and the administrative culture. Nevertheless, this network must still be based on a strong and clear political intention, associated with a clearly recognised centre of gravity, without which, it runs the risk of gradually disappearing.

Progress in recent years is the result of monitoring and discipline (including penalties) as well as the development of methodologies and support tools. The administrative culture is gradually changing with, for instance, the development of progress charts, impact assessment, the establishment of networks of correspondents on administrative simplification and quality of the law, and the development of new forms of consultation. The beginnings of a change in culture are evident. Two issues need attention. First, the administrative culture remains marked by the dominant weight of legal training and, in comparison to other countries, there is little sign of an economic culture. Second, the development of regulatory quality requires particular attention to the training of civil servants, including in-house training. Acculturation must continue so that the processes and tools which have been set up function effectively.

Transparency through public consultation and communication

Since the 2004 OECD review, the French approach to public consultation has experienced major changes. France has moved away from a model based largely on corporatism, though with plenty of scope for traditional elements. The method chosen for reshaping the approach has not been to do away completely with traditional institutionalised forms (advisory boards or committees) and pursue "all-out use" of the Internet, but to supervise them more closely, diversify consultation procedures and involve stakeholders more effectively beforehand in drawing up public policies. These lines of action reflect recognition of the need to reform public consultation so that it is more effective, and to adapt consultation methods to changes in society, while taking account of the institutional heritage and some degree of wariness among many administrative authorities regarding the effectiveness of open consultation over the Internet.

In recent years, significant breakthroughs have been achieved in revitalising public consultation. First of all, rules have been devised governing the establishment and operation of all advisory boards, and almost 40% of these boards were abolished in June 2009, following a process of review with "cut-off" clauses. This rationalisation of the advisory boards will only have a long-term impact if it occurs in conjunction with regular monitoring of the rules for the establishment and the work of the boards. Second, ministries have developed new consultation methods to involve stakeholders more effectively in drawing up public policies prior to the process (the *Grenelle* forum, Internet forums on reforms or major schemes under consideration, and the establishment of a "Business Council"). Third, with the January 2007 law for modernisation of the social dialogue, the reform of public consultation has also affected the processes of consultation and negotiation involving the government and "social partners" (trade unions and business representatives).

The work undertaken has to be part of a broader and more ambitious policy for reshaping public consultation. This need is recognised by the administration, which is seeking to establish clearer guidelines, but it has not (yet) resulted in comprehensive reflection and discussion. While reform of the advisory boards may make the system less cumbersome, it must be part of a strategic vision of what public consultation is expected to achieve. There is a need to strengthen the openness and diversity of consultation procedures, beyond experimentation with new methods. It is increasingly hard to rely solely on predetermined expert groups in more complex societies.

Consultation currently lacks a baseline methodology to support a clearer strategy and raise its profile. During the OECD discussions, several interlocutors (from within and outside the public administration) highlighted the need to establish more structured procedures and, more generally, to develop guidance on consultation. Reference was made to how the views of stakeholders were often not considered and to the lack of feedback on consultation (a frequently mentioned weak point, and not solely in France), partly because of the pressure of time.

Much attention is focused on access to the law. Considerable effort has been invested and maintained in developing mechanisms for accessing the law, and in particular the *Légifrance* and *monservicepublic.fr* websites.

The development of new regulations

Since 2004, steps have been taken to strengthen rule-making processes. The government's work programme has been set up (and remains the government's internal working document), which, every six months, establishes the government's overall direction, containing the list of bills, orders and decrees. The time limits for implementing the acts' application decrees *have been reduced. An* application has been developed to dematerialise the regulatory production chain. Finally, the support tools for drafting laws have been strengthened. The rules for drafting legal texts have been grouped in the "legal drafting manual" (*guide legistic*). This voluminous manual (500 pages) concentrates on legal drafting and does not adopt a comprehensive approach to the production of regulations. It has still to be integrated into the online tools for the production of regulations. The need to strengthen legal drafting capacities in the various ministries was often emphasised at OECD meetings, particularly to produce texts that are clearer and easily accessible.

Bills introduced by the parliament need attention. Since the constitutional revision of 2008 provides greater scope for parliamentary initiative, the issue arises of the need to reinforce the procedures ensuring the quality of draft laws proposed by the members of parliament, including impact assessment. There is the risk of a “fast-track” procedure under which government initiatives are promoted through the intervention of one or more members of parliament.

France has set up a new system for impact assessment, which gives it a leading position in Europe, at least in principle. Since 1 September 2009, impact assessment has been a constitutional requirement. This anchoring constitutes a "first" in comparison with other countries. According to the new provisions, an impact assessment must be attached to all bills the government sends to parliament. Failing this, the conference of presidents of the parliamentary chamber to which they have been initially referred, may refuse to put the bill on the agenda, including if it considers that the impact assessment is inadequate. In the event of a disagreement between the parliament and the prime minister, the question is referred to the *Constitutional Council*.

Recourse to a constitutional and organic text underscored the difficulty of making headway on impact assessment in the rule-making process without imposing a substantial constraint. Earlier efforts (based on prime ministerial circulars) did not succeed in making impact assessment a part of ministries' practice and culture. They also failed because of a lack of rigour and penalties. In the current system, three elements should help: the system is based on a review process in which all the players (government, parliament, *Council of State*, administration) are engaged. The obligations and the practical details for control are laid down very precisely by an organic law, and cannot therefore be easily changed. Substantial penalties may be incurred if an assessment turns out to be inadequate (*Council of State* comments and may refuse to put the draft regulation on the parliament's agenda. This refusal may be endorsed by the *Constitutional Council*).

The first months of the new regime are encouraging. The government bills introduced to parliament now have an impact assessment with a significant scope and which is published on the *Légifrance* site. The SGG has developed methodologies and reference materials, while leaving each ministry room to manoeuvre in adapting the impact assessment’s structure and content to its field of activity. The initial months show that impact assessment dossiers have started to be used as an argument during the parliamentary debate, and are also taken into consideration in the broader public debate.

The current interest in impact assessment must be maintained over time and resist pressures. The commitment – both political and administrative – made by the various stakeholders, in the first place the prime minister, the *Council of State* and the National Assembly's Law Commission was a key factor in setting up this system. It is essential that the government and the parliament maintain strong and sustainable political attention so that the threat of penalties remains credible.

The system does not clearly incorporate public consultation procedures and does not sufficiently draw attention to the "zero" (do nothing) option. In order for impact assessment to be a genuine decision-making tool, it must be accompanied by a public consultation tool to collect the elements required for good decision-making. The studies' publication (and the comments received) should contribute to the tool's quality. Impact assessment must also reflect on the actual need for the law. The analysis must therefore start far enough upstream of the reform project itself.

The methodological tools need to be strengthened. Developing impact assessment will require the methodology to be updated and developed in more detail, particularly for economic analysis and cost calculations (so far as possible), a point raised by several interviewees. With regard to calculating the cost of administrative information obligations, the *Oscar* tool should continue to be developed and updated so that it remains relevant. Efforts to determine what statistics need to be collected must also continue. Particular attention should be given to impacts on France's competitiveness internationally.

The right balance must be found when determining the system's field of application and the proportionality of the effort devoted to impact assessment. The current system is mandatory for all government bills, and does not apply to bills initiated by members of parliament and to draft decrees. There are no details with regard to updating the impact assessment to take amendments to a government bill into consideration. It would also be useful to consider the content and the accuracy of the assessment, relative to the importance of the draft text, so that the efforts are proportionate.

An ambitious reform has been initiated, and institutional capacities need to match this ambition. The SGG must ensure that the impact assessments are undertaken from the start of the drafting process, that the methodology is developed, and that adequate support tools are put in place. The quality and the reliability of the current impact assessments depend to a large degree on individual ministries. It is important to improve economic skills so that economic aspects both in the SGG and in the ministries are better taken into account. It is also important to strengthen the *Council of State*'s capacities to evaluate impact assessments.

The management and rationalisation of existing regulations

The French government has made substantial and sustained efforts over time to codify the law, which distinguishes France from the majority of other European countries. Today, more than 40% of the laws in force are grouped into almost 70 codes. However, not all legislation can be codified and maintaining existing codes requires considerable resources when faced with the flow of new regulations or amended regulations. Codification must be not only an *ex post* remedy for the proliferation of regulations but needs to be associated with efforts to control the flow of regulations upstream, initially impact assessment.

Since 2003, annual simplification laws have embedded simplification in the French political landscape. These laws have helped to simplify the legal stock in a large number of domains and also made it possible to reduce administrative burdens on businesses and citizens. The regular use of simplification laws has raised the visibility of administrative simplification policy. The approach can however, lead to a proliferation of measures, undermining clarity.

Since the OECD review of 2004, the French government has developed a distinctly more active policy for the reduction of administrative burdens. A major element was the programme to "measure the reduction of the administrative burden" (MRCA), rooted in France's commitment to reduce administrative burdens on businesses by 25%, made at the end of 2007. Substantial progress has been made, including a mapping of the information requirements burdening businesses, the quantitative measurement of almost 800 of these obligations, the development of a methodology (based on the SCM), and a data base (*Oscar*).

Since 2008, the government has given a new slant to its administrative simplification policy, which led to a plan to simplify 15 measures in the autumn of 2009. It was decided to re-focus efforts on a small number of measures (irritants) and to base this selection on an analysis of life events. The change in orientation underscores a willingness to respond better to priorities as expressed by users of the administration, including businesses, and to communicate better in order to encourage and sustain interest (political, in the administration, among users). However, this change occurred without the measurement work carried out within the scope of the MRCA being the subject of an *ex post* and detailed assessment of the whole. Furthermore, no plans were made to update *Oscar* which, in the long run, runs the risk of devaluing the capital invested, just at the point when this tool could be used to help strengthen impact assessments.

More strategically, the policy to reduce administrative burdens is not clearly attached to economic policy objectives. Above all, it is incorporated into the wider state modernisation programme (RGPP), in which the main objective is to make the state more effective. In so doing, business competitiveness, even if it is mentioned and is the subject of specific initiatives (such as the simplification of business creation procedures), is not a prime objective. In the current context of the emergence of the world economy (and that of France) from one of the more serious crises in its history, it would be timely to create a more direct and closer link between the policy on reducing administrative burdens and boosting the economy.

The objectives to be attained have not been clearly determined or assigned. The 25% reduction objective was a step towards a more quantitative and specific approach, which can be found in the MRCA programme. The objective was set globally, without taking into account the flow of new regulations and without setting detailed objectives by ministry. With the slant towards life events, it is even more important to stay on course with regard to clearly determined objectives. However, if the 25% reduction objective is not to be officially abandoned, it is not clear, in the absence of well-defined quantitative monitoring, how progress made towards achieving this objective can be assessed.

An issue which needs attention is the co-ordination of administrative simplification actions throughout the administration. Discussions held by the OECD showed that the project to reduce administrative burdens is somewhat out of touch with ministries' initiatives, which do not fall clearly within an overall programme. The lack of specific objectives by ministry, for which they must be held accountable, has made it difficult to mobilise shared support for the project, and, more broadly, for administrative simplification.

There is a need for more information on progress. Until recently, no detailed and regular information was provided on the progress of the administrative burden reduction programme, so much so that this policy has remained relatively invisible both for the external stakeholders and for the rest of the administration. The publication in February 2010 of a follow-up sheet on the 15 simplification measures is a step in the right direction.

Compliance, enforcement, appeals

Enforcement activities are (rightly) moving towards increased consideration of risk and better co-ordination between inspection services. "Obligations based on results" have replaced "obligations of means" while risk analysis is increasingly used to target controls. The policy on state modernisation and application of EU regulations have also led to the regrouping of some services (which in France are primarily under the remit of central government) and to improve co-ordination of inspection bodies. Simplification and co-ordination of inspection and control activities are concerns raised by business representatives.

Alternatives to judicial appeals have been developed, in particular, administrative appeals and the mediator. This meets the need to reduce the number of cases that come before administrative courts. The mediator fills in (or attempts to fill in) the gaps in the formal system. A major necessary improvement relates to the need for greater transparency in relation to information about appeals procedures, in particular time limits for referring a case which are often very short. Another difficulty lies in the delays for taking cases forward, as the number of cases continues to rise.

The interface between member states and the European Union

Since the 2004 review, there has been a marked improvement in timely transposition. France used to be a "poor performer" in the EU with regard to transposition. It has made up considerable ground in transposing directives and has achieved its policy goal of reducing its transposition deficit to below 1%. This can be put down to the introduction of careful planning and monitoring arrangements. The government has set up a system to monitor transposition very closely, with a strong "name and shame" factor. It is important to maintain the frequency of high-level group meetings as well as political pressure via the European Inter-ministerial Committee.

Quality control needs to be stepped up. The main weakness of the current system is its failure to cover the quality of transposition (this is not unique to France). Quality control relies heavily on the European Commission (done at the end of the process). Working on the quality of transposition requires increased anticipation (upstream, as soon as the negotiation starts) and use of impact assessment by lead line ministries.

France should be more active in developing Better Regulation issues at the EU level. There is a need to take forward the major discussions it launched during its EU Presidency. This includes law accessibility, including with respect to the interaction between EU and national legislation, and use of ICT for better access, interaction between impact assessment at the EU and national level, interaction between impact assessment and administrative simplification. A lack of resources appears to be hindering the ability to follow up actively on these various issues at the EU level.

The interface between subnational and national levels of government

Complex structures at the subnational levels heighten the need for a coherent Better Regulation policy. Over the past three decades, France has moved forward in a decentralisation process intended to shift new powers and responsibilities to local officials and subnational levels of government. Better Regulation is all the more necessary because the subnational structure rests on a large and diverse range of municipalities, which are a fundamental point of contact for businesses and citizens.

Substantial progress has been made towards including subnational governments in the process of making regulations. The Advisory Board for Regulatory Evaluation (*Commission*

consultative sur l'évaluation des normes – CCEN) has recently been established so that proposed regulations from the centre can take account of the financial consequences downstream (thereby avoiding unfunded mandates). Strengthening consultation with local governments would help identify impacts of draft laws and decrees at the local level, beyond financial impacts.

Progress could also be made to encourage understanding of Better Regulation principles and good practices at the local level. Exchanges of good practices between local governments are currently very limited compared to other countries. Such exchanges could be helpful to local governments, for example in the development of model or standard administrative acts, or methods for public consultation. Such exchanges could take place whilst respecting the fact that no local authority can have jurisdiction over another local authority.

Key recommendations

Better Regulation strategy and policies	
1.1.	Regroup the different initiatives to create an overall strategy. Launch an integrated communication strategy covering the initiatives and the vision for the future, highlighting the link to economic performance. Produce an annual progress report, which could be sent to the prime minister and parliament by a minister given the responsibility for co-ordination of the strategy, its implementation, and its communication. This report would be made public.
1.2.	Elaborate a communications strategy that regroups the different initiatives, showing the interaction, leaving room for communication on individual reforms. Ensure that communication is targeted to meet the needs of the administration as well as those of the general public, outside the administration.
1.3.	Reinforce and make more systematic the evaluation of Better Regulation policies. Anticipate the evaluation of key programmes, such as impact assessment. A global evaluation could also be done to show the link between Better Regulation policies and economic performance. Consider which body would be best placed to carry out such evaluations.

Institutional capacities for Better Regulation	
2.1.	Evaluate capacities and mechanisms in place for ensuring that line ministries take full and active responsibility for their part in simplification policies.
2.2.	Consider what the adequate role and resources (including in terms of economic capacities) of the SGG should be to ensure an efficient monitoring of Better Regulation policies from the centre of government.

2.3.	Consider setting up an inter-ministerial committee to provide political support to Better Regulation policies as a whole. The Inter-ministerial Committee on Europe (CIE) could be taken as a template. Nominate a minister in charge of following up and communicating on Better Regulation policies.
2.4.	Strengthen administrative culture as necessary for implementation of Better Regulation policies. Review training policy so that civil servants fully grasp Better Regulation tools. Review economic skills.

Transparency through public consultation and communication	
3.1.	Engage a discussion on the overhaul of public consultation. This could be partly based on targeted audits, for example, on open consultation processes on the Internet.
3.2.	Establish consultation guidelines. Set up a consultation portal (in which the forum website could be integrated). Encourage ministries to share their experiences in order to highlight good practices and the most useful processes.
3.3.	Consider how *Légifrance* can be further developed (the public website providing access to legal texts) further.

Development of new regulations	
4.1.	Continue to reinforce basic processes for making new regulations. Further develop online tools, in particular by integrating the *legistic* guide and developing training programmes in parallel. Continue to focus on monitoring delays for issuing secondary regulations necessary for the implementation of laws and for transposing directives. Publish the government programme to increase its visibility.
4.2.	Encourage strengthening of procedures for making new regulations when they are initiated by members of parliament.

4.3.	Define a policy for consultation regarding impact assessment. Clearly integrate the “zero option” at the very beginning of the impact assessment process.
4.4.	Reinforce methodological tools, including quantification of costs as far as possible. Establish an adequate framework and sufficient resources for the maintenance of the *Oscar* database.
4.5.	Consider extending impact assessment to draft decrees. Encourage a similar development for draft laws initiated by members of parliament as well as for parliamentary amendments.
4.6.	Integrate economists in the teams responsible for impact assessment. Set up a common training programme across ministries to promote culture change.
4.7.	Evaluate the implementation of impact assessment in a regular and detailed way. Publish these evaluations. This could be integrated in the annual report proposed.
4.8.	Highlight possible ways of integrating *ex ante* impact assessment and *ex post* simplification.

The management and rationalisation of existing regulations	
5.1.	Evaluate the contribution of codification to regulatory governance and more particularly its capacity to control regulatory inflation.
5.2.	Make a clear connection between administrative simplification policies and economic challenges.
5.3.	Set up clear objectives on administrative simplification and processes for allocating objectives to the different bodies in charge of conducting simplification. These bodies should be made accountable for the implementation of policies in a detailed and public way. Do not abandon quantification.

5.4.	Prepare and publish scoreboards on the effective implementation and specific results of simplification initiatives, for both government and external stakeholders, in addition to general communication on RGPP.
5.5.	Establish a schedule for regular evaluations. Identify the body which is best placed to carrying out these evaluations.

Compliance, enforcement, appeals	
6.1.	Encourage co-ordination between inspection bodies, including through mergers if necessary.
6.2.	Monitor the transparency of the different appeal processes for businesses and citizens, and time taken in processing appeals.

The interface between member states and the European Union	
7.1.	Maintain pressure on the monitoring of the transposition of EU directives by ministries.
7.2.	Continue to reflect on the interaction between impact assessment undertaken at the European Commission's level and the national level, and on integration of impact assessment in the transposition process.
7.3.	Reinforce France's role in discussions on Better Regulation at the EU level. Consider how to secure adequate resources to support this objective.

The interface between subnational and national levels of government	
8.1.	Consider monitoring and an extension of the scope of the work of the Advisory Commission on Evaluation Standards (CCEN).
8.2.	Encourage the development of good practice exchanges between local

	governments.
8.3.	Improve communication on local regulations by identifying possible tools and measures (*e.g.* legal portals, progressive codification of local regulations).
8.4.	Efforts should be continued to incorporate subnational entities into the central government's administrative simplification initiatives.

Better Regulation in Europe: Germany - *Executive Summary*

Economic context and drivers of Better Regulation

A commitment to streamline the regulatory state, reduce the bureaucratic machinery and simplify the legislative environment has been a feature of German policy through successive governments over the last couple of decades. As in many other OECD countries, regulatory reform has been seen as a necessary adjunct to structural and other reforms aimed at modernising the German economy as well as the public administration. Progress, however, has often been slow and tentative, with reform initiatives not always yielding effective results.

There have been significant developments since the last review of regulatory reform by the OECD in 2004, based on a renewed political commitment to Better Regulation. Better Regulation was formally identified as a major support for economic goals in the coalition agreement between the CDU, CSU and SPD of 11 November 2005 "*Working together for Germany – with courage and compassion*", which formed the basis of the then government's programme. The long-term goal is "to bring Germany back to the top" over the next ten years. Faced with significant complaints from business over red tape, the federal government decided to launch a major new programme to reduce administrative burdens on business and streamline administrative procedures in order to free companies up for new initiatives and more productive activities. Intensified efforts have been made across several other fronts to accelerate progress and to identify new ways of addressing issues such as the roll out of e-Government, as well as new institutional support structures.

Better Regulation is also strongly framed by the EU Lisbon Strategy for Growth and Jobs. Germany emphasises a strong link between its Better Regulation agenda and the Lisbon Strategy. Initiatives at the EU level are positively channelled into action at the federal level. Germany has reacted constructively to external stimuli. The need to set administrative burden reduction targets, and implement the Services Directive, are clear examples. The continued modernisation of the state, bringing the administration closer to citizens and making it more efficient through e-Government are further important factors in the current commitment to Better Regulation.

Securing regulatory quality is not only a concern of the federal executive. The federal parliament has also been active, notably as regards the establishment of the independent watchdog for burden reduction, the National Regulatory Control Council. For their part, the *Länder* have, to varying degrees, a longstanding tradition of developing relevant initiatives, many of these mirroring those at the federal level, such as modernising their public administrations and addressing administrative burdens on business. As far as the SCM is used for the latter, methodological comparability and co-ordination with the federal level is ensured.The public governance context for Better Regulation

Public governance context for Better Regulation

As in other OECD countries, regulatory management is heavily influenced by constitutional and public governance structures and traditions. In Germany's case, these are important assets which have successfully secured stability and a deeply rooted respect for the law. At the same time, the system poses significant challenges for moving forward speedily, for the promotion of a strong collective view of reform needs, and for the emergence of an approach that positions Better Regulation as something much more than the assurance of legal quality. The legal state (*Rechtstaat)* tradition confers a very positive respect for the law, but it also tends to hold back innovation and the development of a broader view of regulatory quality. Ministerial autonomy within the federal executive poses challenges for the development of a collective view. Not least, Germany's federal

system, which gives the *Länder* a crucial role not only in respect of their own areas of competence as states in their own right, but also in the implementation of federal legislation, makes for a complex environment in which to take decisions. Two important reforms of the federal system of governance are underway, aimed at providing a more effective backdrop for reform efforts and addressing aspects of the system which slow up change. Box 0.1 outlines the main features of the German federal system.

It is considered that the first phase of the federalism reform is one of the most extensive changes ever made to the Basic Law. The reform is primarily aimed at improving federal and *Land* authorities' ability to act and make decisions, at assigning political responsibilities more clearly, and at speeding up and simplifying decision-making processes within the legislative procedure.

The federal structure and competences across the levels of government

The Federal Republic of Germany is a parliamentary federal democracy, established in 1949. Further to the reunification of 1990, five states from the former Democratic Republic brought to sixteen the number of federal states (*Länder*) composing the federation. Each state has its own constitution, parliament, government, administrative structures and courts. Germany's institutional and legal system rests on a longstanding and strong tradition of "legal state" (*Rechtsstaat*) and co-operative federalism.

There are three levels of government (federal, *Land* and local). The sixteen *Länder* are states in their own right, exercising state authority in the areas set out in the Basic Law (see below). The municipalities comprise 12 200 cities and communities, and 301 rural districts. While they are an integral part of the *Länder* structure, municipalities have some of their own residual responsibilities and a certain independence (see Chapter 8).

In 2006, an important constitutional reform, the federalism Reform I, clarified the relationship and division of competences between the federation and the *Länder*. The reform (among other changes) strengthened the legislative competences of the federation in areas of supranational importance; abolished "framework" legislation; reallocated a number of previously concurrent competences either to the federal or to the *Länder* level; and reduced the scope for political blockages by reducing the number of laws requiring the consent of the *Bundesrat*. The new regime extended the legislative competences of the *Länder*, as these are newly responsible for the penal system, association rights, as well as store closing times. The *Länder* continue to execute federal law in their own right. However, if the federation provides for the administrative procedure and establishing agencies, the *Länder* may adopt deviating regulations. Such deviation is possible only in very limited exceptional cases, which require the consent of the *Bundesrat*.

The reform has helped improve federal and *Land* authorities' ability to act and make decisions, and assign political responsibilities more clearly. It has helped expedite the legislative procedure and improve its transparency. It has helped increase the expediency and efficiency of the legislative procedure. An important effect is that the number of laws requiring the consent of the *Bundesrat* was reduced. Between September 2006 and February 2009, 39% of laws required the consent of the *Bundesrat*, compared to 53% before the reform. The *Länder* have made use of their new competences. They may enact laws at variance with federal legislation with respect to substantive matters, in accordance with Art. 72 (3) of the Basic Law. In accordance with Art. 84 of the Basic Law, the *Länder* may enact deviating regulations concerning the administrative procedure and the establishment of requisite authorities. As of July 2009: Art. 72 (3) of the Basic Law was used by two *Länder* on two occasions (for matters related to hunting); Art. 84 (1) (2) was used on two occasions (social legislation).

Legislative competences

The Basic Law (*Grundgesetz*) lays out in great detail the allocation of legislative competences. These can fall within the remit of the states; be devolved to the federation; or be "concurrent".

- *Exclusive federal competences*. The federation is exclusively responsible in the areas of legislation and implementation only if expressly mentioned or implied in the Basic Law, or where responsibility derives from an unwritten competence. Such areas cover those typically falling within the competence of central states, as well as those for which uniformity across the territory is needed. Among others, they include foreign affairs, the army, defence, citizenship, currency, customs, trade with foreign countries, border protection, railways, air transport, postal and telecommunication services, copyright, counter-terrorism and nuclear energy.
- *Concurrent competences*. Areas subject to concurrent competences (competences allocated to the *Länder* until the federation legislates) include civil and criminal law, public welfare, food and medicines law, transport, protection of the environment, university admission and diplomas, and

regional planning. The power to legislate lies with the *Länder* if the federation does not hand down any statutes of its own in those fields. In some domains the federation can wield its legislative right only if, and as long as it is necessary to create equivalent living conditions on the federal territory or to maintain legal or economic unity in the overall state interest.

- *Länder competences*. Their exclusive competences are relatively few but important. They include their own constitutions, internal security and policing, education, cultural affairs, and radio legislation. A key exclusive competence is over local government. Only the *Länder* are entitled to delegate tasks to the local level, and they have exclusive responsibility for the organisation of local government.

Administrative (implementation) competences

In practice, most legislation is adopted at the federal level, and implemented by the *Länder*, which have a relative freedom as to how they apply federal laws as well as their own laws. For this reason, the German system is often described as "executive federalism". Three forms of implementation can be identified. The first approach is the general rule:

- As a rule, the *Länder* are fully responsible for the implementation of federal statutes, while the federation merely supervises the lawfulness of that administrative activity and may issue general administrative provisions. The administrative costs are met by the *Länder*.
- The *Länder* may implement federal statutes on behalf of the federation. In this case, the federation bears the relevant costs.
- The federation implements statutes directly itself. This is the case, for example, in foreign affairs, the administration of the federal army and the management of the federal budgets. In such cases, many of the ordinances adopted by the federal Cabinet require the approval of the *Bundesrat*.

The 2006 federal reform has had an important effect on the capacity of the *Länder* to self-organise. The abolition of framework legislation and the creation of the right to deviate from federal provisions have strengthened their organisational sovereignty. Generally, the *Länder* are responsible for the establishment of authorities and the regulation of administrative procedures. Even if a regulation is adopted at the federal level in this area, the *Länder* are now entitled to adopt their own regulations, in derogation of federal law. Any statutory exclusion of this possibility of deviation on the part of the *Länder*, which would require the consent of the *Bundesrat*, is now only permissible in exceptional cases involving a special need for uniform nationwide regulation. Such a need exists, for example, in the case of procedural environmental law.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

There have been significant developments since the last OECD review in 2004. The main pillar of current federal policy on Better Regulation is a carefully structured programme to reduce administrative burdens on business ("Bureaucracy Reduction and Better Regulation") adopted in 2006. There is also a wide ranging programme to take forward e-Government in support of businesses and citizens ("Focused on the Future: Innovations for Administration", including the e-Government 2.0 programme) also adopted in 2006. There is a growing interest in developing a sustainability dimension to the agenda. Legal quality continues to receive attention, supported by recent initiatives such as the deployment of the eNorm software, and efforts to improve linguistic clarity. Measures to simplify the legislative stock have also been vigorously promoted.

The federal government is now driving some important changes, together with a few *Länder*. Better Regulation has been brought closer to the centre of government with the establishment of the federal chancellery Better Regulation unit, and the initiatives of key frontline ministries including the ministries of Justice and Interior. The federal burden reduction programme, in particular, has raised awareness of the costs of regulation and the impact on business (and citizens), sowing the seeds of further developments. Most recently, the federal government and parliament have been developing plans for a sustainability impact assessment.

Better Regulation processes remain tailored to German traditions. The link between the longstanding and often highly sophisticated older structures and processes for law making (epitomised by the *Joint Rules of Procedure*), and new processes such as impact assessment, the burden reduction programme, and more open consultations remains fragile. The new tools tend to be adapted to fit the existing framework, instead of being used as an opportunity to act as a lever of more fundamental change. Impact assessment for example does not stand out with a clear identity from the broader framework of the *Joint Rules of Procedure* for law making. This misses an opportunity to take a fresh look at how public policies are launched and developed.

The strategic relationship with high level public policy goals, especially economic goals, is not yet clearly evident. Although the link between burden reduction and business competitiveness is underlined, the strategic value of Better Regulation is not prominent, and the programme is not clearly linked to broader economic policies in support of competitiveness and post crisis recovery. Effective regulatory management (going beyond burden reduction) has an important contribution to make in sustaining economic performance and supporting further structural reforms. The sustainability dimension is also not yet fully exploited.

There is no "joined up" perspective on Better Regulation as yet. This fragmentation was already noted in the 2004 OECD report. As well as overall coherence, the linkages between specific programmes need attention. Better Regulation policy needs a stronger and clearer identity, for the benefit both of internal and external stakeholders.

The scope of Better Regulation processes remains somewhat narrow, and the administrative burden reduction programme appears to have absorbed a large part of the political impetus. The agenda leans disproportionately towards the measurement (and reduction) of costs, leaving the analysis of benefits in the background. At the same time, *ex ante* impact assessment needs to be strengthened. The development of a sustainability dimension provides an opportunity to do this. Communication has so far been largely limited to the administrative burden reduction programme. The government's recent annual report on the administrative burden reduction programme has been the main specific communication related to Better Regulation available to the general public. Communication on overall Better Regulation strategy and policies is not evident, beyond the fact that is referenced in the coalition agreements. This leaves stakeholders (inside and outside the administration) short of a clear picture of what is being achieved, and how it helps broader policy objectives.

***Ex post* evaluation of the successes and failures of Better Regulation programmes tends to be *ad hoc*.** One notable exception is the e-Government programme which was reviewed prior to the launch of the current programme. There has been no evaluation of the effectiveness of current *ex ante* impact assessment processes. Regular programme evaluation will enhance the effectiveness of future reforms, and can also be used to engage business and citizens in the results.

E-Government is a cornerstone of the federal government's policy to modernise and streamline public administration at the federal level, with significant effects for Better Regulation. E-Government initiatives can also help to speed culture change within the administration, as the I.T. society challenges the assumption of independent and isolated federal ministries. There is unexploited scope for e-Government to address administrative burdens as well as to support greater transparency in public consultation and communication. The "e-Government 2.0" programme is an integral part of the strategy, and includes several useful initiatives including the single public administration telephone number, shared with the *Länder*. The EU Services directive has been a major boost to the development of one-stop shops and the electronic processing of services (as in other EU countries). Results are promising but Germany is conscious that ICT potential has further to go. The development of e-Government initiatives in a federal state is acknowledged to be a major challenge.

Institutional capacities for Better Regulation

There have been important institutional developments to support Better Regulation since the 2004 OECD review. The creation of a Better Regulation unit in the federal chancellery, together with the establishment of an independent advisory body, the National Regulatory Control Council (*Normenkontrollrat-NRCC*) appear as the landmark developments. The chancellery Planning unit underlines efforts to improve co-ordination on proposed legislation. A growing interest in sustainable development is reflected in the creation of another special unit within the chancellery, as well as two advisory bodies, the Parliamentary Advisory Council on Sustainable Development and the independent German Council for Sustainable Development. Change is also underway in the line ministries, with the identification of dedicated units or staff working on Better Regulation related issues, notably for the business administrative burden reduction programme. The e-Government strategy is also supported by a new institutional structure.

These developments are important in terms of counteracting the centrifugal forces at work in the German context, set against the tradition of silo ministries, an inward looking administration, and a weak centre. The new chancellery units have active advocacy, management and evaluation responsibilities. The establishment of the *NRCC* as an independent watchdog is equally striking in the context of German institutional tradition. An important feature of the *NRCC* is that its mandate transcends the political cycle. Institutional structures for supporting Better Regulation nevertheless remain disconnected. There is an increasingly urgent need to consolidate the new approach, with further institutional development to strengthen the coherence and clarity of Better Regulation management (not only for those inside the administration but also for external stakeholders), and to fully secure its sustainability over political cycles. A "networked" approach to institutional management of Better Regulation is being tested across several EU countries with some success, and for the same reasons as in Germany (to fit with existing public governance traditions). But such an approach is not a soft option, still relies on some form of visible flagship unit, and needs careful development.

As a first step, the future, location and mandate of the federal chancellery Better Regulation unit needs to be confirmed. It should be strengthened as a core player, anchor and orchestrator of Better Regulation policies across the federal government. Its location is a key issue. The experience of other European countries highlights two main options for such a unit, the first of which is to put it at the centre of government, and the second of which is to embed it within a key central ministry with a policy interest in Better Regulation. In order to act as a recognisable flagship for Better Regulation, the unit's mandate needs to be extended beyond the important but narrow issue of administrative burdens. Its sustainability needs to be addressed, which means looking again at budget and staffing, as well as how to secure its survival beyond the political cycle. As a linked second step, the scope of the *NRCC*'s mandate needs to be extended. In the German context the *NRCC* is an institutional innovation which is an essential adjunct to the structures internal to the federal administration.

A strong co-ordination network is needed to bind the work of different parts of the administration on Better Regulation together. This issue was already raised in the 2004 OECD report. Compartmentalisation of initiatives that should be related to each other needs to be vigorously tackled. Beyond the federal chancellery, four key ministries have important Better Regulation related responsibilities (the Interior ministry which shares the task of checking constitutionality of draft regulations with the Justice ministry, checks compliance with the *Joint Rules of Procedure* for the preparation of draft legislation and is also responsible for e-Government roll out; the Justice ministry which is responsible for legal quality and constitutionality; the Economics ministry which reviews costs to companies and consumers of draft regulations and co-ordinates and represents German positions on EU matters; and the Finance ministry which assesses budgetary effects of draft regulations). There is no need to centralise these responsibilities if a strong enough framework exists to bring the ministries together round the table. This implies the need to revisit current co-ordination arrangements and to strengthen and expand their reach. The only current co-ordinating structure of

this kind - the Committee of State Secretaries on Bureaucracy Reduction - has a remit confined to administrative burdens.

There has been progress since the last OECD review on cultural change within the administration. The need to assess business administrative burdens in draft legislation has focused attention on costs and generated some awareness of the implications of government intervention, but this interest has not yet spread to other impact assessments. The approach to further culture change needs to be two pronged. First, it needs teeth. Quality control, incentive mechanisms and sanctions for non compliance are needed to ensure that processes are respected and that poor drafts are turned down. Second, training for Better Regulation needs to have a higher profile.

The federal parliament is an important player beyond the executive and has played a positive role in the emergence of the administrative burden reduction programme. The parliament has also been an active participant in legislative simplification. Finally, it has a fast growing interest in sustainability issues, through the Parliamentary Advisory Council on Sustainable Development. As in some other European countries this suggests that the parliament is taking a growing interest in Better Regulation.

The long run success of Better Regulation in Germany depends on enhanced co-operation between the federal government and the *Länder*, including the development of shared goals. Reflecting the federal nature of the German state, Germany's regulatory production system is complex. Regulations are produced at the federal level, covering areas of federal competence. These laws are usually fleshed out in secondary regulations produced by the *Länder*, as part of their responsibilities for implementing federal legislation (the *Länder* may in turn delegate implementation responsibilities to the counties and municipalities, which may give rise to further subsidiary regulations and instructions). The *Länder* also issue laws and regulations in respect of their exclusive competences (with an equivalent delegation process to counties and municipalities). The quality of regulations and the burdens contained in this regulatory "cascade" can only be addressed through a shared effort.

As matters stand, nearly all of Germany's Better Regulation initiatives are exclusive either to the federal level or to the *Länder*. However, there is a growing awareness of the need to join up, notably as regards the federal burden reduction programme, which now includes pilot projects to capture the downstream effects of implementing federal legislation in the *Länder*. A greater presence of the *Länder* in Better Regulation is evident. There is a willingness to experiment, involving like-minded *Länder*. It appears that a growing number of *Länder* are taking a dynamic approach both to co-operation with the federal government and in terms of their own initiatives.

Transparency through consultation and communication

There have been few significant changes in public consultation on draft regulations since the 2004 OECD report. Public consultation by the federal government is formally regulated by the *Joint Rules of Procedure*, which specifies that ministries must consult early and extensively with a range of stakeholders. In practice, individual ministries have significant latitude on such issues as feedback, timing, publication of comments, selection of consultation partners etc. Informal pre-consultation rounds (with the *Länder*, municipalities and associations) are the norm, at an early stage in the process before a bill is drafted. The results are fed into the drafting, and the same parties are consulted a second time. Consultation thus takes the form of institutionalised negotiation and bargaining with key stakeholders and is driven by a search for consensus.

E-consultation is an important and steadily emerging feature. For example, there was an e-consultation on the Citizens Portal Act in 2008, the first time that citizens could make direct comments on a draft federal bill. The roll out of the federal programme for reducing burdens on business has provided an opportunity to test new and more open approaches to public consultation, through direct contact with businesses.

Compared to many other countries, the consultation machinery is activated at an early stage. It is felt that economic and societal interests are heard and taken into consideration. While the process is not particularly transparent, it facilitates consensus building and is valued for this. Getting consultation "right" is a particular challenge in a large country. Compared with some of its European neighbours, Germany comes out relatively well.

The approach, however, falls short of a fully effective, modern and inclusive public consultation system. The issues raised by the 2004 OECD report remain largely valid. The two most important issues are the lack of transparency and the fact those outside the established system have little if any opportunity for their voices to be heard. This increases the risk of bias and capture in interpreting the results. The exclusion of stakeholders who are not part of the traditional system is likely to stifle innovative ideas and miss useful inputs. It also puts citizens and individual businesses at arm's length from the administration, which is unhelpful to the task of building a constituency in support of Better Regulation.

The system is also weakened by the lack of clearly visible and enforceable rules to be applied by all ministries. Each ministry interprets the *Joint Rules of Procedure* differently, which means that no stakeholder (whether part of the system or outside the traditional network) can be sure of how consultation will be organised. A particular concern of some "insider" stakeholders is that deadlines for consultation rounds can be unpredictable and often very short. The lack of controls on what is done and of enforceable sanctions is another weakness of the system. The *Joint Rules of Procedure* lack teeth.

The link between *ex ante* impact assessment and consultation needs attention. The *Joint Rules of Procedure* require consultation of, and communication with, key stakeholders at the different stages of the impact assessment process. But in practice, ministries go their own way.

The development of new regulations

The trend in the number of federal regulations has been on a consistently downward path since 2005, partly because of a "spring clean" of the regulatory stock, but also because of a significant reduction in the number of new federal laws and subordinate regulations. The recent federal reform which abolished framework legislation is intended to reduce the scope for unnecessary production at the *Länder* level.

Administrative procedures, legal quality and forward planning are generally well covered at the federal level, reflecting the importance that Germany traditionally attaches to a sound and formal framework for law making and a concern to sustain legal quality. The Administrative Procedures Act sets the framework and is backed up by the *Joint Rules of Procedure*. The latter includes requirements for the *Länder* to be consulted at an early stage. Legal quality is an especially strong feature of the German system, with important recent developments which include the "Electronic Guide to Law Drafting", the eNorm software tool, and a project recently launched to improve linguistic clarity. By the standards of many other European countries the comprehensiveness of this overall framework is impressive. The eNorm software tool for law making is especially interesting. In the context of autonomous ministries, it sets an important central standard, aids co-ordination and enhances transparency.

Forward planning procedures have received an internal boost with the establishment of a dedicated unit in the federal chancellery, but there is more to be done. There is no annual work programme to flesh out the coalition agreement, as exists in some other European countries. This has repercussions on the timeliness and length of consultations with external stakeholders. The arrangements are internal to the administration. The general public must fall back on the coalition agreement for information on the government's draft legal projects.

Strong traditions also act as a brake on the development of new approaches. An underlying structural problem common to many European countries, including Germany, is that longstanding administrative procedures and legal quality control mechanisms tend to be used, for example, as the basis for the development of impact assessment processes, even if they are not very well suited to this role. There is no fundamental re-engineering of underlying requirements to make room for a new approach.

Germany's *ex ante* impact assessment policy dates back to the mid-1980s and is embedded in the *Joint Rules of Procedure*. The current approach is based on changes introduced as part of the "Modern State-Modern Administration" programme in the late 1990s. It consists of a preliminary assessment (is the regulation necessary; alternatives), a concurrent assessment (carried out as the law is developed) and a retrospective assessment or *ex post* evaluation (to check whether the adopted law has met the anticipated objectives). Key impacts are covered including environmental, economic and social impacts. The process is applied to primary legislation, and only covers secondary regulations partially. The most important recent change has been the integration of requirements flowing from the federal government's administrative burden reduction programme for businesses (quantification of the information obligations found in draft legislation), which has added a significant new dimension. The development of a sustainability impact assessment is currently under discussion. The administrative burdens assessment has started a change of culture, with a greater appreciation by ministries of the perspective of stakeholders affected by a new law.

There is some way to go still for impact assessment to inform decision making as it should, not least so that Germany can react appropriately to post crisis pressures for regulation. The approach is comprehensive on paper, but practice appears to fall some way short of the conceptual objective, an issue that had already been largely commented on in the 2004 OECD report. Assessments tend to come at a relatively late stage of the law making process. Part of the problem may be a political and cultural reluctance to use it in a context where decision-making is very politicised from an early stage, ministries are used to acting autonomously, and key stakeholders are used to the relatively closed process of building up consensus on an issue. Yet impact assessment is to be seen as a tool for evidence based decision making so that the inevitable trade-offs are soundly based, not a technocratic substitute for the decision itself.

If impact assessment is to have a stronger influence on decision-making and outcomes, four main issues need to be tackled: the institutional framework, methodological support, transparency and scope. The institutional framework for the management of impact assessments is fragmented. Each ministry in practice goes its own way. Methodology is well covered by the Interior ministry guidelines but stops short of guidance on quantification and is undermined by the proliferation of guides produced by individual ministries. The process could be more transparent. This affects the internal stakeholders (other ministries) but more particularly external stakeholders who are not part of the established inner circle of informal consultations carried out by ministries. Last but not least, the current system only covers some secondary regulations, may need to be extended to cover sustainability (which is under discussion) and has an uncertain reach as regards the parliament and the *Länder*.

There do not appear to have been any significant developments as regards the use of alternatives to regulation since the 2004 report. It was beyond the scope of this review to take a close look at this important issue. However, the level of consideration, scrutiny and assessment of regulatory alternatives does not seem to reflect the provisions set in the *Joint Rules of Procedure*.

The management and rationalisation of existing regulation

The federal government has engaged in a "spring clean" of the existing regulatory stock, with significant results since the 2004 OECD report. The report had already noted that Germany puts substantial efforts on its reviews of existing legislation. The federal government has passed eleven laws to repeal redundant regulations, and a Simplification Act to clean up the stock of environmental regulations. The federal legislative stock was reduced from 2 039 laws and 3 175 ordinances to 1 728 laws and 2 659 ordinances, the greatest reduction since 1968. This is a major achievement relative to many other European countries, where legislative simplification has tended to take a back seat to administrative burden reduction programmes (which are not the same thing, although a side effect of the latter can be to remove unnecessary regulations). However, the German system does not particularly encourage sunset clauses or other devices that would trigger reviews of individual regulations.

A well developed federal programme (The federal "Bureaucracy Reduction and Better Regulation" programme) aimed at reducing administrative burdens for business has been established and is already making a measurable difference. The 2004 OECD review had highlighted the absence of any systematic approach, which has now been made good. The programme has a precise, carefully defined objective. It seeks to capture the information obligations in all federal legislation using the SCM methodology. The formal target is to reduce administrative costs calculated as at September 2006 by 25% by the end of 2011 (a full baseline measurement was carried out), with half of the goal to be achieved by the end of 2009. The business community is a strong supporter of the programme. By 2008, EUR 6.8 billion of reductions had already been confirmed or given effect.

The programme has triggered positive changes in a number of directions. The most important effect of the programme has been to change attitudes. Germany's approach to law making is traditionally less concerned with the perspective of the enterprise (or citizens), seeking instead to ensure a high standard of legal clarity, coherence and comprehensiveness of the law. In fact, both perspectives are important and need to back each other up. Ministries have established a network of internal co-ordinators to liaise with the federal chancellery and the *NRCC*, and the programme has raised their consciousness of the costs of regulation for external stakeholders, not least by putting a figure on those costs (which- as in most other countries- are significant). The programme has also entailed new and more transparent approaches to public communication and consultation.

The establishment of the *NRCC* and the Better Regulation unit in the federal chancellery to oversee the programme's implementation are important institutional innovations. The *NRCC* is now a well established advisory and assessment body for quality control as well as methodological issues. Federal ministries must submit their draft bills to the *NRCC* as a part of the inter-ministerial co-ordination and the *NRCC*'s opinion is necessary for a draft bill to reach Cabinet. If the federal government does not follow the *NRCC* opinion, it must address a written response to the parliament.

The programme nevertheless has important limitations and needs to be further developed, if it is to reach its full potential. The scope of the programme is limited to information obligation burdens arising exclusively from federal legislation. The target is not at this stage "allocated" between ministries, but is an overall federal government goal, and this deprives the programme of a strong institutional incentive to meet the target. Also, it is not explicitly a net target to ensure that overall burdens are kept under control. An evaluation of the programme so far in order to set the scene for further development would be helpful.

The programme only covers the burdens in federal laws, and does not capture the burdens in secondary implementing regulations, which thus excludes the *Länder* dimension. This issue was already highlighted in the 2004 OECD report. While up to 95% of legislation affecting business is adopted at the federal level, implementation mainly takes place at the *Land* or local level, which gives rise to further substantive obligations (not necessarily the same in each *Land*) as well as "irritants". This cascade of regulatory obligations is likely to be affecting the competitiveness of the

German internal market as well as international competitiveness. There is a growing awareness of the need to look beyond federal legislation if all the burdens affecting the business community are to be captured. So far, however, co-ordination between the federal level and the *Länder* has been confined to a few pilot projects.

The burden reduction programme was a major step forward in Germany, is now well established and ready for further development, which will also help to sustain momentum. A broader programme will require adequate institutional support and resources, if it is to extend its reach to cover broader compliance costs, and enhanced co-operation with the *Länder*, as well as a tighter approach to targets.

The burden reduction programmes for citizens and for the public administration are not as well developed as the one for business. There is a commitment to develop a programme for reducing burdens on citizens, and this is work in progress, which includes the development by the federal chancellery Better Regulation unit and the *NRCC* of an adapted methodology.

Compliance, enforcement, appeals

Compliance rates are likely to be high but they are not monitored. Reasons for this may be that the *Länder* are mainly in charge of implementation and enforcement, and that a strongly embedded respect for the rule-of-law has been assumed to ensure high compliance rates. The *ex post* evaluation of regulations which is provided for in the impact assessment process provides a framework in principle for checking what really happens, and whether regulations have actually achieved the objectives originally set.

The German system of "executive federalism" requires attention to the way in which the *Länder* implement federal laws. Most legislation adopted at the federal level is implemented and enforced by the *Länder*. Another important feature of implementation and enforcement in the German context is that the *Länder* rely extensively on the districts and counties, as well as the municipalities, to execute state and even federal legislation. The system generates challenges for streamlining enforcement practices and for adopting new approaches. It will be important to evaluate the impact of the recent federal reform in practice, as this may give rise to an increasing diversity of approaches by the *Länder*. Risk based approaches to enforcement (taking a proportionate approach to inspections based on an assessment of the risk that compliance will be poor) could be encouraged.

As might be expected in a system that is strongly framed by the rule of law, a range of appeal processes are available. The constitution and the Administrative Procedures Act set out general obligations for the authorities to consult with affected parties, and to inform affected parties or the general public about administrative decisions. The main appeal options for citizens and businesses are internal review, court action and (for citizens only) constitutional challenge. The principle of judicial review is a major element of the German tradition. The judicial system is reported to work smoothly although there can be some delays at tribunals due to budget or staff constraints. Initiatives such as the citizen phone contact point support accessibility. The aim is to facilitate the delivery of administrative services, helping citizens to understand the "who's who" and "who does what" in the federal public administration.

The interface between member states and the European Union

The influence of EU origin regulations is significant, as in other EU countries. The German legal system is strongly influenced by EU law. In some areas such as agriculture and the environment, this affects up to 80% of regulations. The recent measurement of administrative burdens on business established that EU or international origin regulations accounted for some EUR 25 million, roughly half of the overall annual administrative burdens on enterprises.

The co-ordination of EU issues is shared by two ministries, with individual ministries taking the policy lead. As in most other EU countries, the federal government does not have a single policy lead for the management of EU affairs. Each federal ministry is responsible for its area of

competence. Co-ordination is mainly carried out through the federal foreign office and the federal Ministry of Economics. The role of the federal parliament is also a defining feature of the German structure. It is significant and can extend to replacing the federal government during the negotiations. The parliament is also the place where EU issues that need to be shared between the federation and the *Länder* are agreed. Impact assessment on EU origin regulations follows the same track as for national legislation. In principle impact assessment is applied the same way as for national laws.

The German record on transposition is average and the system does not include any clear sanctions to ensure timely implementation. In the latest EU Scoreboard, Germany's implementation deficit was 3% of European directives to be transposed, ranking about average among EU Member States, although well above the target of 1.5% set by the European Councils. A database helps to track progress in transposition against deadlines, and other monitoring tools are used. Transposition may be seen as a challenge by the administration because directives lack precision, are too general, and do not correspond with German legal terminology.

In recent years Germany has intensified its contribution to the European debate on Better Regulation. In particular, it has been close to developments relating to administrative burden reduction programmes, and was instrumental in the launch of the EU programme. The *NRCC* interacts closely with the European High Level Group of Independent Stakeholders on Administrative Burdens (*Stoiber Group*). There is considerable interest and concern about the need to better manage EU aspects of Better Regulation (which was acknowledged to be as much the responsibility of member states as the EU institutions).

The interface between subnational and national levels of government

Better Regulation initiatives by the *Länder* are largely separate from federal initiatives, in keeping with their independent status. The *Länder* are not directly subject to the federal level Better Regulation agenda. For example they are not formally part of the federal government's administrative burden reduction programme, although there has been some co-operation through pilot projects. Instead, most of the *Länder* have developed aspects of Better Regulation on their own account and suited to their own context. Some initiatives go back a long way, to the mid 1970s. The reduction of administrative burdens and modernisation of the public administration appear to be the current focus of the *Länder* Better Regulation agenda. Initiatives are not confined to the *Länder* level, with a number of cities taking initiatives too.

A number of *Länder* are well advanced in Better Regulation policies, sometimes beyond the federal initiatives. A number of *Länder* have established dedicated central units for Better Regulation or some form of oversight. They commonly make use of the Internet to consult and communicate with stakeholders. Administrative burden reduction is the most widely used process. There are marked differences as regards the deployment of *ex ante* impact assessment procedures. It is acknowledged that there is room for improvement. The implementation of the EU Services Directive is having a marked impact on the organisation of services.

Federal-*Länder* co-operation starts at the top with the engagement of the *Bundesrat*, which represents the sixteen *Länder* governments. The relevance of the *Länder* for the implementation of federal legislation is given expression in their active role throughout the processes used to shape the latter, not least via their consent in the *Bundesrat*. The *Joint Rules of Procedure* require ministries to involve representatives from the *Länder* "as early as possible" in the regulatory process. Every bill passed by the *Bundestag* must be submitted to the *Bundesrat*, either requiring its consent or allowing it to lodge an objection. Beyond this strong formal engagement between the federal level and the *Länder*, regular information exchanges take place via the federal chancellery Better Regulation unit. There are also specialised conferences and a network of working groups to pick up issues of shared interest.

There appear nonetheless to be some challenges with federal-*Land* co-operation mechanisms, leading to a suboptimal handling of important issues. The fact that federal and *Länder* Better Regulation initiatives are largely disconnected suggests that the mechanisms for co-operation are not fully effective in promoting a shared agenda where this is appropriate, for example in the area of administrative burdens. Both levels of government lose out on the added value of working together. The failure to co-ordinate effectively may partly be explained by the fact that there are too many (not too few) working groups, and focus is lost.

Competition is more evident than co-operation between the *Länder*. The scope for competition in a federal system can have a positive impact on the introduction of Better Regulation tools and the development of best practices. Germany considers that the complexity of a federal state is balanced by the advantage of competition between the *Länder*. It positively encourages this approach, as evidenced by the planned introduction of a benchmarking provision in the Basic Law (the first provision of its kind in Europe). Each *Land* appears to concentrate on its own needs, though some are willing to co-operate with others over best practice, and the co-operation network appears to be growing. *Länder* vary a lot in size (city size to country size) and economic strength. Variable geometry may allow more flexibility and dynamism but there is also the risk of duplication of effort. The question which also needs to be asked is how companies cope when they "migrate" across *Länder* boundaries with different regulations.

Key recommendations

Better Regulation strategy and policies	
1.1.	Make sure that there is a balanced development of Better Regulation policies. Consider how to strengthen *ex ante* impact assessment as well as the burden reduction programme. Consider the issue of a name for the strategy which reflects its broad reach. For example, Better Regulation (*Bessere Rechtsetzung*) should be preferred to *Bürokratieabbau* (Reducing Bureaucracy).
1.2.	Consider the development of a White Paper which proposes an ambitious and interesting vision for future developments. The White Paper should identify key programmes, their linkages, and targets to be achieved (qualitative or other), to be shared across the federal ministries and with those *Länder* that wish to participate. Consult widely and seek out partners to help flesh out the vision. Ensure that the strategic link with economic and sustainability goals and performance is clearly spelt out. Once the baseline paper has been agreed, back it up with an annual report on developments, signed by all the relevant federal ministries and interested *Länder*.
1.3.	Continue efforts to identify areas where Better Regulation initiatives can be shared with the *Länder*.
1.4.	Alongside the development of a more joined up policy for Better Regulation, develop a communication strategy which sets out developments and explains the link between Better Regulation and practical outcomes and advantages for businesses, citizens and the economy. Encourage the German business community to raise their profile as advocates for Better Regulation.
1.5.	Commission evaluation studies of key programmes from universities, think tanks or private foundations on a regular basis. Consider whether the Court of Auditors might play a role.

Institutional capacities for Better Regulation	
2.1.	Confirm, clarify and communicate, as soon as possible, the shape of a strengthened and internally coherent Better Regulation institutional network to support key initiatives such as the burden reduction programme and *ex ante* impact assessment, and to make the necessary links between them.

2.2.	Confirm the future of the Better Regulation unit and its role as the visible face of Better Regulation in the federal structures. Ensure that its future is assured, as far as possible, through secure staffing and budget lines. The unit, for example, should have its own staff as well as secondments from other ministries. Consider whether there is a way to secure its position institutionally over the long term. In the absence of a strong policy decision to orientate Better Regulation in support of a specific policy objective (environmental sustainability, competitiveness/economic recovery), in which case the unit might be attached to the relevant ministry, it should be confirmed as part of the federal chancellery, which covers all policy areas from a strategic perspective. Extend the scope of its mission to cover all key Better Regulation issues (not necessarily as leader of these issues) including *ex ante* impact assessment and the EU dimension.
2.3.	Confirm a commitment to the *NRCC* as a valuable external adjunct to internal structures in support of Better Regulation. Expand its mandate in line with the proposed developments in Better Regulation tools and processes so that it plays a broader role in the *ex ante* assessment of draft legislation. Confirm its role as a facilitator in the dialogue with the *Länder*. Ensure that the resources available to it are adequate to these tasks.
2.4.	Consider how to strengthen co-operative mechanisms between core Better Regulation ministries (Interior, Justice, Economics and Finance, as well as Environment for sustainability) so that synergies between related initiatives are captured, and to enhance the coherence of the federal government's Better Regulation policy. Establish the Better Regulation unit as the co-ordinator of this process, fronted by a senior chancellery minister. It is preferable not to duplicate arrangements. One structure should suffice (political committee, supported by a shadow officials' committee).
2.5.	Consider how to strengthen capacities and interest in regulatory quality among officials, including and not least for *ex ante* impact assessments. Strengthen the carrots and sticks for good performers, drawing on ideas from other EU countries. Review training for civil servants and ensure that training in Better Regulation techniques is an integral part of this and is a requirement for all officials (including senior officials) who need to be aware of regulatory quality issues.
2.6.	Strengthen the dialogue with the *Länder* on Better Regulation, building on existing initiatives. Consider mechanisms for raising awareness of shared issues and exchanging ideas. For example, intensify a programme of secondments between the federal government and the *Länder* for officials to experience issues at first hand.

Transparency through public consultation and communication	
3.1.	Carry out a comprehensive evaluation of consultation practices by federal ministries, as a starting point for establishing a clear and enforceable set of common guidelines for public consultation. Ensure that the guidelines emphasise transparency, with clear provisions for consultations and their results, including feedback on the more important comments received, to be posted on the internet. Cover both the established processes, and the use of more open "notice and comment" procedures, building on the recent efforts to promote e-consultation. Consider whether to engage the help of the Court of Auditors for the review and guidelines, and keep the federal parliament informed.

Development of new regulations	
4.1.	Ensure that future data on regulatory production trends cover the picture at the *Länder* as well as the federal level (in consultation with the *Länder* over how to do this). Refine the data and its interpretation to ensure that trends and their causes are clear, and help to shed light on what Better Regulation processes need to tackle (for example, consider whether the reduction in number of federal regulations could be due at least in part to longer and more complex laws, and whether this raises any issues).
4.2.	Consider further steps to enhance the transparency of forward planning procedures, including the establishment of an annual forward look, and the provision of more and timelier information to external stakeholders.
4.3.	Consider whether the eNorm and electronic guide to law drafting initiatives could be joined up, where this is relevant, and made binding on all federal ministries.
4.4.	Consider whether it is possible to adapt the process in place for overseeing administrative burden impacts, and extend this to cover the other forms of impact. This could be developed in stages. For example, the procedural check by the federal chancellery could be extended in a first stage to cover a more in depth review of whether key aspects such as consultation, quality of assessments etc, have been effectively covered. Consider whether there is a role for the *NRCC*, bearing in mind that quantification of broader impact assessments can be a challenge, compared with the established methodology for administrative burdens (and that in the absence of objectively verifiable figures its involvement may be considered too political). Ensure that central monitoring units are adequately resourced for the task.

4.5.	Check the main guide on impact assessment for weaknesses such as the time specified for completing an impact assessment ahead of a proposal being tabled before the Cabinet. Review the different guides available and streamline them to ensure that the strategic core requirements are clearly contained in the main guide, with ministries' own guides as a technical supplement to core requirements. Commission a review of quantification methodologies for different forms of impact assessment, drawing on the knowledge and experiences of other countries, in order to move forward on quantification where possible. Review training for impact assessment and make it a systematic requirement for officials engaged in law drafting.
4.6.	An effective and simple way forward would be to post all impact assessments on line at a single website, alongside the Interior ministry guidelines (and the guidelines of other ministries), which would allow stakeholders to make up their own minds about whether the system is operating according to their satisfaction (boosting quality control).
4.7.	Consider how to extend impact assessment so that it covers all important secondary regulations, ensuring that efforts are targeted at the most significant regulations. Ensure that the sustainability impact assessment framework does not develop separately from the rest. Avoid fragmentation, and work towards an integrated system.
4.8.	Consider whether there is scope to strengthen the dialogue between the federal government and the parliament with respect to the efficient development of legislation, and to sustaining regulatory quality through to the final stage of enactment. Consider, with the federal parliament, whether there are ways in which impact assessment can be deployed where this matters (significant amendments to government bills, the parliament's own draft legislation).
4.9.	Review, with interested *Länder*, whether the current arrangements for their involvement in the development of federal legislation is enough to secure a clear view of implications for implementation downstream, and the scope for working together on impact assessment in areas of shared interest.
4.10.	Consider a review of the extent to which alternatives to regulation is picked up as an option before the decision is made to proceed with a regulation, using the existing very complete checklist for identifying opportunities for regulatory alternatives as a guide. Associate this with a commitment to strengthen impact assessment processes more generally.

The management and rationalisation of existing regulations	
5.1.	Keep up the "spring cleaning" of legislation at regular intervals. Strengthen the law making procedures to encourage officials to consider the inclusion of a review mechanism in individual draft regulations, or even a sunset clause (beyond which the law automatically expires) where appropriate.
5.2.	Consider how the new approaches used for engaging and informing enterprises and the public on the burden reduction programme might be used for other issues or sectors which carry an important weight of regulations.
5.3.	Consider extending the organisational setting used for the burden reduction programme (centralisation of political/administrative support, independent oversight, creation of a network of contacts in the line ministries) to cover other aspects of Better Regulation and notably *ex ante* impact assessment.
5.4.	Commit to the continuation of the programme and to its development in terms of scope. Arrange for a rapid but complete independent evaluation of the programme to pinpoint how and to what extent it should be developed, with the participation of the federal parliament and of interested *Länder*, and with input from external stakeholders (notably business).
5.5.	Expand the methodological scope of the programme with a view to covering substantive compliance costs as well as irritants. Review the approaches which are being developed by other countries for this, as well as the proposals of independent institutions. Ensure that there is adequate quantification of costs.
5.6.	Tighten up the current target. Divide it between ministries. Confirm it as a net target.
5.7.	Consider how to include relevant agencies and other bodies attached to federal ministries, taking a proportionate approach (only those which may be generating significant burdens). Engage a dialogue with the federal parliament over the best way to capture burdens arising from their role in the law making process.
5.8.	Commission an independent survey of the "burden cascade". Where do burdens (and irritants) actually arise, and who is responsible for the relevant regulations that contain them? Use the results to engage a dialogue with interested *Länder* over a shared approach to future burden reduction that links the federal programme with *Land* initiatives, and

	identifies specific issues for co-operation (for example, databases).
5.9.	Review the capacities and resources of the federal chancellery Better Regulation unit and of the *NRCC* for supporting an enhanced programme.
5.10.	Commit to the development of programmes to address burdens on citizens and within the administration and make this known as part of the federal government's Better Regulation policy. Draw on the experiences of other countries that have already travelled down this road. Ensure that these initiatives are appropriately connected with e-Government initiatives.

Compliance, enforcement, appeals	
6.1.	Ensure that the *ex post* evaluation of regulations is used effectively for assessing compliance rates. Ensure that the *ex ante* impact assessment of draft regulations examines enforcement issues downstream.
6.2.	Ensure that the impact of the 2006 federal reform is evaluated for its effect on *Länder* implementation of federal legislation. Consider whether further dialogue with interested *Länder* would be helpful in order to stimulate new approaches to enforcement, such as risk based inspections.

The interface between member states and the European Union	
7.1.	Review the extent to which impact assessment is applied for EU origin regulations, both at the negotiation and the transposition stages, and the approach which is taken. Consider how the process could be improved, taking account of the European Commission's own impact assessment processes. Consider in particular whether there is a need to strengthen consultation with stakeholders.
7.2.	Carry out a review of transposition processes, in co-ordination with the *Länder*. Consider how the system could be improved with incentives (and sanctions) for late transposition.
7.3.	Use the EU dimension to frame German Better Regulation more clearly as a potentially key contributor to growth, competitiveness and jobs.

The interface between subnational and national levels of government	
8.1.	Consider a review/evaluation of co-operation agreements and working groups, to pinpoint what works and what works less well (and why). Seek to identify Better Regulation processes (such as administrative burden reduction) or issues (such as sustainability) where there is shared interest in enhanced co-operation, and focus efforts on these issues.
8.2.	Consider an evaluation of the extent to which competition between the *Länder* really does stimulate best practices, and the extent to which these are picked up across the *Länder*. Consider a survey of business views to check attitudes to the German internal market and its efficiency (in terms of harmonised regulatory approaches across the *Länder*).

Better Regulation in Europe: Ireland - *Executive Summary*

Economic context and drivers of Better Regulation

The OECD's 2010 Economic Survey of Ireland recorded that growth in GDP per capita had been among the highest in the OECD until the economic downturn. In the wake of the financial crisis, the economy plunged into a severe recession in 2008. The sharp slowdown in activity contrasts with the rapid expansion from 2002 to 2007. The downturn has revealed a weak underlying fiscal position. The authorities have already taken important steps to restore stability, but more will need to be done and the adjustment will be prolonged. Major economic and policy adjustments are now taking place to address the situation. Better Regulation has an important part to play in this process. Regulatory as well as policy failures were a fundamental factor underlying the downturn. This implies that beyond the sector specific actions that are needed in complex sectors such as banking, the application of general regulatory policy principles such as *ex ante* impact analysis of regulations, public consultation and robust institutional frameworks need to be vigorously promoted.

Better Regulation is supportive of fiscal consolidation, as it can help to make the public sector and public services more efficient, including through the use of e-Government to reduce paperwork inside the administration, reviewing policy on enforcement including a risk-based approach, and reducing the number of agencies. Better Regulation helps to strengthen the institutional fabric of the public service, for example, by identifying ways in which the framework within which government agencies operate can be improved. Better Regulation can also help to support buy-in and implementation of reform. For example, effective approaches to public consultation and communication are a key part of the Better Regulation toolkit.

A positive perspective of what Better Regulation can bring to the economy and society is already evident in Ireland. The Smart Economy Strategy (Building Ireland's Smart Economy – a Framework for Economic Recovery, published in December 2008) includes "Smart Regulation" among its five key action areas. The 2009 report of the National Competitiveness Council underlines the need to restore competitiveness which includes the need to reduce the costs of doing business.

The public governance framework for Better Regulation

The underlying framework for Ireland's public governance is quite stable compared to the developments seen in some other European countries which are experiencing significant decentralisation, for example, or a major rationalisation of their subnational structures.

Public governance modernisation has been a major feature of the Irish policy landscape over the last twenty years, has come a long way, but as in many other OECD countries remains a "work in progress", as Ireland itself acknowledges. There is a need to continue strengthening institutional capacities (skills, culture change) within the public administration in support of a modern economy and society. The report of the Irish government, Transforming Public Services (TPS – published in November 2008) is a further step on this way, together with the appointment of a Minister of State with responsibility for public service transformation.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

Ireland has made considerable progress since the 2001 OECD report. In relation to nearly all of the issues raised in that report, there has been movement, often significant. A milestone was the 2004 White Paper "Regulating Better" which set out six key-principles of Better Regulation and an agenda of 50 actions grouped around five headings. This remains the blueprint for further work. A progress report by the Department of the *Taoiseach* in 2007 demonstrates a breadth and persistence of efforts across a broad front which compares well with many other EU countries over the same period. The issues which have been, and continue to be, tackled include: regulatory impact assessment; simplification and accessibility of the law; administrative simplification; public consultation; a framework for the effective functioning of regulatory agencies; and a stronger framework for the management of EU regulations. There are also initiatives to address enforcement and compliance. This agenda remains a work in progress, and is subject to regular reviews.

A set of principles is now in place to guide developments, on which Ireland is developing its policy for Better Regulation, driven from the centre of government. The principles – necessity, transparency, consistency, accountability, effectiveness, and proportionality – cannot be faulted. They represent a clear statement of intent, which is still lacking in some other EU countries.

An important achievement has been to raise general awareness of Better Regulation, both within and outside the administration, but active support remains fragile. General awareness is high as a result of the initiatives of the Better Regulation Unit within the Department of *Taoiseach*, the High-level Group on Business Regulation (which gathers external stakeholders and the administration), and the large number of reports issued on Better Regulation policies. It is not complete, however. The detailed picture across departments and beyond reveals that it is patchy and that "buy in" (the next step beyond awareness) is far from complete. Some parts of the administration do not yet fully support the objective and downplay the importance of Better Regulation. However interviews, more positively, also suggested that the business community is anxious for more effective regulatory management and has a good grasp of its importance as well as the detail of what is needed.

The challenge at this stage is to mainstream Better Regulation more fully into the fabric of policy and rule making, and to encourage political support, post crisis. Better Regulation remains a poor relation of other priorities such as public service modernisation and fiscal consolidation. However regulatory policy has considerable links with the effective achievement of those policies. This needs to be drawn out and communicated. There is also a need for political sponsorship. In the meantime, a relative failure to reflect on the connections limits capacities to deliver (it is difficult to engage departments, and to secure necessary resources). Raising support beyond the inner-circle of Better Regulation champions is essential. This will require a (re) articulation of the link between Better Regulation and a stronger economy and society, to prevent senior officials and politicians from staying in the perspective that "the real issues lie elsewhere".

The gap between principles and practices often remains wide. Ireland is confronted with the classic difficulty (common to most countries) of converting principles and strategy into reality. Thus *ex ante* impact assessment is now supported by well designed tools and processes, but actual results fall short of expectations. The longstanding issue of simplifying the complex stock of legislation is universally understood, but despite progress over the last decade, much remains to be done, and the work is (relatively) under-resourced which slows progress. The administrative burden reduction programme was, at least until quite recently, moving forward quite slowly.

The Better Regulation agenda may require some rebalancing and a linked effort to structure it around priorities over time. The Better Regulation agenda in Ireland has a broad scope by EU standards. Whilst Ireland has broadened its perspective from a relatively narrow focus on red tape, relatively little attention is given to the broader needs of citizens, society and public service improvement, and to issues of sustainability. Local authorities are largely out of the loop at this stage, although there are some valuable initiatives. At the same time, limited resources imply the need for prioritisation of activities over time.

The communication strategy has succeeded in the first phase of awareness raising, but needs to be updated and refreshed. The key initial challenge was the need to increase awareness of Better Regulation among internal and external stakeholders. This can be considered a "mission accomplished", aided by the prominence of the Department of the *Taoiseach*. A second stage has opened up, partly because the tools and processes are now largely in place, requiring a different kind of communication, but also to fit the post-financial crisis environment and a desire on the part of interested stakeholders for more attention to be paid to the promotion of a fairer society and reduce the "democratic deficit", alongside the traditional emphasis on economic aspects. There are significant pockets of enthusiasm for Better Regulation both within and outside the administration, whose views on what needs to be communicated could usefully be tapped. Communication at this stage needs to be more pro-active, going beyond reports and websites. It also needs to highlight the progress made. As one stakeholder put it, "the government has not spelt out what it has achieved". For example, the BRU website focuses on the different reports and documentation on Better Regulation initiatives. This does not do enough justice to significant achievements (for example, the progress on legislative simplification). The BRU website itself needs to be publicised.

Taking stock of what has been done is well embedded in the administrative culture, follow through is not so strong. Ireland compares favourably with a number of EU countries in its willingness to evaluate the development of Better Regulation processes. The number of high-quality reports produced over the last few years is impressive by OECD standards. Reports actively seek to identify areas for improvement and to make focused recommendations of practical value. The real challenge in the Irish context is to act on the results of these evaluations. Reports tend to accumulate and to some extent reflect a forward movement that is more about appearance than reality. Performance could be strengthened by using more measurable targets, which is not yet fully embedded in the administrative culture. "Public exposure supports higher standards" as one stakeholder put it.

E-Government is being used to good effect in some areas, and the broad strategy has been given a renewed impetus. E-Government is a key supporting element of Better Regulation. The OECD peer review team were not able to review this aspect in any detail. It is clear, however, that ICT is being used to good effect to support some key Better Regulation processes such as administrative simplification, the development of a web based Statute Book, and new Internet based forms of public consultation. The link between e-Government and Better Regulation is a significant driver for Better Regulation initiatives in many EU member states and the link could be developed further in Ireland. Since the OECD mission, the Government established a new e-Government strategy and announced the intention to appoint a Chief Information Office (CIO). The renewed impetus with the publication of the e-Government strategy provides the opportunity to make a clear strategic and institutional link to the Better Regulation agenda.

Institutional capacities for Better Regulation

Institutional structures to support Better Regulation have progressed steadily since the 2001 OECD report, spearheaded by an active central unit. The first structures of the late 1990s, which were primarily focused on red tape reduction, have been broadened and replaced with a range of bodies and networks covering Better Regulation processes ranging from the implementation of regulatory impact analysis to statute law simplification. The Better Regulation Unit in the Department of the *Taoiseach* (Prime Minister's Department) has, in particular, established itself as a small but

highly active and enthusiastic advocate of Better Regulation across government and beyond (commendably so, given its small size). It has overall responsibility for supervising the roll out of Better Regulation, and direct responsibility for the key process of regulatory impact assessment. Not all EU countries are yet equipped with such a unit. This is an important achievement, which needs to be sustained.

There are limits to what the Better Regulation Unit has been able to do, in order to bridge the gap between principles and practice. The Better Regulation Unit has, in essence, succeeded in putting Better Regulation on the government policy radar screen, not least through clear explanations of what it means, how it works, and why it is important for Ireland. But – Ireland is not alone in this situation – there remains an appreciable gap between principles and practice. The OECD's 2001 report had already noted that "implementation strategy and institutional drivers for reform are weak". These have significantly improved, but need further strengthening. Beyond the often uncertain political support, this can be linked to three factors, which are explored further below: a relative lack of buy-in from other key players at the centre of government; the need for the Better Regulation Unit itself to be strengthened within the Department of the *Taoiseach*; and the need for significant further culture change among line ministries.

Beyond the Better Regulation Unit, other key players are, or need to be, providing active support for the development of Better Regulation. The constitutionally established Office of the Attorney General advises the government on matters of law and legal opinions, and also drafts most of the important regulations, as well as spearheading key aspects of statute law simplification. Its perspective on developments must be seen as valuable and necessary. Two government departments also have responsibilities that are important for the Better Regulation agenda. The Department of Trade, Enterprise and Innovation has been engaged for some time in the business related aspects of the agenda, and was charged by the government in 2007 with responsibility for the business administrative burden reduction programme. In March 2008, DETI was given responsibility for leading and co-ordinating the measurement and reduction of administrative burdens across government, leading to the achievement of the 25% target by 2012. The Department of Finance leads more broadly on key aspects of public governance which are relevant to Better Regulation. Without the perspective and full support of these players, the further development of Better Regulation will be a struggle. Reflecting a common dilemma across Europe over the best organisational structure, it is difficult for Prime Ministers' Offices to take sole responsibility for Better Regulation, as they must balance the whole range of issues meriting the Prime Minister's attention, and they are not directly "connected" to the citizens and businesses for which they ultimately work, in the way that line departments are. The Better Regulation Unit needs, therefore, the full and unconditional support of other key players, in order to exert effective leverage across government. The "baton" of Better Regulation advocacy must be shared, if it cannot be handed over, building on the recent achievement of sharing part of the agenda with the DETI.

Yet the engagement of these key players seems muted. The OECD peer review team had the sense that the other key actors were not always fully engaged. The Finance ministry is the most important department alongside the Department of the *Taoiseach* for Better Regulation. It is responsible for financial and performance management across government, shares responsibility with the Department of the *Taoiseach* for public sector modernisation, and oversees e-Government policy. However, its understanding of the value of the horizontal Better Regulation work promoted by the Department of the *Taoiseach* as support for policies to strengthen the economy post crisis appears fragile.

There is a need to reinforce the Better Regulation Unit itself, not least in terms of securing supportive connections with the other parts of the Department of the *Taoiseach*. The Better Regulation Unit also needs the active engagement and support of other parts of the Department of the *Taoiseach*. It is attached to the Public Service Modernisation Division, which only reflects a part of the relevant Better Regulation functions inside the Department. The Department includes other relevant units including the division for European and International Affairs (link to EU management),

the economic and social policy division (link to competitiveness), and not least, the cabinet secretariat. It is not clear to what extent this work is fully joined up, where it needs to be. Given the horizontal nature of the Better Regulation agenda, have other divisions in the Department of the *Taoiseach* mainstreamed its agenda sufficiently? Does its work perhaps lack a strong enough visibility within its own Department? The 2008 OECD public service review of Ireland underlined the importance of the Department of the *Taoiseach* (as a whole) as a strong central driver of reform.

The Better Regulation Unit also lacks powers, and may be short on the necessary resources to do an effective job. The BRU currently can do little more than encourage, monitor and advocate. It has few if any real powers (sticks or carrots) to ensure that departments, for example, produce timely and adequate Regulatory Impact Assessments. It may not be appropriate to increase its powers, as this does not necessarily fit with the Irish conception of how a Prime Minister's Office should function. However, this should be considered. Resources and their effective deployment may also be an issue. The BRU expanded following the publication of the 2004 White Paper "Regulating Better", but staff were reduced in 2007. Given the size of the country, and compared with some other EU countries, resources overall (taking account of staff directly deployed on Better Regulation functions elsewhere, such as in the DETI), are reasonable. But as some stakeholders suggested, they may need to be deployed more effectively. Some other countries such as the United Kingdom and the Netherlands have developed their institutional approach on the basis of secondments from relevant parts of the institutional structure, which encourages buy-in, so that the BRU is not working in relative isolation. This approach also reflects the findings of the 2008 OECD public service review, which drew attention to the need for more mobile postings across the public service, as well as the Irish government's own statement on Economic Regulators, which advocated internal cross-postings. The Belgian federal government is another example to reflect on, as it has developed its Better Regulation unit into a semi detached "agency" within its federal Chancellery, which allows it some independence from political cycles, as well as the potential to acquire and to use resources more flexibly.

There is, as in most other EU countries, the need for further significant culture change across the "whole-of-government" in support of Better Regulation. Overall, and with some important exceptions, ownership of the Better Regulation agenda in-line ministries looks fragile. Ireland's departments are traditionally autonomous, a feature shared with most other jurisdictions, and the context is therefore challenging. It is difficult to hold departments accountable and to put them under pressure to perform. Significant efforts have been deployed over the last few years to develop networks and co-ordinating groups for different aspects of Better Regulation, internally and shared with external stakeholders. The 2008 OECD public service review of Ireland drew attention to the importance of networking. This is a key way of advancing. It should be pursued in tandem with "stronger" mechanisms to secure performance. As already advocated in the OECD public service review, there should be a stronger use of performance measures and budget frameworks to drive effectiveness, with departments held to account on the basis of measurable targets.

There is a general lack of baselines, measurements, targets to support qualitative analysis and allow for effective *ex post* evaluation. The 2001 OECD report had already noted that Ireland could raise accountability for results through measurable and public performance standards. The Irish government is aware of this need. Both the report "Smart Economy" and the report "Transforming Public Services" emphasise the need for quantification and performance measurement. The argument which the OECD peer review team sometimes heard that the relatively small size of the country needs to be taken into account is not clear. The team also heard many comments to the effect that there are no measurable performance targets, and that a tougher approach (more sticks, not only carrots) and increased accountability, was needed. This is one major reason why the Finance Department needs to be part of the central leverage, and the performance and delivery focus – as advanced through the Annual Output Statements – needs to be brought to the forefront within the resource allocation process. Without this, it will be an uphill struggle to secure buy-in. At the same time, the carrots need to stay in place (for example, the BRU has set up some impressive training for Regulatory Impact Assessment, which draws in an increasing number of line ministries).

One aspect that needs particular attention is the need to improve capacities for a more rigorous and quantitative approach to the Better Regulation work of line ministries. The OECD peer review team heard a number of comments to the effect that the use of data and quantitative approaches needed to be strengthened ("Metrics needed as well as incentives". "Be data driven". "Is there enough of the right capacities in ministries?" "Dearth of expertise". "Legitimising the use of quantitative approaches has some way to go"). Enhancing the quality of processes which are in place will require a more rigorous approach to measurement, targets, and the use of quantitative methods in processes such as RIA.

Rationalisation of government agencies is a priority; at the same time they offer some important examples of Better Regulation best practice. The government is conscious of the need to identify further means of rationalising a complex network of government agencies, following the rapid growth in their numbers in the 1990s. Judging from stakeholders' comments to the OECD peer review team about the confusion generated by the existence of numerous agencies whose functions are not always clearly understood, this is important. The government also notes that the principles in its 2009 Statement on Economic Regulation may be considered to apply to all regulatory agencies. A broader review of government agencies, focusing not so much on savings but aiming to strengthen their governance framework to maximise efficiency and effectiveness, as well as to clarify the functions which are most appropriately delegated, would be a helpful further step. This could build on the 2009 Economic Regulation Statement and the 2007 mapping exercise. At the same time, it seems that Better Regulation practices are well advanced with some regulators, which could help to guide others in their adoption of good practice which has been tested on the ground.

The role of the parliament appears to be changing, with a growing engagement and interest in Better Regulation issues. This appears to be a significant development relative to the OECD's 2001 report. Three parliamentary committees, two with specific mandates relating to regulatory management (the Joint *Oireachtas* Committee on Economic Regulatory Affairs, and the Joint *Oireachtas* Committee on EU scrutiny), and a third which takes an interest in initiatives related to the business environment (the Joint *Oireachtas* Committee on Enterprise, Trade and Employment), are now increasingly active. A particular area of progress relates to EU issues where significant efforts have been made by the government to better inform parliament on negotiation and transposition. This interest needs to be actively encouraged, as in some other EU countries, since parliament shares with the executive the development of legislation. Parliament's overall ability to be engaged remains fragile.

The importance of the judiciary in the Irish context should not be neglected. In the Irish system, the judiciary has traditionally played a significant role in the judicial review of regulation, even by the standards of common law countries. Judicial review of regulations can be vigorous. The system of judicial review in Ireland is described in detail in Annex C.

Finally, some other key players should not be neglected. These include the Office of the Comptroller and Auditor General, which was receptive to the OECD peer review team on increased involvement in Better Regulation (which could be done by asking them to help with regular evaluations of the RIA process, for example). The Ombudsman is also relevant for its surveillance role and the feedback which it can provide on the effects of regulation. The Law Reform Commission, an independent body which was set up to examine specific areas of the law as directed by the government and to make practical proposals for its reform, carries out necessary underlying work (including statute law restatement) to ensure that the Irish Statute book is effectively reformed, and needs adequate resources to carry on this work. Finally, the local authorities play a key role in direct contact with business and citizens over the provision of public services.

Transparency through consultation and communication

Ireland has a strong tradition of public consultation, based on informality and social partnership. Consultation in the development of regulations is well embedded in the administrative

culture. It has traditionally relied heavily on informal interaction between departments and external stakeholders, as well as social partnership since the late 1980s. Social partnership has played an important role in developing a consensus on major public policy issues. By contrast, formal requirements relevant to all potential external stakeholders have been handled with a light touch. For example, the Cabinet Handbook briefly raises the issue of public consultation without going into detail.

A recognition of the need for evolution with the 2004 White Paper, combined with a growing use of ICT, has generated significant developments which have opened up the traditional processes. There have been noteworthy changes since the 2001 OECD report. With transparency identified as one of the six core principles of Better Regulation in the 2004 White Paper, steps have been taken to promote a more formal and structured approach to public consultation. The approach nonetheless leaves an important margin for departments to define specific arrangements. The aim is to allow room for the relevant dose of informality, linked to Ireland's small size, as well as allowing for innovation, which has been grasped with enthusiasm by some departments and for some consultations, through their use of ICT.

The BRU's consultation guidelines set clear best practice standards, which need to be enforced. The BRU's 2005 guidelines on public consultation are clear and comprehensive. They were designed to be a practical tool to help departments, and as such, fully meet this objective. Any Department which reads the guidelines (especially the checklist and the flowchart) should be in no doubt over how to apply best practice. The guidelines are not prescriptive. There are no sanctions for non-compliance. Departments are left to define the appropriate level of consultation, which can go from a full formal public consultation to informal consultation. They are "advised" or "encouraged" to publish submissions and provide feedback. Specific approaches therefore, and as might be expected, vary. The use of ICT appears to be spreading and to be handled with sophistication in some cases (just using ICT without proper follow through does not guarantee a quality consultation), which means that some consultations engage a wide range of stakeholders.

Echoing the situation in some other EU countries, Ireland is in a period of transition, and the full engagement of relevant stakeholders is not always achieved. The testimony of a wide range of stakeholders to the OECD peer review team suggests strongly that there are issues, as well as a demand for more effective consultation from the wider community. While everybody consults (usual practice), the capacity of departments to reach out to a broader public (where relevant) and develop new forms of consultation varies a lot. Public consultation within the RIA process also does not seem, as yet, to play a strong formal role in practice for gathering evidence. The consultation guidelines are not universally known. Issues raised by stakeholders included the problem of being heard if one was not an insider; the need to reach out to all sizes of company, not just the larger ones; the need for stronger efforts to reach out to citizens and the broader public; and the need to step up efforts to make the consumer voice heard. There seems to be a growing demand for the government to be more inclusive and to hear citizens.

Informality continues to play an important role, the argument sometimes being advanced that the size of the country dictates that this should be so. This argument needs to be treated with caution, as size is not necessarily a barrier to a more formal approach, and it should not limit efforts at the consistent deployment of best practice, especially in the Irish context where the political system (multi-seat constituencies with a tradition of direct links between citizens and their local politicians for the discussion and resolution of issues) may in fact require the promotion of a more centralised and structured approach. Some stakeholders suggested that the lack of formal safeguards can lead to undue influence from some groups or lack of consultation in cases of political pressure. Informality can easily turn into a self referential insiders' debate.

For social partnership or dialogue to remain an important process it must continue to evolve. Social partnership has been helpful in bringing consensus on key issues since the late 1980s when it was developed. It has also evolved, encompassing new parts of the society (community

groups). However, while it has integrated community and environmental groups, it has not always adapted easily excludes many, and may not adapt easily to new technological and societal developments. The 2001 OECD report had already drawn attention to the fact that over time, and given the open nature of the Irish economy, new participants (for example, non-nationals) are affected by Irish regulatory affairs. In tandem with any ongoing social partnership process, it is important that divergent and external voices are heard. The consensual approach can also lead to the avoidance or exclusion of some issues from the agenda.

Ireland faces considerable challenges, which it is addressing, in the accessibility of its regulatory stock, which harms transparency. There is no single consolidated Irish statute book. The historical development of the Irish legislative landscape and methods for enacting legislation have combined to generate a complex regulatory stock. The government has stressed the importance of ensuring accessibility of legislation and taken a number of initiatives since the 2001 OECD report to make the law more accessible. Efforts to make regulations publicly available sit alongside efforts at simplification of the regulatory stock. A major initiative in the former category is the electronic Irish statute book, a free of charge database, as well as the Legislation Directory. These initiatives may not be "politically interesting" but are highly valuable and necessary for future progress on transparency. As matters stand, despite the efforts of recent years, the state of the statute book combined with uneven performances in public consultation significantly reduce regulatory transparency, which has to be assessed as rather poor in comparison with many other European countries, and which has knock on effects for government accountability.

The development of new regulations

Irish regulatory production needs to be monitored, not least in support of the efforts to simplify the regulatory stock. A significant number of new primary and secondary regulations come on to the statute book every year. In the Irish context this matters especially, as much of this represents amendments to existing statutes, necessitating a major and ongoing cleaning up of the regulatory stock over time so that it remains legible.

Secondary regulations are not subject to the same processes as primary regulations. Primary laws are the subject of forward planning published on the Department of the *Taoiseach* website by the Office of the Chief Whip for upcoming parliamentary sessions. This is well in line with international best practice. However, it contrasts with the lack of arrangements for secondary regulations. Planning of secondary regulations rests with the sponsoring department, and is not made publicly available. Checking for the legal quality of secondary regulations is also much less in evidence than for primary legislation (which is implicitly subject to legal quality principles by dint of the fact that it is drafted by the staff in the Office of the Parliamentary Counsel to the government in the Attorney General's Office).

Ireland was a relative latecomer to Regulatory Impact Analysis but has been catching up. Deployment of a policy to embed *ex ante* RIA in policy and rule-making has been gathering speed over the last few years. Following a pilot phase and an evaluation, in 2005 the government established RIA as a requirement for all government departments and offices. This was a landmark step forward. Some aspects of the policy reflect the best international practice, including the requirement for an integrated RIA covering all the major issues, and its application to EU directives (at least in principle). The principles and practical guidance and training disseminated by the BRU are among the best.

The BRU is an active advocate and promoter of RIA, and its activities have been met with some success. The BRU has been active and creative in the promotion of RIA following the 2005 decision to make it a requirement. The guidance and training is comprehensive, well focused and well developed. A network of Departmental officials orchestrated by the BRU is gradually extending understanding and culture change. RIAs are examined for their quality by the BRU on their way to the

cabinet. Most of the necessary support tools for an effective RIA are in place. There is, as a result, progress on the ground, with a significant and documented rise in the number of RIAs carried out.

But acceptance of RIA as an integral part of policy and rule-making has some way to go, and the gap between the principles of RIA and the practice generally remains wide. The process continues to operate within a weak institutional framework which does not sufficiently "scare" departments into co-operating for the production of quality RIAs. Thus the OECD peer review team were told that RIAs were often "self-serving", and that RIAs can get lost in "turf battles" between departments. The team were also told that in practice, some draft proposals did proceed without a RIA attached, depending on political will and support. However several stakeholders (including from outside the administration) were supportive and said it was an important process, even while acknowledging that it tended to remain an "add on". The 2001 OECD report had already proposed that disciplines on regulatory quality should be strengthened. Despite progress since then, more is needed to discipline departments into carrying out RIAs of good quality, systematically. How should this be done, in the Irish context? The compulsory nature of the process remains something of a formality unless there are real sanctions, and perhaps a statutory requirement to carry out RIAs. The recent conclusion of some other EU countries where previous "requirements" were largely flouted is that statutory backing for the process may be needed, combined with a watchdog function that enables poor RIAs to be turned back, and that publication of RIAs (and opinions on their quality) is also an important lever. These aspects are considered further below.

Currently, there is no statutory backing for the RIA process. The requirement rests on a cabinet decision, integrated into the Cabinet Handbook, so that in principle, all departments have "signed up" to the RIA process. Ireland lacks an administrative procedures law, which exists in some (not all EU countries) to give statutory backing to the processes for development of legislation (and other issues such as appeals).

The process lacks sanctions and a strong challenger that would force departments to pay attention. The BRU does not have a statutory gatekeeper role with regard to RIAs (it does not have formal authority to turn poor RIAs back), nor does it have a formal mandate to assess the quality of RIAs or to report on the outcomes of its monitoring work on RIA. There is no strong challenge function. Many stakeholders said that the training was good but the process lacked quality control. "Too many carrots and not enough sticks", said one, and another "BRU is not a gate, as it should be". The OECD peer review team also heard that a stronger approach is needed at the beginning of the process. The scrutiny by the BRU of RIAs attached to heads of bill, before they are circulated for approval by government is an important part of their work, and they have used this channel to promote higher quality RIAs. But could this input start sooner?

Systematic public consultation and publication, which would also help departments to co-operate by exposing RIAs to public scrutiny, is often inadequate or not done. The formal integration of public consultation as part of the RIA process is a positive development, as is the requirement in principle that RIAs be published (a least for primary legislation and when the bill is published etc). However, neither of these practices appear yet to be fully embedded. There is concern that there are still low rates of publication. The OECD peer review team heard that there is considerable resistance to publication. It also heard that publication would be a significant lever to promote change. Name and shame is not (as yet) a strong tradition within the administration and this is likely to be an effective way of applying pressure.

The analytical framework and quantitative support for RIAs remain relatively weak. The BRU now focuses on its action on improving the quality of RIAs, where a lot is still needed. A key weakness is quantification by departments. The OECD peer review team heard that there is a need to "legitimise quantitative approaches". Beyond the economic and business related impacts, methodologies remain relatively undeveloped. Whilst it is important to strike an appropriate quality/quantitative balance, the latter needs a further boost, including further capacity building among departments. It was suggested that there is a need for a more effective allocation of appropriate

resources (economic, legal) within departments to areas conducting a lot of RIAs. Departments appear to make little use of the service of the economic expert, which is not a good sign. These points suggest that capacities may exist but are not fully used. Is there an underlying issue of the perceived relevance of RIAs for some departments? The current process, whilst broad, tends to emphasise in practice the economic dimension, and sustainability, for example, is not so clearly covered.

Significant statutory instruments (secondary regulations) may be slipping through the net. The requirement to prepare a RIA applies to "significant" secondary regulation, but there is no clear definition of what "significant" means. This is left in the hands of departments. The OECD peer review team were told that many significant secondary regulations were in fact slipping through the net. There is a similar issue for RIAs on EU regulations, which are required in principle but also often not done (see also Chapter 7). Secondary regulations are important as these are often the vehicle for amendment of existing laws, adding to the complexity of the regulatory stock and lack of readability of the law.

Regular evaluations of the overall process are important for sustaining pressure and for securing any necessary improvements. Evaluation is valuable for moving the process forward and refining mechanisms for maximum effectiveness, as evidenced by the 2005 report and subsequent review. The next evaluation might be structured around an impact analysis on the RIA process itself, in other words, consider the costs and the benefits of the system in order to pinpoint what needs to change.

Effective communication is critical in order to make clear the importance of RIA for meeting high-level public policy goals. The BRU has articulated the strategic value of RIA as a means of improving the quality of governance, improving economic efficiency and the effectiveness of the public service, and to improve competitiveness. How can RIA be further promoted as a tool for enhancing effective policy debate, both internally and externally? Supportive external stakeholders could be encouraged to contribute to the communication of why RIA is important. Internally, the OECD peer review team were not clear whether buy in had been achieved within the Department of the *Taoiseach* itself, for example by the Cabinet Secretariat. There appears to be a need to strengthen communication, both internally and externally.

The integration of *ex post* evaluation in the RIA process reflects best international practice. *Ex post* review is now also a mandatory element of the regulatory impact assessment process, reflecting best international practice. As one stakeholder put it, "if we can't stop draft legislation, we can look at it afterwards". Although it is of course preferable to catch issues before they become law, several EU countries are aware of the fact that in a context where effective RIAs may pose a challenge, *ex post* review is another opportunity to take stock. However, the most important reason for having a process that uses both *ex ante* and *ex post* evaluation is that this should generate a virtuous circle, in which the *ex post* evaluation can help to strengthen understanding how draft regulations can be more robustly constructed, for example in terms of securing compliance, and avoiding "unintended consequences", as well as discouraging the production of poor RIAs in the first place, if evaluations are publicised.

More broadly, there is a need to envision the development of the RIA process in the wider context of regulatory governance aimed at joining up stock and flow initiatives. RIAs are only part of the processes that need to be deployed for effective regulatory governance. They can be seen as part of a support chain for broader efforts to secure an effective and efficient legal framework. As well being a tool to evaluate each draft regulation individually, they should also serve to provide an overall view of the way in which regulation is evolving, with reference for example to different sectors of the economy or different types of company. For example, a review of RIAs may show that one sector has been particularly affected by (too much) regulatory activity. Joining up the RIA process with the initiatives for simplification may also suggest issues for debate and further action in terms of managing regulatory output, improving the quality of the law, and evaluating the effects of regulatory output on specific actors and sectors of the economy.

As in many other countries, further emphasis seems to be needed on considering alternatives to regulation at an early stage of the process. The OECD peer review team was not able to consider this aspect in any depth. Ireland has various strong examples of the use of alternatives. However, as one stakeholder put it, "the government may be stuck with a policy decision, but can still work on how it is implemented". This is an area where sustained pressure is needed over time to encourage the consideration of alternatives. The evidence from other EU countries is that it is not enough to include this consideration in the guidance on development of regulations, and leave it at that.

The management and rationalisation of existing regulations

Ireland has a longstanding issue of needing to simplify a complex stock of legislation. Ireland is not the only country to face challenges in this regard. In the Irish case, however, the problems are somewhat specific. They stem from the historical development of the Irish Statute book (which includes pre independence legislation), as well as from the process for making regulations, under which acts and statutory instruments are usually amended by the enactment of new regulation which makes piecemeal changes. This means that simple, effective and transparent access to regulations does not exist in Ireland. There is a consensus (both within and outside the administration) over the fact that it is difficult to understand what regulations apply, and what is in the law (lawyers systematically need to be consulted, and even they have trouble). The National Competitiveness Council notes that legal fees are one of the important non pay costs for businesses.

Impressive efforts have been set up to address the challenge, and there has been progress since the 2001 OECD report. The Irish government fully acknowledges the importance of tackling the challenges, which are underlined in successive reports on Better Regulation. There is a three-pronged approach at work: statute law revision (abrogation); statute law restatement (an administrative form of consolidation); and consolidation. Different parts of the institutional structure are engaged, including the Attorney General's Office and the Law Reform Commission. Since the 2001 OECD report, significant progress has been made, particularly in the area of statue law revision. The Statute Law Revision Act 2007 and the Statute Law Revision Act 2009 together repealed over 4 500 spent or obsolete pre-1922 Acts.

But progress is slow, creating palpable frustration and incomprehension among many stakeholders. The OECD peer review team found a broad consensus (both within and outside the administration) over the need to move much faster. The regulatory framework remains difficult to understand. Many consolidation projects are moving slowly. Resources allocated do not seem to match the requirements for the work and do not reflect the importance given to the issue in the Better Regulation agenda. It is therefore not clear to what extent a real priority is being attached to this work and what political commitment it commands.

Links are needed between simplification of the regulatory stock and the RIA process. As new regulations are produced, amendments continue to pile up, transforming restatement into an endless race against time. This issue needs to be tackled *ex ante* as well as *ex post*. Part of the RIA process should be to examine the nature of the proposals for new regulations in order to spot those which would lead to unnecessary further complication of the regulatory stock.

Communication of the benefits to be gained from the simplification work is not evident, but essential for stimulating interest and support. It is not clear how many (inside as well as outside the administration) are aware of the simplification work, its objectives and its importance. The 2008 report of the Law Reform Commission has a compelling section on the benefits of restatement for example, explaining its importance for increased transparency, the potential to enhance compliance, and accountability by government, as well the wider benefits for the economy (confidence for investors) and the cost for all users. The OECD peer review team considered that communication of this should be enhanced.

As in many other fields of Better Regulation, Ireland has strengthened its approach to administrative burden reduction since the 2001 OECD report. The programmes that have been put into place are clear. There are two strands to the policy: a programme to reduce administrative burdens on business by 25% by the end of 2012, announced in March 2008; and the work of a High-level Group on Business Regulation on five priority areas, based on the work of the Business Regulatory Forum and international experience, and identified through these processes to be the most burdensome. Although there is no up to date figure, progress has already been made, with an estimated EUR 20 million savings (figure reported in 2008) and some significant ongoing projects such as: an XBRL project (extensible Business Reporting Language) including Revenue, CSO and CRO; ROS Signatures and eFiling with the CRO and revenue, and risk-based enforcement with participation of agencies across government.

The momentum, which seemed to have slowed, has been picking up speed. The DETI notes that the work programme is business driven. In other words it depends on the ideas, suggestions and issues put to it by business. Reporting is done periodically, not according to a fixed cycle. The problem of initial momentum may have its roots in the fact that the work is not perceived to be the most important issue for business competitiveness, and may have been "drowned out" by other measures to redress the economy in the wake of the financial crisis.

The initiatives are acquiring a stronger framework with regard to measurement and follow up, but specific targets and resources remain issues. With respect to the quantitative target, the DETI has defined the areas for reduction, has established a baseline measurement for itself, and is now encouraging other departments to follow suit. To encourage buy in and in line with best practice elsewhere in the EU, the target should be divided between ministries (which would put pressure on them to perform). It should also be a net target, as many rightly see RIA as key to reducing overall regulatory burdens. Adopting a quantitative approach requires strong incentives if not sanctions, as the Irish administrative culture is not particularly tuned in to measurements and data. Ireland could use the examples of relevant other countries and through discussion in the SPOC network to strengthen its approach on the ground. The project has also stumbled on a relative lack of resources (or a reluctance to allocate resources) within line ministries for taking forward the identification and measurement of burdens.

The institutional structure which appeared to make a slow start is now gathering pace. At the time of the OECD mission in late 2009, the framework structures for the programmes did not seem to command adequate attention. The HLG did not appear to be functioning effectively. The OECD team understands that this is now improving.

The initiatives do not seem to be backed up by a strong communication strategy. Public consultation and communication fall short of international best practice. Beyond the High-level Group standing dialogue with stakeholders, the initiative is with departments and attention will be needed to ensure that they follow up on the workshops anticipated after the measurements have been completed.

Overall, the policy may benefit from a review to draw out what really matters in the Irish context post crisis. There seems to be compelling evidence from some reports, echoed by comments to the OECD peer review team, that more should be done to support very small firms, in order to strengthen the domestic economy. Some of these actions may relate to administrative burdens. Some interviewees also pointed out the reluctance to address the "real" issues behind simplification, implying that the programme should go beyond administrative burdens. The 2007 ESRI survey commissioned by the BRU provided a very useful snapshot at the time of the issues judged important by business. Three years on, another survey would help to crystallise what the focus should be.

A specific programme for citizens may be a step too far at this stage, especially given resources and the need to prioritise, but Ireland might usefully review the experiences of other countries such as the Netherlands and Portugal, with a view to putting this into its forward Better Regulation programme. There is also no clearly defined programme at this stage for burdens

inside the administration. However the wide range of relevant initiatives which are already underway or planned under the banner of Transforming Public Services, could be identified to see whether there are any gaps.

Compliance, enforcement, appeals

Policies for compliance monitoring vary. Some departments and agencies have developed specific policies to track compliance. As this is an important indicator of the effectiveness of regulations the practice should be encouraged.

Approaches to enforcement also vary across sectors, with a significant number of enforcement entities developing initiatives to enhance efficiency. This area appears to be one where Ireland is ahead of many other EU countries, at least as regards individual cases of good practice, as it not clear just how widespread the developments are. The Smart Economy Strategy, however, identifies the need for a more consolidated approach, and that enforcement should where possible be based on risk. There are promising initiatives spearheaded by the DETI and some agencies to share views and develop a national approach.

Compliance and enforcement are closely linked to the development of effective RIAs. An effective RIA process seeks to identify and anticipate likely issues of compliance and enforcement. There is considerable knowledge stored within agencies which should be used to help strengthen this aspect of RIA assessments.

Administrative appeals practices vary across departments and agencies, raising some concerns about fairness and transparency. Although the Irish appeals system does appear to raise any major issues, the OECD peer review team heard that the piecemeal development of appeals mechanisms has led to inconsistencies and a relative lack of transparency. An improved approach to regulatory appeals was the subject of a recent consultation by the BRU, the conclusion of which was not to establish a single appeals body.

The Ombudsman is a useful channel for views on how the regulatory process is "lived" by ordinary citizens. As in other countries with an Ombudsman, this institution is well placed to develop a systemic view of regulatory management which should be tapped for ideas on where there is a need of improvement.

The interface between member states and the European Union

The establishment of clear and formalised structures for the management of EU regulations has helped to strengthen Irish performance. Co-ordination and monitoring have been improved. A range of processes and structures have been put into place including EU specific co-ordinating committees within the executive which meet on a regular basis, as well as parliamentary committees, guidelines to departments on best practice in transposition, and the introduction of an electronic database "EU Returns", to co-ordinate and monitor information. The EU Returns system is particularly striking relative to other EU countries, allowing departments to run reports on transposition and infringement proceedings, and the centre to monitor the overall picture. The structures that are now in place have forced departments to adopt more standard procedures (requiring them, for example, to prepare reports to the parliament), and have enhanced Parliamentary scrutiny of EU developments. The Department of the *Taoiseach* plays a growing role in co-ordination, alongside the Department of Foreign Affairs. Ireland has reduced its transposition deficit (now under the 1% target set by the Commission).

Resource constraints require a stronger and clearer approach to prioritisation. Departments can only deploy a limited number of staff on EU issues. This fosters flexibility and an ease of communication as the network of officials on EU affairs is small. However, it can create difficulties to respond adequately to developments and thus makes prioritisation a necessity. There is

a need to prioritise not only on the immediate agenda but also in terms of Ireland's strategic priorities- what are the most important issues for Ireland?

The application of RIA to EU regulations is far from systematic. The RIA guidelines are quite clear as to the use of RIA on draft and adopted directives (*i.e.* both in the negotiation and transposition phases). Irish requirements are ahead of some other EU countries in this regard. However the guidelines are often not observed. One way of applying pressure on departments to comply is to ensure that RIAs are attached to the drafts sent to the parliament (in the case of draft directives the information may be less developed than for adopted directives).

Communication on EU matters needs attention. The need to identify and prioritise the most important issues for Ireland also puts a premium on communication of the overall strategy. The OECD peer review team heard a number of comments to the effect that the government should communicate more effectively on EU issues (which needs to be put in the perspective of the rejection of two referenda on the EU, and the recent adoption of the Lisbon Treaty). If departments and other key players are to maximise their performance on EU issues, it is important that the government communicates the importance and positive aspects of engagement in EU processes, including transposition of directives.

The interface between subnational and national levels of government

A relatively simple structure and relatively restricted functions compared with many other EU countries are assets in the Better Regulation context. The structure is simple and does not need to be pruned, as in some other European countries. Responsibilities devolved to the local levels of government are relatively circumscribed, albeit not inconsequential. Local authorities in Ireland are responsible for the delivery of public services under central supervision, and they have significant responsibilities in the delivery of permits and in planning. Most of their regulatory work rests on regulations that have been defined at the centre of government.

Co-ordination with central government needs attention. The OECD peer review team found evidence that each Department goes its own way in relationships with the local level. There were complaints that "central departments are not joined up" and co-ordination between the centre and the local levels does not always seem to be optimal. This raises a number of issues. For example, environmental burdens which can mainly be traced back to the EU are a major issue at this level and may not be effectively picked up. Local authority representatives also raised the issue of unfunded mandates, and the fact that regulatory burdens on them of regulations adopted at the national or EU level are not properly discussed beforehand. The local level seems in need of more effective consultation with the centre, with special regard to financial and resource implications. The 2008 OECD report on the Irish public service underlined the need for a more co-ordinated approach at the national level to minimise regulatory burdens on local authorities.

By contrast, horizontal co-ordination between local authorities appears to be stronger. The local authorities remarked that horizontal links between them were stronger. The OECD peer review team heard that a wide range of groups are active.

National policies such as the administrative burden reduction programme do not include the local level. There may, however, be interest. The local authorities said that they had "not been invited to join the AB programme".

Key recommendations

Strategy and policies for Better Regulation	
1.1	Review the way in which the Better Regulation is presented within the administration, drawing out more clearly the potential links with the agenda for post crisis recovery (not just business competitiveness, but also structural and sectoral reforms, including the financial sector, the transformation of the public service, and stronger citizen engagement in policy and rule making.
1.2	Review the scope and balance of the current Better Regulation initiatives. Prioritise the work over time, perhaps through an anticipated programme of activities to take the agenda forward over a five year time horizon.
1.3	Review and update the communications strategy, if necessary with specialist help. Ensure that, post financial crisis, the messages on what Better Regulation can deliver are focused and clear. Make sure that for specific initiatives where there has been significant but perhaps unnoticed progress such as simplification, full and public credit is given to achievements. Consider an annual report for the Better Regulation Unit of the Department of the *Taoiseach*, as a vehicle for this and for publicising priorities and the forward programme, to be published on a regular basis and shared with the Parliament.
1.4	Devise a follow through strategy to evaluations. Set targets for further improvements, publicise these and publicise achievements against targets.
1.5	Continue to give e-Government greater visibility, a firm strategy and strong champions, as well as closer links with the Better Regulation strategy. Strengthen the working links between the Department of Finance, the BRU and the DETI.

Institutional capacities for Better Regulation	
2.1	Consider whether to increase the powers of the Better Regulation Unit. Actively integrate the Better Regulation agenda across all areas of the Department of the *Taoiseach*. Consider whether to evolve towards a larger shared unit, based on secondments from other key players as well as selected line ministries, and perhaps on the basis of

	a special status within the Department of the *Taoiseach*. At the very least, ensure that the Better Regulation Unit does not shrink further, and (as far as possible) that the public service cuts needed for fiscal consolidation do not affect capacities to deliver on Better Regulation.
2.2	Consider identifying a Better Regulation "champion" in each Department. Consider secondments from departments to the Better Regulation Unit. Sustain the networks that have been set up. Link Better Regulation performance to budgets and performance assessments.
2.3	Pursue the efforts in rationalisation of government agencies, and at the same time, clarify the extent to which the principles set out in the 2009 Statement on Economic Regulators will be applied to enhance governance for optimum efficiency and effectiveness. Consider, with the relevant agencies, how to encourage the diffusion of their best practices to other agencies (and to government departments).
2.4	Consider how to further encourage parliament into taking an interest in Better Regulation. This could be done by sending it relevant reports on progress as well as evaluations, which would also have the merit of increasing accountability for Better Regulation performance by government departments and agencies.
2.5	Consider using the legal decisions of the judiciary to learn about regulatory issues that may need attention.

Transparency through public consultation and communication	
3.1	Share best practices for public consultation across departments (and agencies). Consider how to give the consultation guidelines some teeth so that they are observed and so that consultation is applied to the same consistent high standards. Ensure as a first step that the guidelines are fully known across departments and relevant agencies. Benchmark Irish consultation arrangements with those of other small countries in the EU to see what could be of value in the Irish context. Consider how the social dialogue can best evolve to take account of societal developments.
3.2	Sustain the efforts at improving the accessibility of regulations and if necessary, increase funding. Communicate more clearly and broadly the value of these initiatives, as part of an enhanced general

	communications strategy for Better Regulation.

The development of new regulations	
4.1	Take steps to monitor regulatory production systematically (both primary and secondary regulations), identifying amendments to existing regulations as well as entirely new regulations.
4.2	Consider whether to set up a system for the forward planning of upcoming secondary regulations, and to publicise this. Consider whether there is a need to bolster the process for assuring the legal quality of secondary regulations.
4.3	Check Irish arrangements against those of relevant EU countries to see what might be done to strengthen the RIA requirements so as to strengthen their quality. For example, consider how the BRU could be formally equipped with the power to turn back inadequate RIAs so that draft proposals cannot be tabled before cabinet unless there is a RIA attached of adequate quality, and how publication might be made a statutory requirement. Enhance accountability for results by regular publication of (and publicity for) RIA statistics-how many done as a proportion of proposals, how many assessed to be reasonable quality, by department.
4.4	Consider how to further boost methodological support and buy in from departments for a quantitative approach. Among the approaches that could be envisaged are the further development of online user friendly tools for departments, linked to the training which is already provided, the establishment of “peer review” groups in departments for mutual support, linked to departments’ economists or economic units, and encouragement to departments to systematise the use of their economic staff for support and review of the work done by non specialist officials.
4.5	Consider how to ensure that significant secondary regulations are picked up by the RIA process, linking this to the issue of amendments that undermine the clarity of the law. A panel of relevant officials working on simplification, together with the BRU could be organised to review RIAs on primary legislation in order to identify expected significant secondary regulations.

4.6	Ensure that the RIA process continues to be evaluated by an objective external entity or entities at regular intervals, taking account of resources for this. Consider who is best placed for this task.

The management and rationalisation of existing regulations	
5.1	Reaffirm publicly that this work is a priority. Review resources for it, and increase as necessary, with a firm commitment to sustaining these for a reasonable time period such as five years.
5.2	Encourage a dialogue between those engaged in the simplification work and those engaged in the processes for making regulations. Start, for example, with an *ad hoc* meeting, orchestrated by the BRU, of the officials involved in these initiatives as a starting point (RIA network, Attorney General's Office, and Law Reform Commission).
5.3	Establish a communications strategy in support of the simplification work.
5.4	Take further measures to strengthen the practical approach, including delegated net targets. Establish a stronger link with the RIA process.
5.5	Monitor the performance of key institutional structures for delivery of the burden reduction programme (High-level Group and Inter-departmental Group). Consider whether it would be useful to rotate the chair of the HLG across key departments. Consider broadening the HLG mandate, for example by giving it an advisory role on important related processes such as RIA. Alternatively or in parallel, and taking account of resource constraints, consider whether a fully external (and independent) watchdog should be established, on the lines of those set up recently in some other EU countries such as the UK, Germany, Sweden. Task it initially to help shape a new strategy for the programme.

5.6	Clarify and monitor the requirements on departments with regard to consultation with stakeholders, and ensure that they have access to best practice examples (using international experiences) of how to go about it. Develop a communications strategy which clarifies the strategic objectives of the programme and why it is important to Ireland, as part of a broader communication strategy on Better Regulation proposed in recommendation 1.4. Consider committing to an annual report (following the example of several other EU countries) so that stakeholders can be regularly and clearly informed of how the programme is developing and results. This could be part of the broader reporting proposed in Better Regulation (recommendation 1.4) or standalone.
5.7	Commission a new survey of business views, and especially, of what matters to very small firms in terms of burdens. In the light of this, consider whether there is a need to adapt the strategy for administrative simplification.

Compliance, enforcement, appeals	
6.1	Consider whether it would be useful to collect and centralise data based on what is already done by departments and agencies in relation to compliance and enforcement, so as to establish a strategic picture of trends and potential issues.
6.2	Promote and disseminate good enforcement practices to broaden their use. Develop a more systematic approach to the development of enforcement, building on existing initiatives.
6.3.	Ensure that the RIA process fully underlines the importance of anticipating compliance and enforcement issues (not only costs, but possible practical difficulties).
6.4.	Consider whether to revisit the issue of appeals and how the system can be made more streamlined and transparent.

The interface between member states and the European Union	
7.1	Prioritise key areas of EU activity for Ireland so that time and resources can be directed toward these areas
7.2	Ensure that RIAs related to draft directives and transposition of adopted directives are sent to Parliament.
7.3	Consider how to establish a clearer communications strategy for EU matters, both in strategic terms and at the level of practical detail (for example transposition and infringement rates). Part of this might be picked in the annual BRU report recommended in Chapter 1.

The interface between subnational and national levels of government	
8.1	Review co-ordination and consultation mechanisms between the central and local levels, with a view to reinforcing these. Consider an annual forum.
8.2	Invite local authority participation in the administrative burden reduction programme for business, perhaps as part of the strategy renewal proposed in Chapter 5.

Better Regulation in Europe: Luxembourg - *Executive Summary*

Economic context and drivers of Better Regulation

Luxembourg has experienced a severe recession, as it was heavily exposed to the drop in world trade and the global financial crisis. Since the 1980s, the main driver of the economy has been the financial sector, which currently accounts for nearly 30% of GDP (or as much as 50%, taking into account that the sector is a major consumer of legal and real estate services). Unemployment has risen and the fiscal position has deteriorated. This follows a long period of continuous and rapid economic expansion, during which living standards rose spectacularly and the economy was transformed by the development of Luxembourg as a financial centre and by large flows of cross-border and migrant workers. While there are encouraging signs of recovery, the future growth path is likely to be weaker than in the recent past, reflecting the sluggish international recovery, structural factors and a loss of competitiveness.

In terms of regulatory governance, it will be particularly important to maintain sound regulation of the financial sector. Effective supervision and closer cross-border co-operation will help contain systemic financial risks, while strong national framework conditions will contribute to development of the financial sector. It would be timely to review the structure of supervision and co-operation between the financial supervisor and the central bank. The services sector would also benefit from greater competition – something that will require a re-examination of regulation in this area.

The spectacular growth of the financial sector can be attributed in part to a regulatory framework that has placed Luxembourg among the top-ranking financial centres and has encouraged financial enterprises to establish themselves in the country. The importance of appropriate regulation has thus been an important consideration in government policy for some years, as was pointed out to the OECD team in several interviews, and well before the issue was taken up by the European Commission and certain other EU countries. This awareness goes beyond the financial sector and indeed amounts to general recognition of the notion that effective regulation can be used to support competitiveness and for the economy.

However Luxembourg's comparative advantage in this area has been eroding in recent years, as other countries have moved forward and as regulatory frameworks have become progressively harmonised. Government and economic agents alike are fully aware of this erosion, and of the need for vigorous efforts, including on the regulatory front, to ensure the competitiveness of Luxembourg firms in general and in particular of SMEs, for which Better Regulation is an important aspect. Luxembourg businesses are fully supportive of this policy, but it must be admitted that this support has not fully translated into progress on the ground. There is still much to be done to improve the functioning of the domestic market, especially for SMEs.

Not surprisingly, the EU context has a strong influence. The government's policy of "administrative simplification" relies heavily on tools developed and implemented at the EU and international levels. The government is aware that it must adopt a common methodology and work to common principles if this policy is to succeed. Luxembourg has understood that its small size demands a spirit of openness, and it recognises the danger inherent in a (re-) fragmentation of domestic markets within the EU.

Public governance framework for Better Regulation

The governance framework in Luxembourg is characterised by the following features:

- **Small government**. In keeping with the country's small size (the smallest of all the countries examined in this project), Luxembourg has a government of modest means. This facilitates the circulation of information, and officials and politicians are readily accessible to citizens. Policy development tends to be pragmatic. The country is also open to the outside world and to learning from positive experiences in other EU countries. Yet issues where economies of scale do not pertain – European obligations, for example – impose a heavy burden in relation to management capacities. Moreover, the structure of government, with 19 ministries, and a strongly rooted tradition of ministerial autonomy can obstruct the internal flow of information.

- **A relatively simple subnational structure**. There are two levels of government in Luxembourg: the central government and the municipalities or "communes". The communes are often very small, which has led to a reflection on the scope for reform of territorial organisation, in the recognition that this small size makes quality service delivery difficult. Progress on this score has been limited to date (see Chapter 8).

- **A stable political system**. The political system, while systematically based on coalition governments, is very stable. The Christian Democratic Party has been a partner in government since 1919 (except for the interval 1974-79), most of the time as senior member of a two-party coalition.

Developments in Better Regulation in Luxembourg and main findings of this review

Strategy and policies for Better Regulation

Luxembourg is in the process of adopting a Better Regulation policy that is increasingly structured and complete. The term "administrative simplification" as used by Luxembourg must be understood in the broad sense. Beyond legislative simplification (and codification in particular) and cutting red tape, it includes other tools such as *ex ante* impact studies and growing attention to the transposition of EU directives. Major efforts have been made recently to structure these various initiatives around a central strategy designed to benefit the economy and (increasingly) citizens. To guarantee the future success of the programme, it will be essential to pursue this integration and to strengthen the linkage between *ex ante* impact studies, *ex post* assessments and the process of administrative and legislative simplification. Another link that should be strengthened is that of simplification, including legislative simplification, which relies heavily on the policy to promote e-Government.

There is strong political support for the current reform efforts. In the wake of the June 2009 elections, the government prepared a political platform that reflected a clear intention to move forward with regulatory simplification. Simplification initiatives were already in place, but they were piecemeal. The public support of the Prime Minister and the decision to place the simplification unit within the Ministry of State sent a strong signal that this policy is important for the country and for post-crisis economic recovery.

On the ground, the strategy is geared mainly to businesses, but there is also an evolution towards integrating citizens and other stakeholders. A certain shift can be observed, with greater attention to involving citizens, consumers, associations, etc. Better use could be made of new technologies for engaging citizens in the simplification process, for example through e-consultation initiatives. Future support for the simplification effort will need to come, not only from businesses, but also from citizens and users, recognising in particular what this means for a population that comprises a large proportion of cross-border workers and immigrants.

Luxembourg may have been slower off the mark than most EU countries, but it is making up for lost ground and showing a strong willingness to assimilate good international practices. When it comes to *ex ante* impact studies, public consultations, transposition and implementation of

EU directives and the central-municipal government interface, Luxembourg will have to make special efforts. *Ex ante* impact studies, in particular, need to be strengthened and taken more seriously in government, and the approach to public consultations should be modernised. A balance must be struck here – the reform process should not introduce procedures that are too cumbersome and difficult for a small country to apply.

The CSA's efforts to communicate progress in simplification are a first step, and one that should be reinforced. The strategy should not be the exclusive preserve of the CSA (Comité à la simplification administrative - Committee on Administrative Simplification), as the cross-cutting policy of Better Regulation has implications for the entire government apparatus, but the CSA is no doubt best placed to assume overall co-ordination and responsibility. As CSA resources are limited, tasks should be shared. It is also important to take every opportunity to highlight the contribution that Better Regulation can make to reviving the economy. Finally, it is important to recognise the real progress that has been made, as an encouragement to future efforts.

As in many other countries, the evaluation of regulatory policies is still a weak point, in the absence of clear and targeted objectives or indicators for measuring progress. Like many other EU members, Luxembourg needs to develop and implement performance objectives and indicators in the various fields of regulatory governance – and not only in relation to administrative burdens – as a way of enabling progress to be assessed objectively. The administrative culture is highly legalistic, and the contribution of an economic perspective and skills (without abandoning the legal focus) would facilitate progress in this area.

Work to date reflects real progress in specific areas such as the "one-stop shop", but the country still lags behind the leading EU states in this area. Luxembourg could benefit from experience in other EU countries to make up for lost ground. When it comes to the development of new regulations, for example, Germany and France could provide useful experience, against a context in which the government has difficulty recruiting staff with legal drafting skills. A dematerialised chain would allow the real-time processing of texts, from the initiating ministry through to publication, with shorter transmission times and enhanced security. The use of ICT in the conduct of public consultations should also be reinforced.

Institutional capacities for Better Regulation

Strengthening the CSA's position within government is an important step forward, and it sends a strong signal that Better Regulation is a key policy concern for the government. The announcement of a Better Regulation policy has been accompanied by a reinforcement of the CSA. Now that the CSA has been placed within the Ministry of State, at the very centre of government, its work is more visible, and its director now attends meetings of the Pre-Council, exercising *ex ante* control over the principles of regulatory quality and legal simplification. The change of name signals that its purview extends beyond the concerns of business.

A question arises, however, as to how to ensure that the strategy, and support for it, can be made to last. A significant part of the answer is to ensure that the various ministries assume ownership of their contributions, and to have them recognise the importance of the task for their objectives. In any case, the task must not be left solely with the Ministry of State. A sustained effort will be needed to raise awareness among stakeholders throughout government. Ministries do not all have the same understanding of what is meant by Better Regulation. The performance of different ministries varies widely, and some have come to a better appreciation of the issues at stake and are making better use of the tools internally. In some key areas, such as impact assessment, there remains considerable resistance overall.

The CSA, with its plenary, constitutes a structure with great potential. It is important to have a structure that can co-ordinate and support the work of the ministries, and that can also take a forward-looking view. Greater precision is needed concerning the – mutually reinforcing – mandates of the CSA and the Central Legislation Service. The CSA's membership in a "plenary" of business organisations constitutes a very useful vantage point vis-à-vis the outside world and the day-

to-day realities of living with regulation. During the interviews, however, it was suggested that the makeup of the plenary could be expanded to bring in consumer organisations, trade unions and other groups representing civil society, either as full members or as observers.

Inter-ministerial co-ordination is vital to the success of the strategy. The CSA's comment warrants repetition: administrative simplification should be seen not as the preserve of a single horizontal service or a single official, but as a concern for all officials and all government departments. Administrative simplification is a responsibility that must be shared by all ministries. In order to institute and, above all, to carry out a coherent simplification policy, departments must work together. Every department must take charge of the procedures for which it is responsible. The mechanisms that have already been put in place – correspondent networks, co-ordination committees – should be used systematically to ensure a better flow of information and to overcome departmental insularity. Some EU countries have achieved success by appointing a minister or a senior official within each ministry to be responsible for follow-up, political support and taking stock of progress.

Parliament seems ready to support sound legislation and regulation. Parliaments in several other EU countries have for some time been showing a growing interest in better regulatory governance. In Luxembourg the relationship between the executive and legislative branches seems very close, reflecting in part the country's small size. The relationship has been strengthened recently as Parliament has been granted a greater role in negotiating EU directives. Continuing this trend in Luxembourg would be positive, for example, by submitting impact studies to Parliament. The impact assessment is an essential tool of any policy for improving the quality of regulation. The assessment would remain attached to the draft text and accompany it throughout the procedure until its adoption. This initiative would strengthen the link with Parliament.

Regulatory resources and expertise are modest. The resources directly available for regulatory governance are modest and need to be strengthened, despite the country's small size, in order to make swifter progress and to live up to the professed ambitions for Better Regulation. Several people interviewed by the OECD team stressed this issue. It is clear, for example, that ministries need more substantive support to help them with impact assessment. The relatively small size of government is also a problem for transposition within the guidelines set by European law. This may not be merely a question of resources, however: more importantly, there would seem to be a shortage of trained legal experts, compounded by a dearth of government professionals in other areas, such as economics. Thought should therefore be given to gearing university education more closely to government needs, so that specialised professionals can stay in Luxembourg and join the civil service, if they are interested, and to equip civil servants with specific knowledge, for example, in legal drafting or quantification methodology.

More generally, Luxembourg needs to pursue public administration reforms, without which the drive for Better Regulation may run out of steam. For example, a system of assessing performance against measurable objectives could also assist Better Regulation by making it part of the performance appraisal of civil servants, as is now starting to be done in some other EU countries. According to the Economic and Social Council, it would also be important, as part of administrative modernisation, to redeploy staff in light of new demands and mandates.

Transparency through public consultation and communication

Luxembourg has a generally successful tradition of seeking consensus which is adapted to the country and which generally functions well. The culture of public consultation has deep roots. It begins early in the process of developing regulations and relies on both formal and informal procedures. For example, *ad hoc* groups are often established to prepare drafts, with the support of outside experts as well as input from civil society. In comparison with the other countries examined, the OECD team received little in the way of unfavourable comment concerning consultation. The interviews did not, however, shed much light on the practice of seeking consensus.

The administration is readily accessible, but private citizens are less likely than businesses to take an active part in the development of regulations. The OECD team detected an awareness in

some parts of the administration that the culture and the tools for sounding out public perceptions of regulation should be reinforced. On the other hand, it was not always clear just how this should be done. The team was told that citizens were more involved downstream than at the upstream stage of drafting, but that "civil society is more active and interested than it was ten years ago".

Luxembourg needs to broaden its approach to consultation so that the form it takes can be tailored to a particular case. Public consultation can take many forms – permanent structures, working groups, public debates with technical support via the Internet, the media, etc. ICT can be particularly useful for boosting participation by civil society and the general public, and for ensuring transparency of the kind that will strengthen a country's democratic foundations.

Luxembourg does not have a framework for public consultation to support ministries. A growing number of EU countries have established procedures, guidelines and training for ministries, to help them consult with the public more effectively.

Luxembourg has a very complete and accessible set of directories and databases concerning the law. They constitute an excellent starting point, and they incorporate the good practices that have been instituted in most EU countries. However, if the law is to be truly accessible and understandable for every citizen, the work of consolidation and codification (discussed in Chapter 5) is crucial.

The development of new regulations

There is a shortage of up-front information and systematized processes for developing regulations. Internal consultation is a key element for the coherent evolution of the legislative framework. In much of the EU, such consultation is mandatory and formalised. That said, the most useful approach is probably to combine formal and informal upstream consultation. Internal consultation is often entrusted to inter-ministerial committees (*ad hoc* or permanent) responsible for specific policy formulation, and it relies on ICT (for example, a government intranet) to make it effective. Recent years have seen a clear improvement in systematising the production of regulations, but implementing the process still seems to be highly decentralised. Luxembourg needs in particular to introduce an application for paperless production of regulatory texts – one that will carry the process from the sponsoring ministry through all the intervening stages to final publication in the Mémorial (for now, the procedure is entirely paper-based).

Legal quality control also requires attention. Upstream control of legal quality is not assured, and the resources currently in place are inadequate relative to the task. As one interviewee told the OECD team, "it is not a disaster, but we could do better." Legal quality depends above all on the work of the Council of State, which becomes involved in the procedure only very late.

There are no fixed deadlines for the Council of State to issue its opinion – an essential step before a regulatory draft can proceed. In practice, response times vary, depending on the text in question. This can hold up the legislative process for as long as two or three years. Many interviewees raised this issue, stressing the need for reform.

***Ex ante* impact assessments are a weak link in the regulatory process, and the CSA is now working to strengthen them.** There has nevertheless been progress. There is now an integrated impact assessment form, and it is being filled out more or less completely. The culture is slowly taking hold, but much remains to be done.

A better performance based on sound policy decisions must start with a clear political statement of the importance of impact assessment. As a first step, the government must demonstrate the political will to support the procedure, for otherwise stakeholders within the administration will not change their attitude. Other EU countries (*e.g.* Finland) have found it useful to communicate clearly in the government programme that this process is deemed essential. To reinforce the message, it would be helpful to draw the link between administrative simplification and impact assessments, as reducing red tape is already seen as important. The Cabinet could at the same time

affirm its support. Luxembourg might consider whether a law would be useful to make impact studies mandatory (as France and Spain have done).

The requirements for impact assessments need to be reinforced. Impact assessments must take into account the "regulatory cycle", *i.e.* the planning, implementation and evaluation stages. Some very specific elements of this process, as discussed below, have proven their worth in other EU countries and should be reinforced in Luxembourg.

Strengthening the upstream institutional framework and sanctions is essential. There must be an organism responsible for guaranteeing the quality of impact studies before they are presented to Cabinet. This could be the CSA or the SCL, or a mixed body derived from both entities. In any case, it must be centrally positioned, with access to the process of preparing policies and regulations, so that it can intervene promptly and decisively as "gatekeeper", *i.e.* it must have the power to reject an inadequate study and to insist on a proper assessment before a draft is submitted to Cabinet. In Luxembourg it is probably neither necessary nor useful to create a new body. Nevertheless, consideration should be given to strengthening the human resources available for this work. Their role should be clearly distinguished from the process of verifying general procedures for developing regulations. These are intended to ensure that formal procedures are duly observed and are concerned only marginally with the substance and the quality of the assessments, which is a separate task.

Ministries need more support if they are to produce high-quality impact assessments. As in most other EU countries, ministries are responsible for carrying out impact assessment, and this in turn gives them a sense of ownership. In order for results to come up to expectations, ministries need to be offered specialised training. The introduction of special courses could also be useful to strengthen networking amongst officials, forge links between ministries, and share experience. The CSA already offers courses, and it would be interesting to compare these with the ones provided in other small countries. For example, Ireland offers regular, well-structured courses that have been very well received and are attracting growing numbers of civil servants. Training needs to be backed by guidelines for ministries to use in preparing studies. Those guidelines could be part of the practical handbook on legislative and regulatory procedure, but whether they are instructions or not, should be supported by concrete examples, must be clear and – to promote a sense of ownership of the process by ministers and officials who "don't see the use of it" – should contain a forthright explanation of the logic and the importance of assessments for better regulatory governance.

The recently overhauled impact assessment statement seeks to correct some of the defects of the previous version; improvements should be pursued. The current impact assessment form was revised in 2010. The change took place after the OECD mission and thus could not be evaluated. The CSA has instituted a quantified assessment of administrative burdens, using the Standard Cost Model, but it should consider going further. For example, the environment and sustainable development do not figure among the areas covered by the assessment.

The stages of the process should also be reviewed. The process needs to be clearly targeted. A balance must be struck between the scope of application of the mechanism and the proportionality of the effort, with care taken not to make the process too cumbersome.

The mechanism contains no obligation for consultation with outside stakeholders, nor any requirement for publication. If impact studies are to be of real use in decision making, public consultation is essential in order to gather the necessary inputs. The current explanatory note highlights the importance of stakeholder consultation, which is the first item on the impact statement form. Releasing and publishing studies would reinforce the message to stakeholders that the process is taken seriously, and at the same time, allowing their contents to be shared with all parties involved in the regulatory production chain, in particular the Council of State and the Chamber of Deputies, which currently have no access to the studies.

Lastly, the mechanism must be evaluated if it is to be effective. Regular evaluation of the mechanism is essential for ensuring not only that the assessments are conducted properly, but that they are useful as tools for decision-making and provide the desired backing for optimal drafting of

regulations. Evaluations should be planned systematically. The Court of Accounts (Auditor General's Office) might be willing to assist in this regard.

It would be useful to reinforce the message that the alternatives to regulation must be considered systematically, as well as the option of a risk-based approach, at a stage which is not too late in the decision-making process. Several participants stressed the need to take better account of the danger of producing too many regulations. There does not seem to exist a systematic assessment of the "zero regulation" option, and a risk-based approach to the development of regulations is not evident either – an approach that could also help limit overproduction. It is not enough to mention alternatives in the impact statement: the pressure has to be maintained.

The management and rationalisation of existing regulations

Legislative simplification is one of the priorities of Luxembourg's policy for Better Regulation, and well-developed codification work is underway. The government has launched a series of initiatives for legislative simplification. Bringing together all the rules concerning a given field within a single structure is considered a useful exercise, and one that should be pursued with appropriate resources. Another tendency is to roll successive laws into one umbrella law, as was done with the 1993 Financial Sector Act, rather than have a scattered series of laws. The OECD team found many interviewees who were decidedly in favour of legislative simplification, in particular through codification.

Nevertheless, efforts at legislative simplification are not systematised but instead take the form of *ad hoc* codification initiatives. The government should commit itself more thoroughly to a systematic policy of simplifying laws and regulations. Any legislative simplification programme must be conceived as a medium- and long-term policy, supported at the highest political level, and implemented by teams well staffed with experts, and jurists in particular, given the objective of cleaning up and rationalising the legal system, rendering the law more accessible, and ultimately making life easier for citizens and businesses. With a reinforced strategy for legislative simplification, implemented in sectors deemed priorities, the government will be able to ensure that the law is clear, less stratified and fragmented, and more readily accessible at lower cost.

Beyond codification, Luxembourg has not yet taken other measures that could be useful for legislative simplification. For example, Luxembourg should consider the advantages of deploying the instruments of a periodic simplification law and a "law-cutting" law. Such instruments engage both parliament and government in the simplification process, and associate regulatory cleanup, simplification and codification in a flexible and innovative form in which the law can evolve.

The current institutional arrangements are not able to provide the required support. The institutions at the centre of government, and the CSA in particular, should be strengthened to promote a more comprehensive programme for simplifying the law. The success of a simplification and codification programme will rely in large part on co-ordination and on the capacities of ministerial departments to work together in identifying priorities for simplification, preparing codes and consulting stakeholders. Above all, codification work requires smooth and constant inter-ministerial co-operation for co-ordinating texts and taking different positions into account, especially with respect to cross-cutting areas or those where jurisdiction is shared. The Irish Law Reform Commission (or for that matter, its British counterpart) could, for example, be a source of ideas for Luxembourg. This independent commission is charged with overseeing the coherence and quality of all regulations and proposing specific reforms to the government. Lastly, the simplification of laws and regulations is a technical undertaking and should be managed by a team of jurists fielded by the various ministries.

It is important to highlight the significant links between legislative simplification and other actions for improving regulatory quality. Legislative simplification and codification, through which the law can evolve, should be linked to programmes for cutting red tape. In addition, consultation and impact assessment are essential for assessing the effects and the innovative scope of legal codes and the impact of the policies pursued, through *ex post* evaluation.

ICT offers good support for legislative simplification, and its use could be strengthened. Consistent with the maxim that it is presumed one knows the law, legislative simplification can also benefit from the use of ICT to make the law more accessible to citizens. The Legilux site is an excellent starting point.

A realistic overall target has been set for reducing red tape, and the CSA has put in place several of the elements needed to monitor the programme. Following the 2009 elections, an overall target of 15% was adopted. A network of ministerial correspondents is in place, chaired by the CSA. *Ad hoc* working groups have been formed to deal with the four areas for which the government has set quantified reduction targets, and this is a good beginning.

The mechanism has no precise objectives and makes no provision for publicising the actual results for the ministries concerned. By no means, have all ministries yet signed on to the simplification agenda. The overall target represents an important step, but it needs to be accompanied by more precise objectives to ensure effective monitoring and evaluation of results and to put pressure on ministries to achieve them.

The link to impact assessments should be strengthened by quantifying burdens *ex ante*. Reducing administrative burdens is already an integral part of the *ex ante* impact study mechanism, but those burdens have no figures attached to them. Tools need to be developed to help quantify burdens *ex ante*, drawing on examples from other countries such as Sweden with its MALIN system, which allows ministries to quantify anticipated burdens.

Measures for citizens should be further strengthened. A programme for citizens is included in the government programme. This would bring greater visibility to the efforts of the government, which is already committed to this route, in particular through e-Government and the one-stop shops, for dealing with the administrative burdens that fall on the general public. Here, the example of the Netherlands could be useful.

Measures to reduce administrative burdens on government itself should also be considered. It would be useful to consider an initiative targeting the administration. In tight fiscal times, some countries have found that reducing burdens on the administration can not only produce savings but can also shift a portion of those savings to strengthening the services delivered directly to citizens and businesses (less red tape, more availability for the customer).

Compliance, enforcement, appeals

The enforcement of laws and regulations deserves special consideration. Risk assessment, co-ordination of inspections and a results-based implementation policy are all tools that can reduce unnecessary burdens on businesses presenting a low risk of non-compliance, and they can make the inspection system more effective and less costly.

Appeals channels are well-conceived, and, a mediator was instituted in 2004. The OECD team was not able to unwrap this in detail, but there would seem to be no major problems with the system. Knowledge of the system is acquired mainly by word of mouth. It would be timely to consider the publication of information on channels of appeal against administrative decisions, taking into account the Luxembourg context, in which foreigners figure prominently among its population and workforce.

The interface between member states and the European Union

The small size of its government, in comparison with other EU countries, is a major challenge for Luxembourg. How can it best be organised to achieve optimal efficiency in the process of negotiating and transposing European directives? The fact is that Luxembourg has to deal with the same number of directives, and hence the same volume of work, as any other EU country.

The negotiating process does not seem to pose any major problems. The negotiating process unfolds in accordance with the EU framework, and Luxembourg focuses its efforts on the most important cases.

The real problem arises downstream, with transposition, where Luxembourg falls short of the target set by the European Commission. A more structured approach was recently instituted, with an electronic support tool, to overcome delays in the transposition of directives. There has been some progress recently. Transposition is normally done via the legislative route, and there are no special provisions for "fast tracking" transposition such as those that exist in the United Kingdom and some other countries.

Nevertheless, Luxembourg "is transposing rather well" in terms of its rate of infractions. This is one of the lowest among EU members.

Overregulation could be a problem. "The whole directive and nothing but the directive" is the rule of thumb promulgated by the government, in an effort to reconcile the need not to go beyond what is strictly necessary for transposition and the need to be thorough enough to avoid infraction proceedings. This principle is well known throughout the administration, but there is no clear consensus on how to implement it. It would seem that some parts of the government are experiencing difficulties ("some ministries are drowning in texts"). Other participants suggested that the quality of transposition was rather good. The same officials are responsible for negotiating a directive and then transposing it. This is an asset, in principle, but when it comes to making a choice, priority will be given to negotiation. The problems with transposition were not clearly identified for the team but are probably of different types, and it would be useful to assess them. The government programme calls for an analysis of the current system of transposition in order to identify problems and develop solutions.

The interface between subnational and national levels of government

There has been some real progress in Better Regulation at the subnational level, but much remains to be done. The communes (municipalities) do not have much room for manoeuvre as their role is generally confined to carrying out projects and regulations prepared by the central government. Nevertheless, the communes have considerable independence in organising their territory and regulating development and land use, through zoning plans and building permits, and they are also responsible for delivering utility services such as water. One-stop shops have been set up for serving the public in a growing number of communes. It is not clear that the communes have given much thought to the overall improvement of regulatory management insofar as it affects their activities. Some EU countries (for example the Netherlands and Sweden) have adopted shared action plans.

The communes would like the central government to take more account of their views. Co-operation between the national and subnational levels needs to be reinforced. Although the state is highly centralised, it is important to guarantee co-ordination among all levels of government. The SYVICOL could be consulted more regularly by all ministries, especially in the process of simplifying legislation and administrative burdens. The ministries are under no obligation to consult the communes – this depends on the ministry and will depend on the project in question. However, decisions can have significant implications for the communes, which are obliged to carry them out.

Key recommendations

Better Regulation strategy and policies	
1.1.	Consider ways of integrating upstream and downstream actions, working with France and other countries that are addressing this issue,
1.2.	Consider ways of giving policy for Better Regulation a permanent status (see also the recommendations in Chapter 2).

1.3.	Ensure a balance between programmes for businesses and citizens in future development of the Better Regulation programme.
1.4.	Take steps to promote *ex ante* impact assessments, public consultation, and effective transposition of EU directives, as well as a policy for central/municipal regulatory management.
1.5.	Adopt a communication strategy in the full sense of the term, shared between key institutions at the core of government, and designed to explain the strong link between effective regulation, a sound and competitive economy, and a government that can deliver public services more effectively. Identify the opportunities and the vehicles (*e.g.* annual reports) for doing this. Consider expanding the CSA annual report and give it greater visibility.
1.6.	Adopt a clear policy for evaluating the different aspects of regulation based on clearly defined objectives and a strict timetable, in light of available resources. Give thought to who should conduct these evaluations.

Institutional capacities for Better Regulation	
2.1.	Confirm the CSA's lead role in regulatory policy, while clarifying the role of its close associates, in particular the Central Legislation Service (SCL). Review the makeup of the plenary to provide for broader representation by civil society stakeholders.
2.2.	Continue with the structures in place for ensuring inter-ministerial co-ordination. Ensure that the representatives in those structures are officials with sufficient rank to reinforce messages with their colleagues. Consider appointing a minister and/or a senior official within each ministry to ensure visibility and political support for those messages.
2.3.	Review the arrangements whereby the executive branch and parliament can share the information needed to maintain parliamentary interest in Better Regulation.
2.4.	Prepare a policy that ensures the availability of resources and training needed to support implementation of the various tools for Better Regulation, including legal drafting and impact assessments.

Transparency through public consultation and communication	
3.1.	Develop use of the Internet in a (initially) targeted and specific manner for certain consultations so as to take better account of public views, and to gain "in the field" experience, following the examples of other countries such as Portugal and Finland. Establish an electronic portal for these consultations.
3.2.	Establish guidelines for consultation. Share experiences among ministries to identify best practices and the most useful processes.

Development of new regulations	
4.1.	Strengthen upstream co-operation among ministries. Publish the government programme and any changes to it, in particular drafts of laws (and of important regulations) to give them greater visibility and allow stakeholders the chance to make their opinions known. Examine the potential of electronic systems for more effective data sharing between ministries and with parliament. Improve online tools. Make clear who will have the lead in implementing these mechanisms.
4.2.	Review the legal control process to have it start as soon as possible in the procedure. Review the structures and capabilities for quality control, by establishing a panel of jurists within government (following the United Kingdom's example) or a strengthened partnership with CSA or SCL in the early stages of the process of developing regulations, and boost their resources.
4.3.	Establish a timeframe for the Council of State to issue its opinions.
4.4.	Identify ways of reinforcing communication on the importance of producing impact assessments at the initial stage of developing regulations so as to avoid the need for *ex post* clean up. Consider how impact assessments can be made compulsory.
4.5.	Review and strengthen institutional arrangements for producing high-quality impact assessments.

4.6.	Review training courses for possible improvements, and ensure that they are part of compulsory training and are taken by the largest possible number of civil servants. Incorporate these into the revision of the general manual.
4.7.	Consider further changes to the impact assessment format. Review the standard form to include all fields important to decision making (*e.g.* the environment). Review the methodology to highlight the need for quantification, if possible, or at least for a sound qualitative evaluation of all costs and benefits of a proposed regulation.
4.8.	Make public consultation and publication of impact studies mandatory.
4.9.	Evaluate the impact assessment mechanism regularly, and publish the evaluations. These could be included in the CSA's published reports on progress with simplification.

The management and rationalisation of existing regulations	
5.1.	Confirm the importance attached to legislative simplification, as part of the effort to make laws more accessible. Review options for using approaches other than codification. Confirm the priority sectors.
5.2.	Strengthen institutional support for legislative simplification. Consider other possibilities that could work in parallel for moving forward faster and more systematically, such as instituting a law reform commission. Review legal capabilities within the ministries.
5.3.	Establish and publish precise quantified objectives for the ministries concerned in the administrative burden reduction programme. Strengthen contacts with other EU countries through groups established for this purpose in order to collect maximum information on experience that could be useful for Luxembourg.
5.4.	Confirm the intention to move forward with the programme to reduce red tape for citizens as soon as resources are available and the responsible body has been identified. Consider the possibility of a red tape programme for the government itself.

Compliance, enforcement appeals	
6.1.	Review the regulatory enforcement policy to identify potentially more effective approaches.

The interface between member states and the European Union	
7.1.	Evaluate the transposition procedure, for directives generally and for each ministry and/or sector, to identify where the problems lie. Consider whether existing legal provisions are one of the reasons behind transposition difficulties. Discuss the issue with other countries with limited means, such as Ireland and Finland.

The interface between subnational and national levels of government	
8.1.	With the support of SYVICOL (Union of Luxembourg Cities and Communes), consider whether to adopt an action plan and priorities for Better Regulation in areas of municipal responsibility.
8.2.	Build into the central policy for Better Regulation an aspect concerning the central/municipal link.

Better Regulation in Europe: Netherlands - *Executive Summary*

Drivers of Better Regulation

The evolution of Dutch economic performance over the last three decades has been closely paralleled by policies aimed at putting Better Regulation on the government's policy agenda, as a means of combating structural and other issues that stood in the way of a stronger growth rate. Regulatory reform gathered momentum through the 1990s, and specific programmes emerged to give regulatory management a clearer shape. The MDW Programme (*Marktwerking, Deregulering en Wetgevingskwaliteit*) was set up in 1994 to improve the regulatory and structural environment for more open markets. Dutch governments at this time sought a new balance between "protection and dynamism", by means of increased competition, regulatory reform and market openness. Pressures to accommodate the emergence of the Single European Market also promoted change. Part of the MDW Programme was to streamline regulations to return to "what is strictly necessary", and this included the reduction of administrative burdens. This was also a decade when significant efforts were made to develop a stronger policy for the development of new regulations, including *ex ante* impact assessment, to avoid the problems of the past.

A second phase started in the late 1990s, with growing emphasis on the reduction of administrative burdens for business. Better Regulation's link with economic performance was re-emphasised in the Coalition Agreement that guides government policy making today, which promotes a more innovative, enterprising and competitive economy. A social aspect has also emerged, partly reflecting the Coalition Agreement's emphasis on social cohesion as well as economic progress, but also as means of supporting public sector reform. Important and emerging aspects of today's Better Regulation policies (such as enforcement, local level Better Regulation, and burdens on citizens) are linked to this broader strategy.

Public governance framework for Better Regulation

The Netherlands is a decentralised unitary state with three tiers of government (central government, provinces and municipalities). The number of municipalities has steadily fallen over time as part of the central government's policy to improve administrative quality and effectiveness through mergers. The central government works on the basis of coalition agreements, which set the policy framework for the four years of the electoral cycle, and annual budget plans. There is an ongoing programme aimed at increasing the efficiency of the civil service, with positive repercussions on aspects of Better Regulation such the streamlining of enforcement practices. The traditional Dutch approach to public governance is based on the corporatist philosophy, which emphasises the principles of consensus building and the use of expert advice to improve regulatory quality, with a view to promoting the legitimacy of regulation and trust in government. Consensus building continues to be an important feature of Dutch governance, but the reforms of the 1990s have also moved the Netherlands towards more open and market driven processes for policy development.

Developments in Better Regulation

Whilst administrative burden reduction has been a key focus of Dutch Better Regulation policy over the last few years, other important policies have also been developed. These include reform programmes for inspection and enforcement, from 2001; programmes to address administrative burdens on citizens which includes elements of regulation inside government, starting in 2003; further

work on the legal quality framework for developing new regulations, including assessment of alternatives to regulation; and a growing engagement with the EU institutions over the development of Better Regulation at EU level. Recent developments are extending these foundations. Notably, there is an increasingly vigorous and targeted communication programme, the development of what was previously known as the administrative burden reduction programme, now known as the regulatory burden reduction programme, to cover a much wider scope of issues, moves to strengthen public consultation through the Internet, as well as renewed efforts to work at EU level and with likeminded EU partners to strengthen EU Better Regulation policies.

Main findings of this review

The Netherlands was one of Europe's early starters in the development of Better Regulation policies, and there has been steady progress since the 1990s to build and expand on this. Better Regulation is now on a sustainable track, with successive governments taking initiatives to expand the institutional and policy framework. A range of policies is now in place, alongside the flagship programme to reduce regulatory burdens on business. At this stage, the development of an integrated policy perspective would help to strengthen Dutch Better Regulation by giving it a long term vision and goals.

Institutionally, the establishment of the Regulatory Reform Group, the unit of officials at the centre of government, and of ACTAL, the independent watchdog, have been major milestones in providing a clearer focus for Better Regulation and promoting culture change. The framework is not, however, yet fully complete, as the Regulatory Reform Group only covers business aspects of the Better Regulation agenda. It would be helpful to find a way of further strengthening co-ordination between key ministries. Culture change, as in other OECD countries, still has some way to go.

The Netherlands pioneered the Standard Cost Methodology (SCM) for the reduction of administrative burdens. Achievements for the business sector have been significant, and the 25% net reduction target set by the last cabinet was broadly met. A new 25% reduction target has now been set, and the methodology has been broadened and strengthened. The implementation of this new and even more challenging phase will require sustained attention to the needs of key stakeholders: line ministries, the business community and the parliament. The Netherlands also has a well-developed citizen burden reduction programme, which will require effective monitoring and evaluation.

There is an increasingly urgent need to address *ex ante* impact assessment of new regulations, as current processes do not provide a sufficiently strong framework for a robust, evidence-based development of new regulations. This is an important weakness as it undermines the government's control of new burdens. There appears to be a broad consensus for change. Issues that need attention include the institutional support framework, training and methodologies, the development of an integrated process, and the need to make public consultation an integral part of the process.

There is also a need for rapid improvement of public consultation as an integral part of effective regulatory management. The Netherlands is at cross-roads between longstanding traditions of very structured consultation and the development of new approaches which reach out to stakeholders very differently, not least via the Internet. Improving the approach to consultation does not imply wholesale abandonment of the traditional approaches, but requires to boost transparency and ensure that effective and timely consultation is integral to the development of government policies and in particular to the impact assessment process for new regulations.

The Netherlands is one of the most active participants in the development of EU level Better Regulation strategies. Well-structured processes are in place for the management of EU regulations. The framework is stronger on procedure. Attention is needed to ensure that impacts of EU regulations under development are effectively captured, and on the substantive aspects of transposition of EU regulations into the national context, not least to avoid possible problems of gold plating.

Strategy and policies for Better Regulation

There has been steady progress over a number of years and across successive governments in the development of Better Regulation policies. The Netherlands was one of Europe's pioneers with the development of Better Regulation policies in their own right, starting in the 1980s. Better Regulation has been consciously used to drive important structural changes, economic performance and more recently, to address social and public sector issues. Today, Better Regulation appears to have found a sustainable place in the government's broader policy agenda, reflected in, and providing support for, key elements of the Coalition Agreement. It also engages a growing range of stakeholders – including not just the business community, but also citizens and local levels of government – a factor that will help to secure long-term sustainability.

A range of policies are now in place, alongside the flagship programme to reduce regulatory burdens on business. These include a reform programme for inspection and enforcement, a programme to address administrative burdens on citizens which covers some aspects of regulation inside the administration, further work on the legal quality framework for developing new regulations, including the assessment of alternatives to regulation, and a strong and sustained engagement with the EU institutions over the development of Better Regulation at EU level.

Achievements so far have been significant in the programme to reduce burdens on the business community, and considerable by international standards. This is one of the most longstanding programmes so it is perhaps not surprising, albeit also testimony to effective leadership and management. An updated action plan sets a quantified 25% net reduction target for 2011, additional to the reductions that have already been delivered over the last few years. The policy has been significantly broadened to include other cost factors and quality of regulatory services for businesses. There appears to be no loss of momentum in the inner core of government for driving this policy forward. This, however, is not always reflected elsewhere, with worries about how the latest target will be achieved, and what the substance of the programme should now cover.

Other policies and programmes reflect significant efforts to extend Better Regulation beyond central government and beyond the Netherlands. This includes the new policies and structures for enforcement, the work to support Better Regulation at the EU level and not least the engagement of local levels of government. The Framework Vision Programme for reform of inspections and enforcement appears to be well conceived and advancing steadily. Work to raise consciousness of the need to further develop Better Regulation at the EU level is particularly striking given the relatively small size of the country. Dutch leadership (alongside a small number of other countries) at the EU level is commendable. Considerable effort is also going into developing the interface with local levels of government on Better Regulation.

A significant weakness is the failure so far to implement an effective policy for the *ex ante* impact assessment of new regulations. The weak aspect in Dutch regulatory management today is the absence of any clearly anchored and rigorous process for an evidence-based approach to the development of new regulations. This issue was already picked up in the 2007 OECD report, which noted in effect that whilst the burden reduction programme had been a strong and necessary motor for putting Better Regulation on the map, a broader focus would be needed in the longer term. Fragmentation of the institutional support structure for Better Regulation has not helped.

Two other challenges are apparent, relating to consultation on new regulations and some aspects of EU management. These are the slow progress toward more modern and open forms of consultation for all regulations (not just those which happen to be part of the programmes to reduce burdens on citizens and businesses). The framework for addressing issues of substance arising from EU regulations also needs further attention. Some helpful systems are already in place. The impact of EU regulations on the national market is taken into account in preparing the negotiating position. The Regulatory Reform Group (RRG)'s work includes big efforts to identify and address burdens on business of new EU regulations in the negotiating process. This is helpful but does not address all

angles (other stakeholders, the benefits of new regulations). The handling of the transposition of EU-origin regulations remains relatively weak.

The development of an integrated policy perspective including all the elements of a balanced Better Regulation agenda would help to give Dutch Better Regulation a long-term vision. It is beyond the scope of this report to comment on what a longer-term vision might consist of, but we would encourage the Netherlands to start discussing this internally, and with other likeminded countries. Highlighting the links between what is already being done, strengthening the weak parts, and showing how the different elements combine to support and promote high level policy objectives for the economy and society would increase the long-term sustainability of the Better Regulation agenda. It would also demonstrate inclusiveness, by showing that Better Regulation is about new as well as existing regulations, and not (just) about deregulation, nor is it just concerned with the business community. Back in the mid 1990s, the MDW Programme set out a broad vision of Better Regulation and what it could do for public policy goals. The time might be ripe for a "millennium" update. A White Paper could be a useful vehicle for starting the process.

Public communication on Better Regulation is covered by a number of specific strategies and processes. Communication and public documents on Better Regulation tend to be focused on specific programmes. These are essential and need of course to be structured so as to reach their specific target audiences. The most prominent communication strategy is the one established by the RRG for the business burdens reduction programme. The communication policy for the project to reduce administrative burdens on citizens is also well developed. The RRG communication strategy has a broad reach and in some respects acts as the vehicle for communication on overall Better Regulation policy in the Netherlands. As well as the more targeted communication programmes, a more integrated communication of Better Regulation policies might help to highlight the extent of the work carried out, and could also be used as a vehicle for bringing together the different parts of the institutional framework that contribute to Better Regulation.

Many of the programmes are covered by forms of *ex post* evaluation but the approach is not systematic. A number of evaluation processes are in place or under development for specific Better Regulation programmes. *Ad hoc* evaluations also take place and the Netherlands Court of Audit (NCA) has been active. The approach needs to be strengthened in order to ensure that *ex post* evaluation is not overlooked and is an automatic part of all Better Regulation programmes. Internal mechanisms for *ex post* evaluation are also a necessary complement for external evaluations from bodies such as the OECD and the World Bank.

E-Government capacities, a key support for business and citizen burden reduction initiatives, have been steadily developed over time; monitoring and evaluation may need to be boosted. The Netherlands started early, in the 1990s, and has built up a range of projects as well as an institutional framework which reaches out to the local levels of government. A full evaluation of e-government is beyond the scope of this review. However it seems that initiatives to monitor the large number of projects for their practical effectiveness need to be encouraged.

Institutional capacities for Better Regulation

The establishment of the Regulatory Reform Group has been a major step forward in providing a clearer focus for Better Regulation. The merger of several relevant units out of two core and influential ministries (Ministry of Finance and Ministry of Economic Affairs) responsible for the business-related part of Better Regulation policy was the right move. The RRG has established itself as a well known and vigorous Better Regulation entity not only with the business community within the Netherlands, but also across Europe and with the EU institutions. The merger also signals that Better Regulation policy in the Netherlands has reached a certain level of sustainability across coalition and cabinet political cycles, since the RRG is a continuation and strengthening of units set up under previous governments.

The Regulatory Reform Group, however, only covers business aspects of the government's Better Regulation policy. Two other key ministries for Better Regulation are not part of the RRG structure. The Ministry of Justice has long played a critical role in managing the development of new regulations and is currently seeking to develop a new and stronger approach to impact assessment. The Ministry of the Interior and Kingdom Relations is not only responsible for the citizen burden reduction programme, but also has general co-ordinating responsibility for key issues related to Better Regulation (e-Government, general co-ordination of the municipalities and the enforcement inspectorates) and for the civil service (including civil service reform) as well as general relations with the parliament. The Ministry of Foreign Affairs is responsible for important aspects of the general management of EU regulations.

In this context, the establishment of the Steering Group for Better Regulation was a positive move to strengthen links between the key Better Regulation ministries. The group, chaired by the Prime Minister, meets every quarter and brings together the Interior, Justice, Finance and Economic Affairs ministries. It is supported by an officials group. It reviews progress reports on Better Regulation policies and prepares the ground for cabinet and parliamentary reports. The OECD peer review team were told that, from low key beginnings, this group had started to become more proactive, in response to the more controversial phase of reform that the Netherlands now appears to be entering.

The independent watchdog ACTAL is another important institutional asset helping to hold different parts of the agenda together. Since it was established in 2000, the Advisory Board on Administrative Burdens (ACTAL) has played an important role in helping to motivate and structure regulatory reform in the Netherlands (and provided inspiration for other countries to set up similar structures, most recently in Sweden). It is not only important for its challenge function to the government. It also, alongside the Steering Group on Better Regulation, covers several elements of Better Regulation (the business and citizen burden reduction programmes, advice to the Cabinet on the burdens of new regulations which gives it a role in *ex ante* impact assessment, and promotion of Better Regulation at EU level).

An effective institutional framework has also been established for sharing the Better Regulation agenda with the local levels of government. Municipalities have a key interface with business and citizens via their enforcement, planning and licensing responsibilities. The central government agreement with the municipalities and its linked Better Regulation Action Plan provides shape and substance to the roll out of shared Better Regulation goals, such as meeting burden reduction targets.

The central institutional framework for overseeing Better Regulation in its entirety remains, however, relatively weak and fragmented. The Steering Group for Better Regulation, which unites the four main ministries, has so far played an uncertain contribution to the Better Regulation agenda. It does not, for example, appear to have yet played a defining role in promoting the development of a new impact assessment process, which needs a strong central lead to encourage cross ministerial co-operation. This relative fragmentation stands in the way of an even stronger Better Regulation performance. It also means that responsibilities – who does what – are not clear to stakeholders outside the system, and that the system itself does not provide an optimal framework for tackling next steps, notably the development of a stronger impact assessment process. The Ministry of Foreign Affairs, which plays an important role in the management of EU regulations, is not part of the group.

What should be done to strengthen the institutional oversight framework? The radical option would be to expand the RRG's role and structure so that it includes relevant units from other ministries engaged in Better Regulation. However this may not be the most effective way to strengthen co-operation between ministries which each have a strong and distinctive contribution to bring. Short of this option, it is essential that the Steering Group on Better Regulation and its supporting group of officials start to play a more proactive role, based on a well-defined agenda that

includes the development of the impact assessment process. In that case, the RRG, as the current main focal point for Better Regulation in the Netherlands, would appear to be best placed to provide the secretariat for the group, perhaps including secondments from other ministries. Strong institutional links between the Ministry of Justice and the other ministries are especially important. The Ministry of Justice is a key player through its role in overseeing legal quality. The 1999 OECD multidisciplinary review on regulatory reform picked up the issue, and the OECD review of the Dutch administrative burden reduction programme picked it up again in 2007.

The need for further support for, and culture change among, implementing ministries needs to be addressed. This is not a new issue (the 1999 OECD report had already noted it), and not unique to the Netherlands. The increasing complexity of the modern reform agenda is a factor. Ministries face a number of challenges for which they need to be well prepared. Stakeholders are more demanding (sometimes both requesting more freedom as well as criticising regulatory failures). The Better Regulation agenda has been broadened to cover the different levels of government. The burden reduction programmes are starting to address more controversial issues. Civil service reforms add a further layer of complexity as well as opportunity (resources are being cut, but this can also be an incentive to update processes). As well as the need for support through enhanced guidance and training, effective carrots and sticks for change need to be in place. The strong link that has been established between showing results for the business burden reduction programme and the budget cycle is helpful. The RRG training and guidance on Better Regulation tools is also important.

The parliament plays a particularly important role in the development of the Better Regulation agenda in the Netherlands. A key player beyond the executive is the parliament. The Dutch political system works on the basis of coalition agreements which set the policy framework for the four years of the electoral cycle. The parliament holds the government closely accountable for implementation of the coalition agreements. It is regularly sent progress reports on different aspects of the Better Regulation programme, and has itself initiated reform of inspections policy. With the extension of the Better Regulation agenda into more difficult and complex territory, its support will be critical.

Transparency through consultation and communication

There is a need for rapid improvement of public consultation as an integral part of effective regulatory management. The Netherlands appears to be at cross-roads between longstanding traditions of very structured consultation (via the search for a consensus through established groups and committees, and the commissioning of expert advice), and the development of new approaches which reach out to stakeholders very differently, not least via the Internet. There is an increasingly urgent need to improve and update the approach to consultation. This does not imply wholesale abandonment of the traditional approaches, but there is a need to boost transparency and ensure that effective and timely consultation is integral to the development of government policies and in particular to the impact assessment process for new regulations. The business and citizen burden reduction programmes have shown the way with new approaches to capture more effectively the real concerns of stakeholders. The pilot project for Internet-based consultation on new regulations across ministries looks very promising.

The introduction of common commencement dates is a very positive step forward. This will put the Netherlands ahead of many other OECD countries. Common commencement dates are fundamentally helpful to business. The presentation to the business community with a set of new regulations "in one shot" may need some management to ensure that it does not (perversely) contribute to poor perceptions of the government's control over the flow of new regulations.

The development of new regulations

Although impact assessment has been established a long time, there is widespread agreement that the current process is in practice unsatisfactory, weak and ineffective. Issues

raised in the review included the fact that impact assessment comes too late in the decision-making process to have any effect on outcomes, inadequate consultation, lack of transparency, failure to take into account benefits as well as costs, and the need to define a clear methodological approach balancing qualitative and quantitative analysis. There is an overemphasis on business costs defined fairly narrowly, and an under emphasis on alternatives to regulation (despite the efforts of the Ministry of Justice), benefits, non business impacts, consultation, and on support and quality control, which is fragmented and ineffective. There is little appreciation of the importance of evidence-based, cost-benefit analysis and other methodologies for effective impact assessment. Many of these issues had already been raised in the 1999 OECD report, which drew specific attention to the need for effective quantification, the need to consider alternatives, and the need to consult. There has been progress on some fronts since then, notably the quantification of administrative burdens for business, but not enough to generate an effective approach.

There is concern to control new regulations more effectively. Many stakeholders expressed an underlying concern at the need to control more effectively the burdens that are likely to arise from the flow of new regulations. Some interviewees made the important point that reforming governments – the Netherlands has carried out recent major recent reforms of its health and education sectors – are bound to generate significant new regulation, the effects of which need to be controlled.

At the same time, there does not appear to be a coherent view of how a strengthened impact assessment system might be structured, and no clear vision seems to have emerged from the work of officials to give shape to a new system. For the past two years, a group of officials has been examining ways of improving the process. Despite some useful elements (examining alternatives, web-based consultation) it seems unlikely that these proposals will give rise to an effective, integrated process with real buy-in across government, as the work is mainly promoted by one ministry (Justice) and no clear plan for a new process has yet emerged.

A new approach needs to be developed. The government needs to develop and promote a clear vision and integrated approach to impact assessment, which sets out what impact assessment is for and how it can contribute to stronger, more effective, evidence-based policy making, ensures that new regulations are fit for purpose, and conveys the message that the government understands the importance of bringing new regulations under control. The significant common ground that appears to exist over what is wrong now needs to be translated into a new strategy emphasising the central place that impact assessment has in the policy making process.

Responsibility for carrying out impact assessments should remain with the individual ministries, framed by strong central supervision and quality control. Effective supervision and quality control is crucial to the success of an impact assessment process. The Netherlands rightly emphasise the responsibility of individual ministries. However the current institutional structures for overseeing impact assessments are weak and have fallen into disuse.

Effective training and guidance need to be in place. Officials will need to be trained in the new approach and especially, in the application of the new methodology. The current guidance does not cover cost-benefit analysis or any of the methodologies for quantification. The cultural changes required, particularly in terms of ensuring that senior management is on board, are as important as the development of technical expertise. The recent training on Better Regulation techniques developed by the Ministry of Finance and ACTAL in conjunction with the Ministry of the Interior and Kingdom Relations and the Ministry of Economic Affairs is a positive development.

Methodological rigour is essential and most obviously achieved by cost-benefit analysis, but a quality dimension is equally important. The Netherlands, through its development and promotion of the Standard Cost Model (SCM) for administrative burdens, already has the benefit of a culture that is used to quantitative methods, and quantification is a fundamental pillar for evidence-based policy making. The methodology should therefore have a strong quantitative element, drawing inspiration from the experiences of other OECD countries that are already applying quantification (such as the

USA, United Kingdom, Australia). It should also incorporate a strong qualitative aspect, supported by multi-criteria analysis, not least to capture future benefits that may be difficult to monetise. It is important that benefits as well as costs are drawn out, as this is about Better Regulation, not deregulation.

A single integrated, standardised process will help to give impact assessment the focus it needs to be adopted by ministries. Current separate processes need to be integrated into a single process which regroups the different assessments and legal quality tests. This standard process should be adopted across the government. The format for presenting the new integrated impact assessment should be standardised, and kept simple and clear, so that it is comprehensible (the rationale for action and key conclusions of the impact assessment should be readily understood by decision makers as well as other stakeholders including the general public). A staged approach to the process is needed, as now, but institutionally stronger. This would make it clear when, early in the policy development process, impact assessments need to be started, developed and updated, taking account of the need for efforts to be proportional *i.e.* distinguishing between proposals that merit a full impact assessment and others which need less attention. The current process generally only covers primary laws and Orders in Council. Consideration should be given to extending impact assessment to other regulations that are likely to be important for Better Regulation.

Consultation, which is not formally covered at all in the current process, needs to be addressed. Consultation needs to be a formal part of the impact assessment development process and engage all potential stakeholders. Broadly-based consultation (including on the web, building on the Internet pilot for consultation on new regulations that has been launched recently) should start early to give stakeholders the opportunity to comment on proposals before it is too late to influence the outcome, including the possibility of alternatives to regulation. Public consultation on draft impact assessments promotes the sharing of information and expertise, which enriches the draft and encourages ownership.

***Ex post* evaluation also needs to be built into the new process.** Feedback to the government on the effectiveness of the impact assessment process should be built in from the start, as part of the new strategy. There are several options for securing this, which are not mutually exclusive. They include giving ACTAL a role in *ex post* evaluation (building on its role of advice to the Cabinet on regulatory burdens); annual reports to the parliament; tracking the development of new regulations; and last but least, encouraging the Netherlands Court of Audit to carry out audits of the process. Audits by the NCA equivalents in some other countries, notably the United Kingdom, have made an important contribution to evaluating the effectiveness of policies to control the development of new regulations, including impact assessment.

The Ministry of Justice efforts to draw attention to consideration of alternatives to regulation need support and further development, including and not least as part of an enhanced impact assessment process. Regulation may not be the only option. Before it is too late, the process should include consideration of alternative approaches to achieving desired regulatory outcomes. The significant efforts that were started over a decade ago in the use of alternatives need to be given a renewed impetus. The Ministry of Justice has issued a number of relevant documents and these now need to be made operational. An effective approach might examine the consequences of several different options, including an alternative to "command and control" regulation, and the "do nothing" option. Guidance should be developed on the appropriate use of alternatives (such as non-legislative action, exemptions, principles-based rather than rule-based approaches, and outcome standards rather than process standards).

The management and rationalisation of existing regulations

There is no systematic effort to consolidate or simplify the regulatory stock. As in other countries with well developed burden reduction programmes, simplification is mainly a "derivative product" of the efforts to reduce administrative burdens (as for example in the review of regulatory

clusters or related laws). As complexity accumulates over time in all areas of regulation, there is a need for more systematic "spring cleaning" at regular intervals. The OECD review team was told that the business community would welcome a "clean-up" of the existing law.

Achievements with the regulatory burden reduction programme have already been considerable by international standards, and the Netherlands' 2003-07 policy identified the main elements of a successful model which has been replicated elsewhere. The 2003-07 Cabinet had a 25% net burden reduction target allocated across ministries, which it broadly achieved. The Dutch model has been an inspiration to other countries, and the considerable investment made by successive Dutch governments since the 1990s has largely paid off. The success factors have been a combination of measurement (the SCM method for the measurement and mapping of burdens); setting a time-bound quantitative target (divided among ministries); a strong inter ministerial co-ordinating unit at the centre of government (the RRG and its predecessor, IPAL); independent monitoring via the watchdog ACTAL; link to the budget cycle; and not least, political support, helped by the narrow focus of the programme on administrative burdens which helped to avoid controversy. It is fair to note that the Netherlands may have had further to go than some other countries, in terms of the relative weight of administrative burdens as a proportion of GDP. But this also means that the Netherlands was probably right to put particular emphasis in the last few years on this part of its Better Regulation strategy.

A new phase has opened up, with the establishment of an ambitious, broad and well-designed new policy. This builds on key elements of the previous policy which have proved their worth (not least a reinforced institutional structure), as well as adding new aspects. The current cabinet has set a further 25% reduction target, based on a (largely) new baseline measurement. The current action plan captures a number of important new issues, as well as addressing weaknesses in the original methodology. This reflects the price paid for being a first mover with no role model to follow, but is also testimony to the fact that the Netherlands is remarkably open to learning from its own and others' experiences, as well as taking advice from independent experts, which it calls in regularly. Among the issues which are being vigorously addressed in this new phase are the extension of the programme to cover burdens at the sub-national levels of government (still very unusual in OECD countries); addressing the burdens raised by enforcement; a renewed attack on the issue of licences; the development of an *ex post* evaluation framework; the establishment of common commencement dates for new regulations; targeting the quality of services related to regulation and not least, the development of the SCM methodology to cover qualitative as well as quantitative aspects and to broaden the definition to cover all compliance costs.

A substantial update and broadening of the programme was necessary, in order to sustain progress towards a new target, but this also raises new challenges. The programme has until recently enjoyed broad support, politically, within ministries, as well as from outside stakeholders. This now looks more vulnerable. As already noted in the 2007 OECD/World Bank report, a politically neutral programme is no longer an option. Proposals for further reform, if they are based on a broader definition of compliance costs, are likely to be politically more sensitive and engage more vested interests. The report also underlined the importance at this stage of having clear goals.

The key stakeholders that matter for progress are: business, implementing ministries, and the parliament. Business is frustrated at what it considers to be slow progress and the failure to tackle issues that really matter from its perspective. There is some discouragement, even resistance, within ministries with regard to the new target, based on a worry that it will not be easy to achieve, as many of the "low hanging fruits" have been cleared off the trees. Even some of the remaining low hanging fruit can raise unexpected problems. The parliament for its part, whilst it takes a keen interest through the regular reports on general progress by the RRG, does not always seem prepared to turn this into specific backing for proposals that require legislative action, without which the new target will not be met.

As regards business, the government is taking the right direction with its expanded definition of compliance costs, and a new communication strategy which is well conceived. For a number of reasons, which are broadly shared with other countries at advanced stages in the deployment of burden reduction programmes, the Netherlands has been confronted with negative business reactions despite evident progress on a number of fronts. The reasons for this include time lags before promised results are delivered; frustration at the scrapping of rules that were not complied with in the first place; and slowness in identifying and addressing key issues for business such as licences delivered by the local level. The situation has not been helped by the redefinition of the baseline for the new target, which calculates that burdens are now only some EUR 10 billion compared with some EUR 16 billion in 2003. The main reason is that information obligations to third parties are no longer part of the definition of administrative burdens, but are now defined as substantive compliance costs. In addition to the administrative burden reduction, the expanded programme has also set targets to reduce these substantive compliance costs. ACTAL underlined to the OECD peer review team that irritants as well as substantive regulatory changes must be addressed at this stage, as businesses do not readily distinguish between administrative burdens and other compliance costs.

The government has reacted comprehensively to the concerns expressed by the business community. As well as the ongoing work to expand the scope of the programme with a methodology that includes irritants and broader compliance costs, and the quality of services, its new highly proactive communications strategy targets needs as identified by business rather than civil servants. This includes the establishment of the *Wientjes Commission* to be the voice of business (which seems to meet with general approval), and a wide range of tailored mechanisms to capture business interests as well as to communicate meaningful achievements (what the recipient wants to know, rather than what the civil servant thinks is interesting). The RRG's communication handbook underlines that concrete results must have been achieved before they are communicated. It is too soon to give a view on the effectiveness of the strategy and regular evaluation will be important, as the government plans to do. The government needs to show results from the new approach fairly quickly if a positive business attitude is to be restored. It plans to evaluate its communications strategy shortly, alongside a "perception monitor survey" this year.

As regards implementing ministries, despite a strong underlying institutional structure, spearheaded by the RRG and ACTAL, there is a need for further support and strengthening of the framework in order to encourage ministries to deliver. The need for enhanced co-operation with "delivery" ministries and further culture change is acknowledged by the RRG. As in other countries, a judicious mix of carrots and sticks is needed. Carrots are important as ministries experiencing fatigue from years of efforts need encouragement. So are sticks, for which sanctions must be credible. The Netherlands has gone further than most other countries in linking achievements to the budget cycle. Consideration should also be given to making a link between achievements and performance appraisals (which would have both a carrot and stick effect). At the same time, ministries need to feel supported in their efforts to push through controversial proposals. This implies some hard choices and trade-offs, for which political support is required. The Cabinet and the Steering Group for Better Regulation chaired by the Prime Minister have an important role to play in this regard.

As regards the parliament, the dialogue needs to be extended to cover specific decisions that will require its approval. The parliament is already heavily engaged in the programme at a strategic level, with the regular reports that it gets from the Cabinet via the *RRG*. There is a need to strengthen and clarify the link between these reports and the specific measures that come to the parliament for approval under the programme. Since the easier targets have been achieved, much of the new work, especially if it is based on an extended interpretation of compliance costs, may need to go through the parliament in order for regulations to be changed or adopted. Skilful piloting will be required. At the same time, although regular updates are essential to sustain parliamentary interest and general support, quarterly reports (even if two of these are short updates) seem excessive, detracting the *RRG* (which prepares the reports) from getting on with the substantive work of developing the programme.

The citizen programme for administrative burden reduction has been carefully developed and adapted to take account of experience in the first phase. The Ministry of the Interior and Kingdom Affairs has developed a programme based on a careful review of what actually matters for citizens. As with the programme for the reduction of burdens on business, from which it was inspired, this project seeks to learn from previous experience (the first phase was acknowledged to be unsatisfactory), to identify the challenges that still need to be met. It makes extensive use of external experts in moving forward. Such openness and willingness to learn is an extremely positive aspect of the Netherlands' general approach to Better Regulation. Among a number of positive features of the project, the local level is engaged in the programme, and extensive use is made of Information and Communication Technologies (ICT). Efforts are made to cover important aspects in the Netherlands geographical context, such as the needs of cross-border workers. Considerable effort goes into promoting an EU level approach to the issues. It is not, however, clear how real progress will be evaluated and measured under an approach which does not set any clear quantitative baseline and reduction target. Without this, it is likely to prove difficult to demonstrate that there have been improvements.

There are considerable and possibly unexploited synergies between the citizen programme and the business burden reduction programme. In a broad sense, the Ministry of the Interior and Kingdom Affairs has learnt from the much longer standing business programme in developing the citizen programme. An element of friendly competition between programmes is also no bad thing. That said, there are numerous points of convergence. These include an overlap in coverage, communication strategy, the use of ICT, a shared independent watchdog (*ACTAL*), and also the development of new qualitative as well quantitative methodologies, some of which might have a shared interest for the two programmes.

Regulation inside government is already part of the citizen programme but could be expanded. Part of the citizen programme addresses regulation inside the administration, notably for professionals working in public services such as hospitals and schools. The aim is to free up time spent on administration so that services to citizens can be enhanced. The Ministry of the Interior and Kingdom Affairs report to the Parliament notes that there is a 25% reduction target for the local levels of government in this respect. Greater emphasis on addressing regulation inside government was already recommended by the 2007 OECD/World Bank report. With a planned cut of 25% in the civil service, development of this part of the programme could help to release resources as well as making a contribution to better service quality.

Compliance, enforcement, appeals

The Netherlands has engaged in pioneer work to ensure that compliance and enforcement are considered at the start of the rule making process. This was already picked up in the 1999 OECD report but deserves to be repeated, in the context of today's interest across the OECD in tackling policy related to the enforcement of regulations as well as their development. Efforts by the Ministry of Justice to raise awareness go back over two decades, via the Directives on Legislation (which it drafts), the legal quality criteria which it applies, and the Practicability and Enforcement Impact Assessment which it also applies. The Netherlands is also responsible for the development of the so-called Table of Eleven determinants of compliance, which have widely influenced other countries' efforts in this field.

There has also been steady development toward a new risk-based approach and structures for enforcement. A well articulated policy which engages the local as well as national levels has been refined through successive cabinets, starting in 2001. Local levels are formally engaged through the central government agreement with municipalities, including pilots for new approaches with a sample of pioneer municipalities.

The establishment of the co-ordinating Inspection Council to promote the new approach has been a successful move and there is close co-operation with the work of the RRG. Is the

Ministry of Justice fully engaged? The Council came across to the OECD peer review team as motivated and enthusiastic in its role. There is a close link with the regulatory burden reduction programme for business (reflected in the fact that a reduction of state supervision forms part of the current action plan for the reduction of administrative burdens on business) and close involvement by the RRG in this work. The involvement of the Ministry of Justice, which has played a longstanding upstream role in drawing attention to compliance and enforcement when regulations are developed, is not so clear. Yet the reform programme implies the need to address regulations as they are developed, as much as how they are implemented once adopted.

The current Framework Vision is ambitious as well as quite precise in its goals; careful evaluation of progress is essential if credibility and momentum are to be sustained. The results to date set out in the 2008 report to the parliament appear to be impressive. The report documents for example the establishment of joint risk analyses between inspectorates, co-operation between inspectorates and municipalities, facilities for digital co-operation, and the reassignment of tasks. What has been the real effect of these reforms on the ground? Are these the right targets?

The Ministry of Justice's research report on the state of compliance is a useful initiative to back up further reform. The results should be directly relevant to the further development of the Framework Vision.

The interface between members states and the European Union

Consciousness of the importance of EU origin regulations in shaping the national regulatory environment is high, and the Netherlands are active participants in the development of EU level Better Regulation strategies. For a relatively small country, the Netherlands have been commendably active in raising consciousness of Better Regulation principles at EU level, so that problems are tackled at source, including most recently the importance of effective EU management to keep down burdens on citizens.

Well structured processes are in place for the negotiation and transposition of EU regulations. As in most other EU countries, the Netherlands have developed and established a clear procedural framework for dealing with EU regulations. A particularly strong feature is the process for establishing an implementation plan when an EU regulation is adopted, in which the local levels of government are invited to participate, and the subsequent monitoring of transposition via a centrally co-ordinated database (run by the Ministry of Justice) which systematically tracks and disseminates progress in meeting deadlines for implementation. Transparency as regards the correlation between EU and national regulations is covered under the framework. The processes for ensuring consistency between EU and national regulations (which extend to taking account of the rulings of the European courts) are also noteworthy.

The framework is more effective in securing a sound procedural performance than in addressing issues of substance arising from EU regulations. The EU was a recurring theme across the interviews with the OECD team, with concerns expressed by a number of stakeholders inside and outside government at the difficulties of implementation into the national context. These included a concern about staying up to date with EU developments, with information sometimes being available too late to affect the outcome, and about failures to pay sufficient attention to likely national impacts of EU regulations both at the negotiation and transposition phase of the process. Although the local levels have a formal seat at the committee tables to discuss these matters, the team also heard that more targeted efforts should be made to involve these levels where needed. The most fundamental critique of the current approach was the failure to assess impacts adequately. There is currently no requirement for impact assessment at the negotiation phase, and it is not clear how much is actually done at the transposition phase. The Ministry of Foreign Affairs and the Ministry of Justice lead the various processes, which may leave the framework short of input from other key Better Regulation ministries (Interior, Finance and Economic Affairs).

The interface between subnational and national levels of government

Considerable effort and resources are being put into linking up the local level with national objectives for Better Regulation, and results have started to emerge. There is increasing co-operation between central and local levels of government in key areas of Better Regulation such as reform of inspection practices, the reduction of administrative burdens and licensing reform. Core ministries (Interior, Finance and Economic Affairs) are clearly working hard to involve local governments in their Better Regulation programmes. Central government is providing direct support for municipalities, including consultancy funds to address burden reductions. Concrete results have started to emerge such as the review and simplification of "model regulations" (templates for local regulations produced by the association of municipalities *VNG*), the establishment of a Better Regulation website dedicated to local level Better Regulation issues, and pilot schemes to test the principle of "silence is consent" for licensing.

The central government agreement with the municipalities is an effective means of structuring the approach and identifying priorities. This agreement (under which a specific action plan is drawn up), which is concluded between central government and the VNG at the start of each government term, has been used to good effect to define shared goals.

Uneven progress can be expected and the role of the *VNG* is important for evening out differences across the country. With 443 municipalities (a large number for a relatively small country) and considerable variations in size (and culture), some municipalities are doing better than others. The OECD team were told that progress on licensing reform is especially patchy. The role of the *VNG* is important for disseminating best practice and encouraging horizontal co-operation.

The action plan rightly addresses not only what municipalities can do for central government but also what central government can do for municipalities. The task force for addressing burdens generated by central government (part of the action plan) addresses the important issue of regulatory burdens generated by central government. There is concern at the local level at the weight of new regulations and a desire to see more targeted management of the development of new regulations which will "hit" the local level. The *VNG* has proposed that each ministry appoint a co-ordinating lawyer for new regulation that will affect the local level.

Key recommendations

Strategy and policies for Better Regulation	
1.1	Efforts to engage a wide range of stakeholders beyond the business community should continue to be actively pursued, in the interests of consolidating the broadest possible support base for the future promotion of Better Regulation policies.
1.2	The development of a new policy for the *ex ante* impact assessment of new regulations should be taken forward.
1.3	Efforts should be pursued to strengthen public consultation on new regulations. The overall management of EU regulations should be evaluated with a view to building on the RRG initiatives, and in particular to ensure that transposition of EU – origin regulations is effectively managed.

1.4	Consideration should be given to developing a strategic perspective for the development of Dutch Better Regulation over the longer term.
1.5	As well as the initiatives to communicate on specific programmes, consideration should be given to developing a more integrated communication strategy, so that stakeholders (both within the Netherlands and beyond) can appreciate the complete picture of what is being taken forward, which extends well beyond programmes aimed at the business community.
1.6	Ensure that *ex post* evaluation processes cover all the relevant policies, are systematically applied, and that there is adequate investment in this.

Institutional capacities for Better Regulation	
2.1	The government should consider the best way in which the institutional oversight framework for Better Regulation can be strengthened. The Steering Group on Better Regulation and its supporting group of officials should in any event play a more proactive role, based on a well-defined agenda that includes the development of the impact assessment process.
2.2	The government should review whether incentives for culture change could be strengthened. For example it should review whether the link to the budget cycle for setting targets and assessing performance needs to be given sharper teeth (real consequences for ministerial budgets, effect on the performance appraisal of key officials). Further support for ministries in the shape of guidance and training should also be put in place.
2.3	The government should take active steps to develop a dialogue with relevant parliamentary committees in order to encourage a shared vision of Better Regulation goals and their contribution to wider public policy goals (see also recommendation in Chapter 5 on the business burden reduction programme).

Transparency through public consultation and communication	
3.1	The plans to introduce Internet-based consultation should be pursued, with special attention to accessibility by the general public. Public consultation should be woven into the impact assessment process for new regulations. A code of good practice to be followed by ministries and others with significant responsibilities for new regulations might also be considered.

The development of new regulations	
4.1	The Netherlands should develop a new strategy, structures and processes for the *ex ante* impact assessment of new regulations, taking account of the more detailed proposals set out below.
4.2	A considerably more authoritative form of the Proposed Legislation Desk at official level should be established, reporting directly to the Ministerial Steering Group on Better Regulation chaired by the Prime Minister. This unit, which could be developed on the basis of the current officials' group that supports the Ministerial Steering Group, would have the functions of issuing and updating the relevant guidelines, providing advice and support for ministries in the development of impact assessments, and monitoring the quality of impact assessments, as well as advising ministers directly on the development of the process and the performance of ministries. Consideration should be given to whether the Steering Group should have a formal gatekeeper role for significant new regulatory proposals before they are submitted to the Cabinet (this could be a formal 'sign off", or referral back to the relevant Ministry for more analysis). ACTAL should be considered for an external oversight role, building on its current responsibilities for providing advice to the Cabinet.
4.3	Training should be developed further to cover the overall process and to encourage the development of expertise in evidence-based policy making. There should also be specialised training on applying the methodology, drawing on support from economists as necessary (given that many officials are not economists by training). Methodology should be incorporated into authoritative step-by-step guidance for officials, which should also make clear the responsibilities of the various decision makers through the process (ministers, officials, the ministerial Steering Group, the supporting officials' group, officials themselves).
4.4	A clear methodology with a quantity/quality balance should be established.
4.5	Establish a single integrated process for impact assessment across government, which includes a simple format, the stages of the process with the emphasis on starting early, and a clear and comprehensive definition of the regulations covered.
4.6	Ensure that the EU and local dimensions are effectively covered in the new process.
4.7	Impact assessment reports should be published on ministry websites, as well as the website of the lead supervisory authority, both at an appropriate drafting stage, and when finalised. Those who have contributed to consultation should be advised of the impact assessment's publication, and where important comments have been made, given feedback on how the comments were used (or an explanation of why they were not used). The views of the external oversight body should also be made public. Efforts should be made to ensure that the non-business community (those who may not have such as strong voice such as citizens and consumer advocacy bodies) are engaged with the process.
4.8	Consideration should be given to the best way of arranging systematic *ex post* evaluation of the impact assessment process. The Ministry of Justice should be encouraged in its work to

	track the trends in development of new regulations.
4.9	As already recommended in the 1999 OECD report, the consideration of alternatives needs to be clearly and firmly anchored into a revitalised impact assessment process.

The management and rationalisation of existing regulations	
5.1	The government should evaluate regularly the effectiveness and results of its action plan and communication strategy (as it plans to do).
5.2	The government should ensure that budgetary and performance sanctions (or rewards) are in place and are credible, to encourage meeting of targets. The Steering Group for Better Regulation needs to play a strong role in dealing with the more controversial proposals that will arise, settling trade-offs and providing collective political support under the aegis of the Prime Minister for the adoption of such proposals
5.3	The government should reduce the number of reports made to the parliament on the programme, from quarterly to half yearly, without reducing their substantive content. It should balance reporting with a consideration of how to strengthen the dialogue with key parliamentary committees in order to encourage a positive attitude to proposals for change under the programme. The RRG should also, as far as possible, encourage ministries to link related proposals into packages before they are put to the parliament, drawing attention to their contribution (where appropriate) to the main strategic objectives of the programme.
5.4	The government should consider how it can best give shape to a concrete target or targets, linked to a clear baseline that would enable stakeholders to assess progress.
5.5	The government should consider whether it would be helpful to reinforce links between the different programmes, and ensure that areas of common interest are addressed jointly.
5.6	Consideration should be given to expanding the elements of the project that address regulation inside government.

Compliance, enforcement, appeals	
6.1	The government should consider how it can share experiences and ideas on more effective enforcement with other countries, both to learn from them and to disseminate its own

	successes.
6.2	The Ministry of Justice needs to be fully engaged in developing the programme, especially as the current Framework Vision seeks to promote a fundamental reform of attitudes to underlying rules and policy.
6.3	Steps should be taken to ensure that regular and independent evaluations are carried of the results emerging from the Framework Vision.

The interface between member states and the European Union	
7.1	The government should carry out a review of current processes for the negotiation and transposition of EU regulations, in order to map strengths and weaknesses, to deepen the involvement of the Interior, Finance and Economic Affairs ministries, and to strengthen procedures and guidance aimed at addressing substantive issues. Impact assessment of EU regulations both at the negotiation and transposition phase should be made a formal requirement and an integral part of the new impact assessment process.

The interface between subnational and national levels of government	
8.1	Further development of the shared agenda for Better Regulation should pay particular attention to licensing, and to finding effective ways of addressing the likely impact of centrally generated regulations on the local level. This issue should be included in the proposed review of *ex ante* impact assessment.

Better Regulation in Europe: Portugal - *Executive Summary*

Drivers of Better Regulation

The development of Better Regulation policies in Portugal over the past few years has been part of the government's reforms to modernise the economy and enhance growth, and to meet the goals of the European Union's Lisbon Agenda on economic growth and job creation. The need to address deep seated structural and economic problems has facilitated the emergence of a shared understanding among politicians and civil servants that in-depth changes are necessary. There is a widespread recognition that the public sector must become more cost-efficient and closer to public needs, which requires a transformation of the administrative culture. Another priority has been to make the business environment more dynamic and innovative to increase the competitiveness of the economy and its capacity to attract

foreign direct investment. Portugal's relatively low ranking in various competitiveness benchmarks has been an important driver for the launch of the *Simplex* Programme for administrative simplification and e-government.

Public governance framework for Better Regulation

Portugal is a unitary state and a parliamentary republic ruled by the constitution of 1976, with a tradition of strongly centralised government. The development of Better Regulation has been closely associated with managing the transformation of the public sector. Reflecting the high-political importance of this objective, responsibility for regulatory quality management and the development of Better Regulation policies has always been at the centre of government, close to the Prime Minister. Better Regulation is also closely associated with e-Government policies to promote more effective public governance.

Developments in Better Regulation

The development of Better Regulation policies is relatively recent compared with some other OECD countries. The government's strategy for promoting Better Regulation in its first phase has been to focus on actions which could rapidly produce tangible and effective results, on which to build a foundation for further reforms. Through the *Simplex* Programme, the objective was to send clear signals on the direction that had to be taken and to raise expectations for further reform among citizens, companies and within the administration. The *Legislar Melhor* Programme for enhancing legal quality constitutes a further and broader development aimed at improving the overall quality of the regulatory system and includes the first steps toward *ex ante* impact assessment.

Regulatory management capacities continue to be developed and reinforced. The Portuguese government recently adopted a resolution to create a stronger institutional framework for monitoring the transposition of EU directives. It has also, building on successive reinforcements of the programme, taken steps to further strengthen the *Simplex* Programme for the reduction of administrative burdens, with plans to introduce quantified targets, extend the programme to full compliance costs, and cover citizens as well as business and burdens on the administration. It is also addressing public consultation via the establishment of a code of good practice.

Main findings of this review

Portugal has made impressive progress over a very short period (three years) in the development and implementation of policies for Better Regulation, which is now recognised as an important part of effective public governance. There is a need to sustain momentum and confidence, and to set out a clear overall strategy that links and further develops the different initiatives for Better Regulation. Defining stronger operational as well as strategic targets will help the reform programme to stay on course. As Portugal unrolls further initiatives for Better Regulation under the *Legislar Melhor* umbrella, it also needs to ensure that *ex post* evaluation is anticipated both for specific elements of the policy, and for Better Regulation strategy as a whole.

Portugal has institutional structures at the centre of government as well as a network of officials involved and interested in Better Regulation across the administration, who are ready to move forward. The implementation of the *Simplex* Programme has played a big role in raising interest across ministries, generating inter-ministerial co-operation. Portugal should focus on enhancing shared working across the government and ensuring adequate capacities for the future development of Better Regulation policies.

An important transition has taken place over the last couple of years regarding public consultation, from reliance on formal requirements to experiments with broader and more flexible approaches. However

the quality and scope of consultation practices appears uneven and open consultation is not yet fully embedded. Portugal has made positive progress in enhancing access to the legislative stock and more generally to the administration, including through the development of e-Government. Two issues that need sustained attention are the delays in the court system for appeals, and the need to strengthen the framework for management of EU affairs, both of which the government is addressing.

Significant steps have been taken towards enhancing regulatory quality and controlling regulatory production. Procedures and guidance for the development of new legislation have been put in place. The government has also introduced the *Simplex* Test, mainly to assess the administrative burdens which new regulation could impose on citizens and businesses. This embryonic form of impact assessment needs to be further developed in order to enhance regulatory quality and management.

The *Simplex* Programme has been impressive in scope and ambition, and has removed some important difficulties in the regulatory system. The government plans to introduce a variant of the standard cost methodology (SCM) and establish quantified targets for 2012. A sharper approach based on quantification will help to evaluate progress on sounder footing and encourage the further and full engagement of relevant ministries. The government is also now engaging the municipalities in the *Simplex* Programme with the *Simplex Autárquico* Programme, launched in August 2008.

Strategy and policies for Better Regulation

Portugal has made impressive progress in the development and implementation of policies for Better Regulation in a very short time frame. Over a period of less than three years, the government has launched a programme for enhancing legal quality (*Legislar Melhor Programme* or Better Law Making Programme) and for the reduction of administrative burdens (*Simplex Programme*), which is now being extended to cover municipalities (*Simplex Autárquico Programme*), alongside a major programme for the development of e-Government. A number of tangible results have been produced, including reduction of administrative burdens on citizens and companies for a number of administrative acts, easier access to regulations (websites of Official Gazette and the parliament), codification, and publication of rules of procedures for the preparation of regulation. Portugal also deserves credit for taking inspiration from the experiences of other countries, thereby reaping the benefits of a catch up effect, and more broadly for getting the measure of the efforts that were needed to start changing the culture of the administration, and the issues to be addressed.

These tangible achievements mean that Better Regulation is now recognized as an important part of effective public governance and is embedded in the policy agenda. The need for Better Regulation is now increasingly recognised and supported not only within much of the administration but also outside (business, trade unions, citizens). Reforms in this area no longer appear to depend on the politics of the moment. A momentum for reform has been created, and there is a climate of confidence as well as an expectation on the part of business and society that the government is taking reform seriously.

There is a need to sustain momentum and confidence, and to set out a clear overall strategy for Better Regulation that links and further develops the different initiatives. Whilst much has been achieved in the first phase of reform, a second phase is opening up, which needs further development if it is to provide effective ongoing support for Portugal's economic goals. The *Legislar Melhor* Programme is an important step in this direction, signalling that the government has understood that Better Regulation must be extended out from its origins in the *Simplex* Programme. This new programme outlines a broader and potentially deeper strategy for Better Regulation in Portugal. The risk is that Better Regulation reform gets stuck at some point in the next couple of years, if this strategic vision is not addressed. A strong central vision will also help to avoid a fragmentation of approaches across ministries, agencies, and beyond at the municipal level.

Defining stronger operational as well as strategic targets will help the reform programme to stay on course. Defining operational and strategic targets, against which the government can report progress, would also act as an incentive for ministries and others to sustain and even strengthen their efforts. For this to work, current policies need to be given a sharper edge. This includes specific targets and measurements for the administrative burden reduction programme, and a stronger and fuller approach to *ex ante* impact assessment which goes beyond the assessment of administrative burdens. The government has taken steps with regard to the administrative burden reduction programme and now needs to take further action with regard to *ex ante* impact assessment.

Better Regulation strategy needs to be clearly communicated to stakeholders within and outside the administration. The first phase of reform rested largely on a specific and highly visible policy (launching the *Simplex* Programme for the reduction of administrative burdens as a way to embed Better Regulation in the administration's agenda). This policy was well communicated. The current situation, however, is no longer so clear. Stakeholders need to be fully aware of what is planned as well as what the government has already put in place.

***Ex post* evaluation is not at this stage embedded in the culture, although there are some useful initiatives.** Measuring and evaluating progress is important to sustain the momentum for reform and to improve the reform programme. A useful specific initiative on *ex post* evaluation is the recently established monitoring panel for the *Simplex* Programme, which could constitute a step towards the establishment of a broader system for monitoring and evaluation policies. As Portugal unrolls further initiatives for Better Regulation under the *Legislar Melhor* umbrella, it needs to ensure that *ex post* evaluation is anticipated both for specific elements of the policy, and for the Better Regulation strategy as a whole.

There is a need to strengthen understanding of the link between the Better Regulation agenda and impact on the economy in order to sustain support for Better Regulation over the long term. Portugal has set itself the goal of achieving a stronger economic performance and a reduction in the public deficit. How can/does Better Regulation (which itself requires resources) contribute to economic performance? This is difficult to show directly at the macroeconomic level. However it could be attempted for specific areas, for example making the link between simplification of processes for business start ups and the effect on new business formation. This can also be a "reality check" on the effectiveness of the reform programme.

Better Regulation in Portugal is closely linked to and supported by e-government policies aimed at promoting more effective public governance and regulatory management. Portugal has for a number of years prioritised the development of the Portuguese Information Society and focused on putting public sector services online. This has resulted in a significant improvement relative to the European Union e-government benchmarks regarding accessibility of e-government. Drawing full benefits from simplification through e-government services however requires that the government also works to tackle the digital divide in Portugal.

Institutional capacities for Better Regulation

Considerable progress has been made in a short time, and foundations are being established for the further development of institutional capacities. Portugal now has institutional structures at the centre of government as well as a network of officials involved and interested in Better Regulation across the administration, who are ready to move forward. The implementation of the *Simplex* Programme has played a big role in raising interest across ministries, and has generated inter-ministerial co-operation for a major horizontal government programme for the first time without a formal legal requirement to do so. Two entities based within the Presidency of the Council of Ministers at the centre of government now play a major role in the development of Better Regulation in Portugal: CEJUR (the legal centre of the

Presidency of Council of Ministers in charge of the *Legislar Melhor* Programme), and SEMA (Secretary of State for Administrative Modernisation) with the support of AMA (the Agency for Administrative Modernisation, in charge of the *Simplex* Programme. Among ministries, the Ministry of Justice is a particularly active and effective player with respect to the *Simplex* Programme, partly as an extension of its own initiatives to remove congestion in the judicial system. The Ministry of Finance and Public Administration and the Ministry of Economy and Innovation have been other key players in the development of simplification programmes.

Despite progress, the institutional motor at the centre of government for Better Regulation has weaknesses. One is the need to enhance shared working. There is goodwill and a certain level of co-operation between the main players in the Presidency of the Council of Ministers and key ministries, but much of their work appears to be carried out independently of each other, and may be over-dependent on the enthusiasm of the officials currently in place. This will matter increasingly as new processes are rolled out, for example to capture the administrative burdens of new regulations, which will need to be meshed with the more established *Simplex* Programme. The second major weak spot is capacities and competences. These are inadequate for the work ahead. For example CEJUR has been given an important role for the development of the *Legislar Melhor* Programme, but its capacity to perform these tasks will be limited by its resources and competences, which are focused on law quality. It could not for example, as matters currently stand, provide much effective support for the development of *ex ante* impact assessment. Policies on administrative simplification and on the quality of new regulations are related, and require strongly coordinated actions. They are currently conducted by AMA and CEJUR, which are under different Secretaries of State within the Presidency of the Council of Ministers.

Across ministries and agencies, capacities and competences for tackling reform appear to be highly uneven and also need attention. There have been considerable efforts to develop training, and an important initiative to link performance assessment with results obtained on Better Regulation policies such as the *Simplex Programme*. Some entities (such as the Ministry of Justice and the financial regulators) appear to be fully equipped as well as enthusiastic for their role. Others, however, seem less at ease and not so well integrated.

The more formal engagement of external stakeholders, many of whom are highly supportive of the government's Better Regulation policies, could also be usefully strengthened. Leaving aside the Ministry of Justice's De-formalisation Commission, which covers both government and external representatives, Portugal does not at present have a fully independent external advisory body of the kind that has been set up in a number of other OECD countries. Such bodies, provided that they are established with careful regard to their independence and balance of representatives, can provide powerful support for sustaining Better Regulation over the long run, advising the government on how Better Regulation programmes can be strengthened, and acting as an effective public communication channel for the government.

The government and the parliament have a shared interest in Better Regulation, which needs to be exploited. The Assembly of the Republic is considerably engaged in Better Regulation initiatives aimed at strengthening the quality of law making, including through early efforts at impact assessment. Sharing of databases on the regulatory stock could be another entry point for encouraging communication and co-operation.

Transparency through consultation and communication

Consultation processes are well established, both through formal rules and in practice, and have been evolving. Although public consultation is not required for all regulations, in practice most regulatory projects are subject to some form of consultation. There is a well-established practice of formal

consultation of specific stakeholders stemming from constitutional requirements. An important transition has taken place over the last couple of years, from reliance on formal requirements to experiments with broader and more flexible forms consultation, often based on the Internet, carried out by different ministries and agencies. In particular, the implementation of the *Simplex* Programme has provided the opportunity to develop new forms of consultation with external stakeholders, which can be considered as a successful experience.

The new legal framework for consultation together with the planned Code of Good Practice are positive steps towards promoting more effective, open and user friendly consultation across all ministries, not just the best performers. The quality and scope of consultation practices appear to vary across ministries, and open consultation is not yet fully embedded. The government is now preparing a new legal framework and a Code of Good Practice, which should help to promote good practices. There is a particular need to promote more user friendly deadlines, and provide more systematic feedback on the results of consultation, so as not to discourage those who are putting big efforts in the provision of comments. Public consultation usually takes place within short deadlines and at a late stage in the development of regulations, which does not allow stakeholders sufficient time to contribute and reflect on how they could be affected. Nor does it encourage public ownership of the policy under development. Feedback on the use made of comments also appears to be poor.

Portugal has also made positive progress in enhancing access to the legislative stock and more generally to the administration, making a strong use of ICT in doing so. The *Digesto* initiative, and other initiatives to enhance transparency of the rule making process (Official Gazette on line, website of the Assembly of the Republic and individual ministries) show that Portugal has understood the need for a more transparent approach tailored to the needs of business and citizens without a legal background or support. The launch of comprehensive portals for citizens and business also transforms access channel to public services and administrative procedures. Business might welcome increased simplicity through the adoption of common commencement dates as it can avoid the need to be on a regular lookout for new or revised regulations.

The development of new regulations

There has been good progress to strengthen the procedures and guidance for the development of new legislation. Very little was in place until recently. A practical guide to help law drafters is under preparation to complement the 2006 Rules of Procedures of the Council of Ministers, which have established common rules for the preparation of regulations. This has been a major achievement of *CEJUR* and should feed through into better quality drafting and planning for new regulations.

An embryonic policy for effective *ex ante* impact assessment of regulations is apparent, especially with the *Simplex* Test. A form of impact assessment has been formally introduced, both in the rules of procedures of the executive and of the parliament. The government has also introduced the *Simplex* Test for new draft regulation, mainly to assess the administrative burdens which the regulation could impose on citizens and businesses. The *Simplex* Test is now well known within ministries, and the practice of making *ex ante* impact assessment (even if focused on administrative burdens) and considering alternatives to regulation is making its way in the administrative culture. The first benefit of the *Simplex* Test is that it has made officials in central government aware that good regulation requires preparatory work, including questioning expected consequences. There are limits to the Test, but with this recent new tool, Portugal has made a significant step towards enhancing regulatory quality and controlling regulatory production. Throughout the OECD mission study, interviewees underlined the progress.

While the initiatives so far fall short of a fully effective *ex ante* impact assessment policy, they are a useful starting point for strengthening the current approach. The current review of the Test

following its pilot phase is an important opportunity to take stock of the following issues and how they might be best addressed in the Portuguese context.

There is a need to move from a static to a dynamic approach. The *Simplex* Test is currently a static exercise – a snapshot of regulatory proposals at an early stage in their development. Effective *ex ante* impact assessment implies a dynamic process over time. Updating assessment as the draft progresses can help authorities to assess the regulation as it develops. It will also allow a more authoritative reference to an assessment which has been done on the final version of the text, and not on an early version which will have been modified significantly.

There is also a need to broaden the scope of assessments, taking account of the proportionality principle. The analysis underlying the *Simplex* Test (which is essentially based on a long questionnaire) and explanatory note is very limited. The *Simplex* Test does include some elements of a broader assessment, but focuses mainly on administrative burdens, not the full-fledged broader range of policy effects and potential costs and benefits. It can be legitimate to have different levels of impact assessments, proportionate to the subjects and their complexity. The overall aim should be to get the right balance as the current version of the *Simplex* Test is both too long and complex, and at the same time offers an inadequate basis for capturing effectively the full consequences of a proposed regulation.

Publishing results of impact assessment and using public communication are important for transparency of public choices and medium term efficiency. The results of the *Simplex* Test currently remain confidential, even within the government. The confidentiality can be justified in the early phase of launch and implementation of the new policy. It is however now necessary to set when and how the *Simplex* Test can be communicated to interested parties and parliament. One argument for not making impact assessment publicly available is that this is preparatory work aimed at providing insights to the government. This is indeed the case, but the study can be made public once choices have been made and the draft is to be published or in the case of draft laws when the draft is communicated to the parliament. Another element of transparency to be improved is public consultation. There is currently no specific link made between public consultation processes and *ex ante* impact assessment. The development of the *Simplex* Test for evaluating the administrative burdens of new regulations should involve effective public consultation of stakeholders in order to identify prospective issues.

The institutional support for impact assessment needs to be strengthened. *CEJUR*, via its responsibility for the *Legislar Melhor* Programme, has the formal responsibility for overseeing impact assessment. However, as a legal centre for the quality of drafting it does not have the necessary economic competences or resources for overseeing a more robust impact assessment process. Strengthening the institutional framework also requires a change of culture across the administration, notably a willingness to engage in more systematic and open exchanges on the development of new policies and associated regulations.

The parliament needs to be part of the process of strengthening impact assessment. The role of the parliament in the development of legislation is strong in the Portuguese system. The parliament has already taken a number of initiatives of its own to strengthen procedures for the evaluation of draft regulations, including not least the requirement for a wide ranging technical note to be attached to drafts which it will enact. The parliament also has its own rules for ensuring transparency of the law-making process through public consultation including via its website, and the collection of data from external experts. It has recently engaged a reflection on the development of a more formalised impact assessment procedure. It makes sense for parliamentary initiatives to be worked up in cooperation with the government, in relation to draft regulations (whether initiated by the government or the parliament) which are to be enacted by the parliament.

Steps are being taken to promote alternatives to "command and control" regulations. The *Simplex* Test for new regulations raises the issue of alternatives. The *Simplex* Programme for the reduction of administrative burdens also increasingly highlights the use of alternatives. This progress needs to be consolidated.

The management and rationalisation of existing regulations

Portugal has developed some important initiatives for the consolidation of the regulatory stock, which support legal clarity and transparency for citizens and enterprises. Consolidation of existing regulations is part of the government's agenda for Better Regulation. In 2006 checks on legal consolidation were made part of the law making process, and the *Simplex* Test also draws attention to this aspect. The *Simplex* Programme also contains some important initiatives for consolidation of areas of the law. However consolidation has lost visibility in the formulation of the programme since 2006, and along with it may have lost some momentum. There is also a new– but still limited– use of sunset clauses or revision clauses in regulations.

Portugal has made good progress in simplifying administrative procedures on citizens and businesses over the last three years. The *Simplex* Programme, and in particular measures by the Ministry of Justice, have been successful at removing some "dark" points in the regulatory system. A flagship measure has been the simplification of procedures for establishing a business, which used to be particularly burdensome and were often cited as a brake to the competitiveness of the economy. This is only one example, and the *Simplex* Programme has been impressive in scope and ambition, resulting in tangible results for companies and citizens. This progress is well recognised both within and outside the administration in Portugal, including the main business associations. Simplifying licences (which is one of the priorities of *Simplex* 2008) is also considered as key to creating a more competitive environment in Portugal.

Good foundations have been laid for further development of the administrative burden reduction programme. The government recognizes this, with its plans to introduce a variant of the SCM methodology and establish quantified targets for 2012. A sharper approach based on quantification will help in a number of ways. It will introduce greater rigour into the programme, ensuring that the most important issues are being tackled. It will enable the government to evaluate progress on sounder footing. Finally, it will encourage the further and full engagement of relevant ministries, who will need to show specific progress against a baseline measurement. The next stage of the programme is ambitious, as it aims to cover full compliance costs, and to cover citizens as well as businesses and burdens on the administration.

Good institutional foundations have also been established for the effective promotion and monitoring of the programme. Portugal already has in place an entity at the centre of government – SEMA– to pilot the programme, which it has done very effectively over the last three years. This now needs to be complemented by the development of capacities and resources within each relevant ministry, charged with providing technical support, encouragement and the monitoring of progress. This would also help to anchor ownership of the programme across the ministries.

Compliance, enforcement, appeals

Portugal retains a largely traditional approach to enforcement (based on inspections), although there is a wind of change through the *Simplex* Programme. Structures, competences and capacities at the local level remain geared to a traditional approach. However the implementation of the *Simplex* Programme has entailed some important strategic policy changes to encourage a more proportionate

approach to enforcement. It could be time to refer to the experience of other countries to promote this approach, both in central government bodies (including at the level of local services) and in municipalities.

Delays in the court system are a real issue, which the Ministry of Justice is tackling to good effect through the Decongestion Action Plan. This is also another good example of a vigorous approach by parts of the institutional structure to identify and tackle problems.

The interface between member states and the European Union

The current approach to the negotiation and transposition of EU regulations does not deliver effective results. Portugal's transposition record is below the EU average. Portugal needs to be encouraged to develop a more formal approach including guidelines, to help ministries address EU issues in a more structured way (both at the stage of preparing and negotiating EU regulations, and at the stage of transposing EU regulations). The UK's EU Guidelines may provide some ideas. Denmark also offers an interesting case of how efforts at the negotiation, through a thorough process involving all stakeholders, can promote a smoother transposition process. There is also likely to be an issue of capacity building in ministries, and if so this too will need to be addressed.

The interface between subnational and national levels of government

Engaging the municipalities in the *Simplex* Programme is an important new initiative, alongside the direct efforts of some municipalities in this field. In July 2008 the Portuguese government launched the *Simplex Autárquico* Programme (*Simplex* for municipalities), an initiative to integrate municipalities in the *Simplex* Programme. Some of these measures imply close co-operation between central government and local governments, as well as between local governments themselves. Engaging the municipalities is critical to ensuring the success of the programme in key areas, in the first place simplification of licensing procedures, as municipalities play a very important role in that field. The government aims at involving 50% of municipalities by 2012 (with nine municipalities taking place at its launch). Some of the larger municipalities have also started their own efforts at Better Regulation. Involvement of more municipalities is necessary as differences across municipalities in the implementation of regulations create difficulties for both citizens and businesses.

Promoting best practices and providing support to local governments need further effort. Efforts to implement Better Regulation policies vary a lot across municipalities. It is important to find ways to encourage municipalities to adopt best practices. The *Simplex Autárquico* Programme includes interesting measures in that respect. Harmonisation of municipalities' approach to enforcement appears to require further effort.

Key recommendations

Strategy and policies for Better Regulation	
1.1	Portugal should set out its strategic vision for the further development of Better Regulation policies over the coming few years, based on the initiatives that have already been set in motion. A White Paper would be a good way of doing this.
1.2	The government should take steps to strengthen *ex ante* impact assessment (see Chapter 4).
1.3	Alongside the development of a strategic vision, the government should establish a communication strategy for Better Regulation both inside the administration and for external stakeholders, which also underlines achievements to date.
1.4	Provision should be made for the *ex post* evaluation of Better Regulation strategy and specific initiatives, so that the insights obtained can be used to strengthen the policy over time. Consideration should be given to whether the Court of Auditors could play a role in this respect.
1.5	Portugal should consider whether to commission studies that would help to highlight and quantify the link between its Better Regulation policies and improvements in the performance of the economy (especially micro effects such as new business formation).
1.6	Portugal should continue to make the roll out of e-Government in support of Better Regulation a priority.

Institutional capacities for Better Regulation	
2.1	Short of setting up a fully integrated unit, which may cut too much across current structures, Portugal should develop a more co-ordinated approach to Better Regulation within the Presidency of the Council of Ministers so that officials can work together and share experiences on linked issues. At the same time it should consider how resources and relevant competences can be strengthened for CEJUR, so that it can effectively meet its responsibilities for the *Legislar Melhor* Programme
2.2	Portugal should identify a high-level committee to take responsibility for Better Regulation, supported by a secretariat in the Presidency of the Council of Ministers, to which ministries would report progress on a regular basis. Within individual ministries, a Better Regulation contact point should be established to liaise with the central structures, co-ordinate reporting,

	and promote best practice.
2.3	Portugal should consider establishing an independent external advisory body of business and other representatives to support the development of Better Regulation policies.
2.4	Initiatives should be taken to strengthen the contact and co-operation between the Presidency of the Council of Ministers and the parliament over the development of Better Regulation tools and processes, in particular *ex ante* impact assessment of new legislation, and databases.
Transparency through public consultation and communication	
3.1	Portugal should ensure that the new legal framework and Code of Good Practice under development includes clear instructions to consult early in the process of developing regulations and to provide feedback.
3.2	As well as current initiatives under the *Legislar Melhor* Programme, consideration should be given to establishing common commencement dates for the introduction of new regulations.

The development of new regulations	
4.1	It is important that the practical guide encompasses all aspects of rule making, including legal quality, consultation and impact assessment. Putting the guide on line would facilitate its use by all law drafters.
4.2	The government should refine the *Simplex* Test procedure to ensure that assessments are updated as a draft progresses.
4.3	The government should put in place a system for assessing the impact of new regulation to capture the full consequences (benefits as well as costs) of draft regulations, beyond what is already done with respect to administrative burdens in the *Simplex* Test, and taking account of the need to secure a proportional approach.
4.4	The government should take steps to publish impact assessments, at least when the draft is communicated to the parliament, and engage external stakeholders systematically in the impact assessment procedures, in order to support a more effective and systematic assessment of potential impacts.

4.5	The government should consider how CEJUR can be strengthened, in order to support and if necessary challenge ministries in the development of impact assessments.
4.6	The government and the parliament should exchange views and ideas on the further development of impact assessment relating to draft bills that will be enacted by the parliament.
4.7	The government should consider how to further raise awareness and embed the use of alternatives in the regulatory culture, including setting up specific guidance for officials. This guidance could be a part of the practical guide mentioned above.

The management and rationalisation of existing regulations	
5.1	Spring cleaning of the regulatory stock is important. Ongoing initiatives to consolidate the regulatory stock should continue to be pursued systematically. Consideration should be given to the more systematic introduction of sunset or revision clauses in new regulations.
5.2	To provide an effective institutional framework for the next stage of the *Simplex* Programme, each relevant ministry should be equipped with a contact point or a small central unit to provide support to ministry officials carrying out the measurements and implementing the measures identified.

Compliance, enforcement, appeals	
6.1	Portugal should review the practical experience of some other OECD countries in the deployment of a risk-based approach to enforcement and inspections, with a view to developing a policy adapted to its situation.
6.2	The Ministry of Justice should be strongly supported in its ongoing efforts to deal with congested courts.

The interface between member states and the European Union	
7.1	Portugal should elaborate a stronger policy and guidance for its approach to the negotiation and transposition of EU regulations, after consulting with stakeholders within and outside the administration. This is now being taken forward. Since the OECD review in spring 2008, the government of Portugal has adopted a resolution to create a stronger institutional framework for monitoring the transposition of EU directives, which constitutes a positive step in that direction.

The interface between subnational and national levels of government	
8.1	Portugal should sustain its efforts to promote Better Regulation across municipalities via the *Simplex* Autárquico Programme. Further effort should be made to promote best practice and coherence in the enforcement of regulations across the country (beyond the reduction of administrative burdens) and provide support to local governments, drawing on the experiences of other OECD countries.

Better Regulation in Europe: Spain - *Executive Summary*

Economic context and drivers of Better Regulation

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

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

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

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

As in several other European countries, e-Government has expanded significantly within the public administration, especially in the national government where nearly 90% of all administrative

procedures (equivalent to 98% of case handled) have a fully implemented online version (see Figure 1.1), and in so doing has helped to support aspects of Better Regulation. One clear internal driver is a growing awareness that the government needs to tackle legal complexity, including the complexity arising from decentralisation and the distribution of legislative and administrative competences between levels of government. Overall, however, a sustained commitment to Better Regulation remains fragile and uneven across the administrative and political class.

Public governance context for Better Regulation

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

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

Developments in the public administration. The public administration has undergone a profound remodelling to fit the new context of democracy and decentralisation. 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. 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. The aim was to streamline the structure and make it more effective, with a view to accelerating implementation of the so-called Plan E (*Plan de Estimulo de la Economia y del Empleo*) 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. To raise the profile of territorial

policy. the Ministry of the Presidency has taken over the public governance functions (*Función Pública*) of the former Ministry of Public Administration.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

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

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

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

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

Spain faces significant structural challenges for the development of Better Regulation in a decentralised state, an issue which is fully recognised. The central government understands that leadership from the centre is important. In the recent past it has launched a series of promising meetings and structured dialogues to take this forward. It has also taken initiatives through the

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

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

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

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

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

Institutional capacities for Better Regulation

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

administrative burdens is another positive move. Institutional structures for the pursuit of e-Government have also been set up.

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

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

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

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

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

simplification, and consolidation of e-Government strategy. It has important links to other key functions within the Presidency ministry such as relations with the Parliament and management of the agenda for the Council of Ministers. One small but significant issue is the name of the unit, which does not reflect a forward looking core responsibility for Better Regulation.

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

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

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

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

Transparency through consultation and communication

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

The processes for public consultation are quite varied, and transparency has been established as a key principle in recent years. The central government notes that the Good

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

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

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

The development of new regulations

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

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

The 1997 Government Law was a milestone in establishing important principles for the preparation of regulations. The Law embedded a number of important principles including consultation, and regulatory impact assessment. However, the OECD peer review team heard that the administrative culture remains formal and legalistic, with "internal gold-plating", and there is a need for further public administration reforms to embed good regulatory practices as well as practical support. In particular, there may be a need to back up the 1997 principles with stronger monitoring and support to ministries, to ensure that the principles are embedded in practice. A weakness of the Spanish public governance system would appear to be difficulties and delays in fleshing out laws with implementing regulations and guidelines (it took well over ten years to agree a Royal Decree

implementing the 1997 Law's provisions on impact assessment) which means that useful laws are not always translated into practice.

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

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

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

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

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

issue. A further option is to set a net target for the reduction of administrative burdens which would require ministries to pay attention to production and quality.

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

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

The management and rationalisation of existing regulations

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

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

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

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

complement to the structured arrangements. The 2000 OECD report proposed strengthening linkages between simplification policy and SME policy, and this implies making sure that the views of SMEs, in particular, are effectively captured.

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

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

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

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

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

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

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

of the public service. A study from the business community suggests that business suffers from inefficiencies in the public administration.

Compliance, enforcement, appeals

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

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

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

The interface between member states and the EU

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

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

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

hoc Committees are created in order to guarantee the correct implementation of directives among all Public Administrations. An example is the "Better Regulation Committee" related to the transposition of the Services Directive. There can be failures to transpose all the provisions of a directive, with the issue ending up in court.

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

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

The interface between subnational and national levels of government

There have been important developments since the OECD's 2000 report, with a progressive but far reaching devolution of powers to the Autonomous Communities. A progressive decentralisation process has been taking place based on provisions of the 1978 Constitution, and the ACs have acquired a growing number of competences. The speed and depth of this process has varied across the ACs. As a result, Spain presents an asymmetrical institutional landscape across the two main levels of government. There has, however, been some convergence since the early 1990s. The Spanish public governance framework is now highly decentralised. Aspects of the process remain a work in-progress.

The engagement of the Autonomous Communities in Better Regulation is crucial. The ACs now have numerous and significant responsibilities, notably in areas such as planning, local government, public safety, and the environment. They also provide major public services such as education and health. Not least, from the perspective of Better Regulation, they account for the majority of new regulations.

The EU Services directive has provided a boost to reform. Implementation of the transposing measures for this directive requires modernisation and simplification of the public administration. It has been used as a driver to unlock blockages and introduce changes, not least with respect to the ACs and municipalities. The Better Regulation Committee, created by Law 17/2009, embedded in the Ministry of Economics and Finance, is a good example. Formed by AGE, ACs and local entities, its main tasks are to foster, in all Public Administrations, Better Regulation in the economic domain to avoid the introduction of any unjustified restriction within markets; to encourage co-operation in Better Regulation of services activities and to monitor and co-ordinate all measures carried out by all Public Administrations to guarantee a correct transposition of the Services Directive.

The devolution and re allocation of competences has, however, raised some complex challenges. As in some other countries with fast evolving decentralisation, the process raises issues, which need to be addressed before they become serious problems. In its 2008 Annual Report, the Council of States noted that there is no conflict prevention mechanism to avoid disputes, or to resolve simple contradictions and overlaps between the State and the ACs, which can occur because there is no obligation for ACs to consult with, or even to notify, the State when they issue a new legislative proposal. Unresolved disputes of this kind end up in court, which adds to the congestion of the judicial system. Other stakeholders drew the OECD peer review team's attention to the problem of concurrent competences.

Leadership from the centre is important. The 2000 OECD report noted that continued leadership from the centre was important, to encourage the adoption and sharing of good regulatory practices and reform. This remains true today. The central government is taking important initiatives to provide a lead, most notably through the inclusive "whole of Spain" approach to the Action Plan for the Reduction of Administrative Burdens. The review team did, however, hear that central government communication on Better Regulation developments could be reinforced.

Effective co-operation between the levels of government on Better Regulation is another key requirement. Although it was beyond the scope of this review to test their effectiveness, a range of formal and informal approaches to co-ordination between the State and the ACs is now in place.

The Autonomous Communities' own work on Better Regulation is equally vital. With some important exceptions, Better Regulation practices are not as developed as at State level, but are starting to gain ground, generally building on the programmes for administrative simplification which are already in place. All the ACs have now established Better Regulation programmes. The 2000 OECD report noted that the ACs as innovation laboratories (2000 OECD report underlined this, and gave examples such as "tacit authorisation rule for administrative procedures started outside the central government". Some of the ACs said that further training would be helpful.

Co-operation between the ACs is also important, to share best practices. Horizontal co-operation between ACs is less formalised than that between ACs and the State. It was beyond the scope of this review to test the success of informal networking but it appears to be an approach that works well for some ACs. There is no formal benchmarking, as in some other countries, which could help to spread best practices as well as encourage innovation.

Some issues may need attention at the municipal level. The OECD peer review team heard that the high degree of autonomy of each municipality to set its own policies and procedures results in different requirements and procedures for the same dossier, causing unpredictable delays. Given that Spain has a higher than average proportion of SMEs in its business community and the fact that this level of government is often the first and most important point of contact for SMEs, the efficiency of municipalities matters.

Key recommendations

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

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

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

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

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

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

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

The interface between subnational and national levels of government	
8.1.	Encourage further multilevel co-operation, including the development of friendly competition, autonomous community "brains" being better than one (Belgium and Germany may offer some examples). This can build on the fora and *ad hoc* groups which are already underway as a means of by-passing the formalities of the constitution.

Better Regulation in Europe: Sweden - *Executive Summary*

Economic context and drivers of Better Regulation

Better Regulation policies in Sweden have traditionally been harnessed to the achievement of important economic goals. The country's economic recovery from the crisis of the early 1990s was partly based on regulatory reforms which supported structural changes, opening up previously closed product markets, reinforcing international market openness. Substantial efforts were made to minimise regulatory burdens on companies engaged in international trade. Product market deregulation was tackled, and the competition law was strengthened. As recorded in the 2007 OECD report on Swedish regulatory reform, this yielded a considerable "productivity dividend".

Efforts have intensified since the 2006 general election (and partly in response to the OECD's 2007 report) to address issues which undermine a positive development of the business environment and in particular, the development of small firms. The 2007 OECD report noted that the Swedish economy depends fairly heavily on large companies, with a relatively small service sector and muted entrepreneurial activity, which could be limiting the potential number of new jobs.

The drivers of Better Regulation in Sweden are defined by the current government as a push for stronger growth, the need to sustain international competitiveness, and the need to create jobs, which will help to prevent social exclusion (*utanförskap)* in the population. The strategy for growth and renewal, launched by the government when it came to office in September 2006, included support for entrepreneurship, including easing regulatory burdens.

The Better Regulation agenda is structured around a simple but compelling formula. Simplifying regulations will reduce burdens on business and release capacities to deal more with day-to-day business operations, which in turn could create economic growth and generate more jobs. The full baseline measurement of administrative costs carried out by the Swedish government estimates administrative costs for businesses at approximately SEK 97 billion.

Sweden is currently facing a deeper contraction than the crisis of the early 1990s, although many economic indicators remain favourable. Public finances are still in good shape, the national debt has been pressed back to the same level as before the financial crisis, and so far the increase of the debt has been moderate. Indeed the extensive regulatory reform of the 1990s and early 2000s, completed before the crisis, suggest that Sweden may experience a good recovery of productivity growth and overall employment. There remains scope to develop the potential for self employment and entrepreneurship, by further reducing administrative and regulatory burdens on small firms.

The Better Regulation programme, and in particular the Action Plan for Better Regulation, which was launched in late autumn 2006, after the general election in September 2006, is the centrepiece of the government's strategy. The target is to reduce the administrative costs for businesses by a net 25% by autumn 2010, and to create a "noticeable, positive" change in day-to-day business operations. The government's 2009 Budget Bill restated the commitment to Better Regulation which had already been made in autumn 2007 and 2008, underlining that a "simple and efficient regulatory framework is urgently required". It emphasised the identification of simplification proposals that "yield substantial

effects for companies in the short term". The strategy is widely supported within the central government and among the business community, which has been constructively vocal and active.

The public governance framework for Better Regulation

Sweden has a strong and well established public governance framework. The Swedish model of government is characterised by small policy-making ministries and a much larger network of government agencies responsible for the implementation of government policy. Constitutional provisions with strong historical roots impose constraints on any changes to the underlying structure of government. Local governments are entrusted with a large number of complex tasks, reflecting an emphasis on local democracy and the need to match the provision of services to local preferences.

The basic institutional structure is relatively stable. Some important constitutional changes in the 1970s altered the structure of the parliament and introduced proportional representation, further underlining the importance of co-operative and consensus building processes for policy and rule making. The election cycle was changed from 3 to 4 years in 1994.

Developments in Better Regulation and main findings of this review

Sweden has moved from an emphasis on deregulation associated with the market liberalisation of the 1990s to the improvement and simplification of rules (Better Regulation), much on the same pattern as other European countries. The policy has also broadened from simplification and cost reduction to a renewed interest in making *ex ante* impact assessment work. A key focus throughout has been on the needs of enterprises. Regulatory quality principles have also extended their reach across different institutions, starting with the committees of inquiry which have always been subject to strong requirements (on consultation for example), even if this remains a work in progress regarding the local levels of government.

After the 2006 election, the government announced its intention to intensify work on Better Regulation, setting a target to reduce administrative costs for businesses by a net 25% by autumn 2010, and putting in place a series of tools and measures to promote Better Regulation, including a renewal of the impact assessment process.

Strategy and policies for Better Regulation

There is a strong commitment by the current government to move forward on Better Regulation. This is extremely positive for Sweden and its international competitiveness prospects. The emphasis is on creating a better regulatory environment for business, which is timely and helpful. The development of the Better Regulation programme and in particular the Action Plan for Better Regulation has acted as a wake-up call, in a context where Sweden was slipping behind in Better Regulation (and was aware of a growing gap compared with some of its European neighbours), and has started to concentrate minds on the importance of the regulatory framework as an essential "infrastructure" for business. The efforts to strengthen and give new impetus to *ex ante* impact assessment also show that Sweden is conscious of the need to manage burdens which may flow from new regulations. It is visible that important investments have been made recently. For example, the establishment of the Better Regulation Council (an automonous external oversight body) is an important signal of the government's commitment to change. It can be expected that these investments will pay off in the near future.

Important tools, processes and institutional structures for Better Regulation are now in place. There have been significant improvements since the 2007 OECD report, which have laid some

foundations for further achievements. The processes for *ex ante* impact assessment have been strengthened, clarified and streamlined, and regulatory simplification is now well underway, supported by the completion of a full baseline measurement of administrative costs for businesses, enhanced consultation processes with the business community and a reinvigorated institutional framework, which includes the establishment of the Better Regulation Council and a more operational group of state secretaries responsible for promoting better regulation policies within government. As the government itself recognises, the new processes now need to be used, and where necessary, strengthened. It has taken time to agree the changes. It may take some time for these processes to bear fruit. Sweden is now moving into a more demanding phase of its Better Regulation programme, where efforts need to be sustained and results may not come overnight. As one interviewee put it, "there are no quick fixes if the objective is to make deep changes and turn the regulatory management framework around". Better Regulation has to be seen as the sum of many efforts over time.

The regulatory simplification measures are generally well structured and go beyond administrative cost reduction. The recommendations of the 2007 OECD report have been largely implemented and there is a clear framework to tackle burdens on business and to implement a range of broader regulatory as well as other simplification processes. The quantitative net target of a 25% reduction of administrative costs on businesses by 2010 is in line with good international practice. It has also acted as an important driving-force in the Better Regulation strategy. The latest update measurement (June 2009) shows an encouraging net decrease in regulatory burdens of 2% from the original baseline. The policy goes beyond administrative costs, and aims to address the more effective overall design of rules, processes and procedures so that they are better adapted to business needs. Proposals and actions are well documented, and transparency is good.

However, some issues with regulatory simplification tools and processes need attention if the target is to be met. The pressure on participating ministries and agencies to contribute to the 25% reduction target is weak, partly because there are no differentiated or individual targets for each ministry. Use of the *Malin* database, which brings together the results of the measurement, also needs to be encouraged, to identify actions that will help to ensure the target is met. *Malin* can also help with the *ex ante* assessment of whether identified actions will be sufficient to meet the target.

Sweden has also taken steps to strengthen its impact assessment processes since the 2007 report. The new policy seeks to broaden the approach and the institutional framework has been strengthened. A common framework of instructions is in place, replacing the previous disjointed approach. However, the policy remains highly business focused. Other impacts (social, environmental etc), although they are not neglected, should merit greater attention, through a more balanced approach. This will help to secure the closer engagement not only of stakeholders inside government, but also outside. An early evaluation of progress will be important.

Public consultation is a traditional Swedish strength, and dialogue with the business community has been boosted. Sweden has a very positive underlying commitment to openness, which frames its overall approach to consultation. Participating stakeholders are generally supportive of the system which rests, notably, on the longstanding practice of establishing Committees of Inquiry for the development of major policies and legislation. The processes established by the government as part of the Action Plan for Better Regulation include significant structures and efforts to engage in dialogue with the business community over their concerns.

The government's current policies need to be extended, if they are to address all the issues that are relevant for a comprehensive Better Regulation strategy. It was right to start with an emphasis on regulatory simplification for businesses, and to use this as a motor for pulling forward the agenda. Policies aimed at other societal groups could now be envisaged, alongside what is already in

place for the business community. A broader policy on public consultation for the development of new regulations (not just with the business community), enforcement policy, the need to engage the local levels of government in Better Regulation, and the management of EU issues would now benefit from increased attention. A broader vision would help to pull these elements together, put Swedish Better Regulation policy on a more sustainable basis, and ensure that Sweden is a front runner on Better Regulation within Europe. There has been tangible progress beyond administrative burdens since the 2007 OECD report. However there is a need to go further still.

Better Regulation in Sweden remains tilted towards business and neglects the engagement of other societal groups. To a number of actors, Better Regulation is currently perceived as "deregulation", and a zero sum game, posing a threat to other societal goals. "Citizens are forgotten", as one interviewee put it. There is a palpable concern that "we would lose something in the process" of making things easier for business and that standards could suffer. This negative perception is aggravated by the fact that civil society does not consider itself as well represented or resourced as the business community for effective participation in Better Regulation processes such as consultation or impact assessment. Addressing perceptions of an imbalance – as well as working on the imbalances which do exist – will be important to sustain support for Better Regulation over the longer term.

The current approach to enforcement is complex and widely acknowledged to be in need of reform, which the government has started. The government has started to take steps to rationalise and clarify responsibilities, and the issue was also highlighted in the 2007 Parliamentary Committee on Public Sector Responsibilities. Some organisations have been applying risk based approaches to enforcement (such as the use of risk analysis to determine the optimum frequency of inspections). However, a stronger and more coherent policy would encourage the more widespread uptake of new approaches. As one interviewee put it, "the problem is not just the production of regulations, but the lack of a clear steer on implementation".

The engagement of subnational levels of government in Better Regulation needs to be strongly encouraged. There is an increasingly urgent need to bring local governments more fully into the government's Better Regulation programme, as they are the primary interface with SMEs. The Action Plan for Better Regulation currently covers central government (the ministries within the Government Offices) and a number of government agencies, currently 39. The municipal level (the main level of local government) is not yet integrated to the same extent. They are considered by many to be a key source of burdens. Inadequate integration of this level of government weakens the proposition that the government is doing all it can to reduce burdens on business. Although this is beginning to change, the process of integrating this level of government into Better Regulation needs to be formalised and accelerated. It is increasingly urgent for local government to be further engaged, as they are the primary interface with SMEs. This would have the support of a wide range of stakeholders both within and outside government. A particular institutional issue is that there does not appear to be any specific forum for discussion between the national and subnational levels.

The management of EU regulations would benefit from more attention. There are clear formal processes for setting strategic decisions in the negotiation of EU directives, but capacities for effective negotiation in practice may need reinforcement. The framework appears less strong once a specific negotiation has started, and external stakeholders raised some concerns. Public consultation by the government is not systematic. The transposition of EU directives would benefit from particular attention. It would be beneficial to carry out a wide ranging evaluation and consultation on EU aspects of Better Regulation.

The widest range of stakeholders need to buy into the government's policy for its sustainability to be assured over the longer term. This report suggests that the Better Regulation

agenda should be explicitly extended to cover societal groups beyond the business community. In any event, a more inclusive approach to communication on the government's policy and regulatory plans is important. This is complementary to the basics of everyday communication such as the right of access to official documents. Sweden is strong in these basics, but a more strategic perspective is also needed. Because of strongly rooted transparency and consensus making traditions, reforms that are tackled through public debate in Sweden are more likely to gain support.

The management of expectations which have been encouraged by the Better Regulation programme could be enhanced through more targeted communications. Securing the continued support of key external stakeholders needs the anchor of an enhanced effort at communication. The experience of other European countries is that a critical (albeit not the only) success factor of a well run regulatory simplification programme is effective government-stakeholder communication. The business community and parliament are impatient to see results at this stage. Business said that it can and must act rapidly on its own decisions, and finds it hard to understand why the government takes longer. The Government needs to persuade them more strongly (with supporting evidence) that results are coming, and to manage expectations by a careful explanation of the processes and timescales needed, in order for a government proposal to become a concrete reality.

As in many other OECD countries, *ex post* evaluation of Better Regulation policies or strategy could be strengthened and become a systematic part of the agenda. This is especially important for Sweden, which needs to ensure that the tools and processes now in place for Better Regulation are functioning as they should. A strategically important missing link is an overall evaluation of the Better Regulation agenda, which could be used both to pinpoint gaps, and to establish more clearly how the agenda is contributing to the reinforcement of Sweden's competitiveness as well as citizen and other societal needs. Evaluation also supports greater transparency about progress, which encourages external pressure and support to step up efforts.

The government's Action Plan on e-Government is a clear signal of the commitment to regaining lost ground on the development of e-Government. A carefully elaborated Action Plan has been put in place, with a supporting high level group in the Government Offices, consisting of State Secretaries, and an e-Government Delegation ("*E- delegationen*"), consisting of heads of government agencies and a representative of *SALAR*. This is very positive, not least for the signals that it gives of the government's commitment. The e-Government Delegation will need to track progress continuously on an aggregate level to promote appropriate intervention from the government when necessary. It was beyond the scope of this review to go into any depth, but it appears that some good progress has been made. Some issues such as funding may need attention.

Institutional capacities for Better Regulation

Sweden has a strong and well established public governance framework characterised by a small policy making centre and a very large network of implementing agencies. Sweden has a particularly disaggregated structure of public governance, with a few small ministries at the apex, and several hundred agencies (some with horizontal, most with sector specific responsibilities). There is also a highly autonomous municipal level of government. Policy and rule making are carefully framed and based on clear principles which are embedded in the constitution. There is an important tradition of consensus building to meet policy and regulatory objectives involving key actors both within and outside government, including the social partners.

The breadth of the institutional structure raises challenges for rapid progress on Better Regulation. In the absence of strong and determined management, this is a system with centrifugal tendencies. There are many autonomous actors, with a constitutionally anchored independence of

action with regard to some aspects of their activities. Effective steering and firm encouragement from the centre of government is therefore critical for the success of a Better Regulation strategy that needs to encompass all the relevant institutions and different levels of government. The system may also encourage a sense that issues are the responsibility of other actors, thus fragmenting collective effort and leading to uneven performance. The growing importance of the EU adds another critical dimension to the need for a strong central engine to promote regulatory quality. The issue is how to achieve change and promote a shared vision whilst respecting the character of the Swedish traditions, which have a number of strengths. There is awareness that fragmentation is an issue. An important distinction, however, needs to be made between the government agencies, which are autonomous but ultimately under the control of central government, and the municipalities, which have a constitutionally protected independence *vis-à-vis* central government.

Against this somewhat challenging background, significant progress has been made since the 2007 OECD report to set up a stronger central driver for Better Regulation, and a "whole of government" approach. The 2007 OECD report recommended that an additional process or structure may be needed to boost reform, promoting a strategic reform vision and helping to establish consensus on important issues. It recommended the establishment of an external advisory body. This has now been done, with the establishment in 2008 of the Better Regulation Council. This is rightly seen as evidence that the government is serious about Better Regulation. The Ministry of Enterprise responsibilities have also been boosted. The ministry has a team of officials responsible for the coordination, support and follow up of work on Better Regulation, and it chairs the cross government group of State Secretaries on Better Regulation as well as the cross government working group on Better Regulation (with officials from different ministries within the Government Offices).

The establishment of the Better Regulation Council has been greeted with enthusiasm by many stakeholders. Considerable expectations are vested in this body. Sweden needs independent perspectives to challenge the strength of government policies for regulatory reform and to ensure that all relevant actors buy in to Better Regulation (not just the enthusiasts). This new watchdog is a major step forward for Sweden. The Better Regulation Council is expected to play an important scrutiny role for impact assessments. Although it is an advisory body, the Council's opinions are made public through its website and it is expected to provide an incentive to prepare better quality impact assessments. It published a report on its experiences in January 2010 and will publish another report at the end of its current mandate in 2010. It is too soon to comment on its success. It certainly has the potential to make a difference, but does need to find its place, and assert itself as a new player with influence. There is a need to decrease dependency on political cycles or personal commitments, which this type of institution can help to meet.

The National Audit Office (Riksrevisionen) is a potentially valuable external observer of the regulatory process. Its 2004 report to the *Riksdag* was instrumental in encouraging the development of today's Better Regulation agenda. It carries out performance audits which, whilst they may not be directly focused on Better Regulation processes, can nevertheless raise issues relating to the effectiveness of regulatory management have a direct bearing on Better Regulation, including impact assessment. Some of its recent work points, in particular, to the "cascade" effect of regulatory development and the need to be clear not just what regulations raise issues, but who produces and implements them.

The Board of Swedish Industry and Commerce for Better Regulation (NNR) and other business organisations also provide valuable feedback on the progress of Better Regulation. The *NNR* represents the views of a large part of Swedish business and is active and vocal in support of further progress. The added value of these organisations is that they are able to identify the practical

issues which need attention to help the business community. Sweden is fortunate to have a business organisation of this kind, which works solely on Better Regulation issues.

Within the government, the Ministry of Enterprise needs more resources and support. The Ministry of Enterprise is the most appropriate focal point for Better Regulation at this stage, but it seems to be treading a somewhat exposed path as the flag bearer for Better Regulation. Its Better Regulation team (it is not even a unit, and staff have to combine their work with other Better Regulation tasks) is under pressure, under resourced and needs to be strengthened if it is to be effective in its work with other ministries for the development of the Action Plan and more broadly to support the further development of Better Regulation. The ministry also needs the stronger support of other key central government actors – the Ministry of Finance and the Prime Minister's Office – if it is to have the desired political impact and leverage on the range of autonomous actors that need to be part of regulatory reform. The leverage of the Ministry of Finance is needed if there is to be concrete and more rapid progress in respect of the agencies, local government as well as the use of e-Government in support of Better Regulation (all of which it co-ordinates). The Prime Minister's Office has a necessarily more complete view of the system, including the EU aspects, and could bring its influence to bear on potential blockages and slow movers. Its visible policy support is needed to secure the sustainability of Better Regulation.

The role of the Ministry of Justice for securing legal quality and promoting plain language remains important and the Council on Legislation may have useful input. The Ministry of Justice plays a fundamental role in support of legal quality. Care is needed to ensure that it is not sidelined in the promotion of new Better Regulation processes. It currently appears to operate somewhat apart from the other core ministries in this respect. The Council on Legislation, which vets draft legislation from a legal perspective, should not be neglected as a potentially valuable ally and source of information on regulatory quality. It may, for example, spot trends over time regarding such issues as quality of legal drafting, which is part of Better Regulation.

The steps taken by ministries themselves in support of Better Regulation appear to be uneven. Support structures of different kinds have been set up in a number of ministries, ranging from a single central unit to a looser network approach. It is not clear how far this boost to internal systems has been adopted across all relevant ministries. The OECD peer review team heard that some ministries (and agencies) are less interested in Better Regulation than others.

The Swedish institutional context puts a premium on effective internal co-ordination and communication across the different parts of government. The different parts of the institutional machinery, which comprise a range of agents who are used to working autonomously, need to be encouraged to work toward common Better Regulation goals. The State Secretaries' Group chaired by a State Secretary at the Ministry of Enterprise and the inter-ministerial working group on Better Regulation are excellent starting points but may need a stronger mandate to address horizontal issues. One interviewee said that further horizontal co-operation was not just desirable but essential. Better Regulation issues often cross the boundaries of individual ministries (notably regulatory simplification initiatives).

The government agencies are key actors in the institutional structure as regards Better Regulation, and need to play a stronger role overall. The powers delegated to the agencies to develop secondary regulations (giving effect to primary laws, which also includes responsibility for the transposition of most EU regulations) give them a powerful and central role in Better Regulation. Government agency regulations form by far the largest part of the Swedish regulatory system. A lot of administrative burdens stem from these regulations. The underlying complexity and breadth of the agency structure is a challenge (one which is in some ways specific to Sweden), as is the fact that there

is fairly continuous organisational change, even if some of these changes are intended to simplify the structure. Effective steering by central government is thus essential to reap the full benefits of agency contributions to Better Regulation. Important tools are in place for this. Beyond the traditional tools of appropriation directions etc, there are specific requirements (through decisions by the government in November 2006, May 2007, July 2008 and August 2009) on ministries and agencies participating in the Action Plan to identify measures and report on actions in support of regulatory simplification, which are brought together in a working plan by each ministry and submitted to the Ministry of Enterprise. Some of these tools may need reinforcement and need to be used more effectively. Some government agencies are very active as regards Better Regulation and co-operate closely with businesses. Government agencies also need to co-operate with each other where their interests converge. There is, in the words of one interviewee a "need to tackle a web of regulations which interact". Some agencies are clearly out in front on co-operation, but others may need to catch up.

Parliamentary views on the government's Better Regulation strategy appear broadly positive but its involvement is perhaps not sufficiently encouraged. The *Riksdag* appears broadly supportive of the government's Better Regulation efforts (more so than in some other European countries). The Trade and Industry Committee suggests that there is scope to broaden the understanding of Better Regulation and its importance to competitiveness. Much of this advocacy of course needs to be done within the parliament itself. A strengthened reporting cycle on progress with the Action Plan could enhance support and understanding.

Inadequate resources are an issue, and there is a need to accelerate training focused on Better Regulation processes to support an enhanced performance by ministries and agencies. The number of officials working directly on Better Regulation is quite small, relative to the ambition of the Better Regulation programme and the large and fragmented institutional structure. Central government needs appear to be the most pressing (with its current assignments, the Swedish Agency for Economic and Regional Growth *(Tillväxtverket)* appears to be managing well in respect of the agencies). As already noted, the Ministry of Enterprise capacities need to be enhanced. The ministry's plans to roll out further training and support for impact assessment are important.

Transparency through public consultation and communication

Sweden's underlying and long established commitment to openness frames the overall approach to public consultation, which is based on a traditional, methodical approach. The establishment of Committees of Inquiry remains a cornerstone of the Swedish policy and rule making process, especially for significant issues. They must follow certain carefully established working methods, and considerable information about their work is made public, including not least the report on their findings to the government. They are required to consult widely. Sweden also has a longstanding tradition of consultation with the social partners. Beyond this, there is a general requirement on ministries to consult, and the Ministry of justice checks that this has been done. Public consultation with policy affected by a certain piece of legislation is a routine part of developing draft laws and subordinate regulations. Consultation is in principle, mandatory, based on the 1974 Instrument of Government which sets out that "In preparing Government business, the necessary information and opinions shall be obtained from the public authorities concerned. Organisations and private persons shall be afforded an opportunity to express an opinion as necessary." There is also a range of further guidelines on regulatory management which cover consultation. There seems to be a general level of satisfaction among stakeholders who engage with the system.

There have been some positive changes since the 2007 OECD report, concerning consultation with the business community. The Government's Better Regulation policy and Action Plan have given rise to significant new developments since the 2007 OECD report, regarding

consultation with the business community. The Ministry of Enterprise has established a central working group with business representatives to identify areas of particular concern to business. Several ministries and government agencies have either established similar working groups or have held meetings with business organisations and other stakeholders in their better regulation work.

Whilst generally supporting Sweden's approach, participating stakeholders do have some issues with the system. Within the framework of guiding documents, ministries may define their own approach. With regard to major legislative changes, before the government takes a position on the recommendations of a Committee of Inquiry, its report is referred for consideration to a wide range of relevant "referral" bodies. This provides feedback and allows the government to judge the level of support it is likely to receive. If there is a significant unfavourable response, the government may try to find an alternative solution. Despite these provisions, some issues were raised with the OECD peer review team. These included "one way" consultations (more information than consultation), unhelpfully short deadlines for making comments and a tendency to accelerate the process, inadequate feedback, and the need to incorporate views at an earlier stage in the process.

The system may lack transparency for outsiders, even if this is not the intention. Public consultation is a routine part of developing draft laws and subordinate regulations and it is in principle mandatory. Nonetheless, it was suggested that ordinary citizens can be left out of the loop, the first practical opportunity for access to a draft law being when the text is submitted to the Council on Legislation. The Committees of Inquiry system appears to work well for established stakeholders (and big issues), but is less effective for the general public (where it is desirable to engage the latter), even though there is a formal right to participate in the system. The number of Committees of Inquiry set up at any one time may not help. The 2007 OECD report noted that consultation procedures seem to be effective in communicating future legislation and consolidating the participation of invited stakeholders, but had some misgivings about the extent of transparency, and heard that participation by some groups was difficult because of the resources that needed to be committed. An updated, practically oriented, consultation guide would be helpful in highlighting good practices, and in encouraging the use of new approaches, such as the Internet, as well as emphasising the importance of timelines, feedback and other issues.

There appears to be a specific issue regarding the development of regulations by government agencies. Regulations developed by agencies to give effect to primary laws are a key part of the Swedish regulatory infrastructure. A handbook for agencies on how to draft regulations includes consultation, and beyond this, the agencies may develop their own procedures. It is not, however, clear to what extent agencies apply the principles of Better Regulation regarding consultation and transparency. Although government agencies are not legally obliged to comply with advice provided by the handbook, this kind of advice from the government is traditionally adhered to by the agencies. The 2007 OECD report noted that the consultation procedures of government agencies could be strengthened, as they are the implementing bodies of most of the regulations that affect stakeholders. There is no clear evidence of progress in this field.

Public communication of regulations is handled robustly with a number of access points. This is a strong feature of the Swedish system. It includes a number of well maintained websites where interested parties may consult developments in a number of different ways. The *NNR* has, however, noted that companies can find it hard to obtain information on which regulations apply, and how to comply in practical terms. It also notes that more could be done to communicate on changes in regulations, as companies may not otherwise notice that regulations have been simplified.

The development of new regulations

There are several processes through which interested parties may find out about proposed new legislation, but these are scattered. Different instruments ensure that those inside and outside government can, if they wish, keep in touch with legislative plans (for example, the annual Budget bill, and information on Committees of Inquiry work). The parliament drew attention to an unhelpful "bunching" of law making activity. Forward planning could be made more transparent to those inside and outside government by publishing, on a regular basis, the list of proposals for new bills. There does not appear to be any systematic information dissemination process for the development of secondary regulations.

Processes to secure legal quality are a strong feature of the Swedish system. Law drafting benefits from a strong framework of supporting institutions, guidance and training, which have their roots in the constitution (Instrument of Government). The institutional support framework includes a Directorate General for Legal Affairs in each ministry, which is responsible for ensuring that draft bills are well prepared, legally correct and conform with requirements. The Prime Minister's Office and the Ministry of Justice provide further support. The Council on Legislation provides a further legal check at the end of the process. Sweden also emphasises the importance of plain language, spearheaded by the Ministry of Justice. This includes work on the promotion of plain language within the EU institutions. The parliament also takes a keen interest in plain language, with the adoption of a law in 2005, where several national language policy goals were adopted, among them on plain language. This was followed in 2008 with a Swedish language law, which among other issues states that authorities should strive to use clear and comprehensible language.

Sweden has taken steps to strengthen its impact assessment processes since the 2007 OECD report. The 2007 OECD report drew attention to a number of serious shortcomings. The system was fragmented (different arrangements for ministries, agencies and committees of inquiry), there was a heavy focus on SME impacts (the only mandatory part of the system) to the detriment of a broader perspective, and no integrated institutional framework to monitor compliance and challenge the quality of impact assessments. The quantitative dimension was very weak. Sweden acknowledged that it had so far failed to develop an effective system. There was considerable support for improvement to secure a stronger evidence base for policy and rule making, not only inside the government but also with the parliament and the business community. The new policy has sought to broaden the approach and strengthen the institutional framework, not least through the establishment of the Better Regulation Council which will scrutinise draft impact assessments.

Oversight for impact assessment has been strengthened, with the Better Regulation Council providing some integrating glue. The institutional support framework has traditionally consisted of different arrangements for ministries, government agencies and committees of inquiry. This division of responsibilities has not changed since the OECD report of 2007, with the notable exception of the Better Regulation Council. The Council will scrutinise proposals prepared by both ministries and agencies as well regulatory proposals from Committees of Inquiry (the majority of its work has so far been on proposals of government agencies and Committees of Inquiry). It criticises, in its opinions, drafts if they are not good enough, but cannot send them back. The other improvement is an enhanced status and role for the Ministry of Enterprise as part of its broader co-ordinating responsibilities for Better Regulation. The issue is whether these changes are going to be sufficient to secure effective and coherent oversight. It is too early to tell. However, it is clear that much depends on the Better Regulation Council, the only actor with a complete view given the continued fragmentation of other actors and their essentially advisory role. Capacities and resources is another weak spot. The Ministry of Enterprise is already short on capacities to meet its responsibilities, and its resources may well need to be strengthened.

For the government agencies, support continues to be provided by the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*), with input from the Swedish National Financial Management Authority (Ekonomistyrningsverket, ESV). Streamlining this part of the institutional structure would likely benefit efficiency. The 2007 OECD report had already drawn attention to the issue, and *Tillväxtverket* continues to have some reservations about the current process.

Although the new ordinances and guidelines appear to have clarified requirements, the handling of some key issues remains weak. In some respects this seems to be a refreshment of existing policies rather than a completely new departure. Some issues need further attention. Quantification of costs and benefits is not sufficiently emphasised. The support arrangements for ministries to carry out quantification may not be adequate, given that this is new territory for many officials.

The policy remains highly business focused. The new ordinances and guidelines anticipate that social and environmental impacts as well as economic and business impacts, should be addressed. Although the new approach clearly signals the need to go beyond impacts on SMEs (the main focus of the previous policy) the emphasis remains on business. The mandate for the Better Regulation Council's work requires it to focus on business, even if other aspects may be taken into account. Sweden also wants to avoid the "Christmas tree" effect. A business focus is valuable and necessary, especially post crisis and given the prominence of Sweden's Better Regulation strategy as part of a drive to enhance competitiveness. However, work on other impacts may be crowded out and this risks alienating stakeholders both inside and outside government.

An early and objective evaluation will be important, given the weaknesses that may still be in the revised *ex ante* impact assessment system. The new system is an improvement in many respects but nonetheless contains some potential weaknesses. Evaluation will be important, sooner rather than later, so that the necessary steps can be taken to remedy weaknesses as quickly as possible. Two potential candidates for carrying out the evaluation are the Better Regulation Council (with hands on experience of the new system) and the National Audit Office (*Riksrevsionen*), (which has previously shown interest in Better Regulation).

The management and rationalisation of existing regulations

Sweden has a good track record of deploying processes to clean up the regulatory stock. Over time, Sweden has been active in the use of different processes aimed directly at ensuring that the regulatory stock remains clean and clear, including codification, the enactment of a guillotine rule in the 1980s, through the work of Committees of Inquiry, and most recently, via some of the work which is being taken forward under the Action Plan for Better Regulation.

Recommendations of the OECD's 2007 report have been largely implemented and there is clear progress. The key recommendations of the last OECD report on administrative burden reduction for business have been acted on. In particular, Sweden has set a quantitative net target for the reduction of burdens on business (25% by end 2010), in line with good international practice, and has integrated *ex ante* burden measurement into its recently updated policy on impact assessment. The latest update measurement (June 2009) shows the good news of a net decrease of 2% in regulatory costs on business compared with the original baseline.

This part of the Swedish Better Regulation agenda is benefiting from the institutional framework set up for the agenda as a whole. The establishment of an external body, the Better Regulation Council and the stronger co-ordinating role of the Ministry of Enterprise are particularly important developments. The Ministry of Enterprise now has a prominent co-ordinating role in

encouraging efforts to meet the target. It is backed up by a State Secretaries steering group (chaired by the ministry), and the inter-ministerial officials working group to spread best practice and prepare progress reports. The keynote in this context is encouragement and sharing of best practice, rather than "name and shame". The Better Regulation Council strikes an altogether stronger note, at least potentially. This recently established external body scrutinises all proposals for new or amended regulations that could affect business competitiveness and its views are made public. Its role may well be crucial in assuring the overall success of burden reduction.

The institutional framework and resources to drive the programme need, however, to be further strengthened. Sweden recognises that key challenges include consolidating official and political "buy in" to the programme. This will not happen if steering and support capacities are inadequate. Currently, the co-ordinating Ministry of Enterprise deploys a small team of fewer than ten officials (not full time). The ministry is strongly committed to and enthusiastic about the programme but struggles because of capacity constraints. Key implementing ministries may also need to upgrade their resources, especially where it is proving difficult to take forward sufficient proposals to meet their "share" of the target, ensure that goals are translated into concrete measures, and secure timely implementation of the measures. The OECD peer review team were told that in general, there are difficulties of time and resources, and that "people do their best". That said, some ministries are doing better than others.

The decision to have a net target is critical to long term success. This is especially the case in a context of likely pressures, post economic crisis, to step up regulation in some areas. It is also important in the specific Swedish context of concern for sustaining high regulatory quality standards. The issue is not to question that concern, but to ensure that regulations do not come with unnecessary burdens attached.

The pressure on participating ministries and agencies to contribute to the target is, however, weak. There are few obvious incentives to encourage a consistently high performance across participating ministries and agencies. The 25% target for 2010 is an overall target for the whole government and there are no individualised targets, which would put greater pressure on individual ministries. This means that a lesser commitment by some has to be compensated by an above average commitment by others. There is a limit to this. Evidence of considerable variability in performance suggests that unless firm action is taken soon, there is a real danger of failing to meet the overall target. Overall commitment and the chances of success would gain a considerable boost from the establishment of individualised targets.

The reduction of administrative burdens is technically well supported by the establishment of a zero base measurement and the Malin database. Sources and inspiration for the measures which are being taken forward in the Action Plan are the baseline measurement carried out by *Tillväxtverket* and stored in the *Malin* database, and the simplification proposals made by the business community, which are also loaded into the database. The zero base measurement, completed in February 2008 with a baseline year of 2006, is updated annually by *Tillväxtverket* to take account of new burdens. *Malin* also includes a simulation facility which can be used by government offices and agencies to calculate the potential administrative costs of new regulations and changes to existing regulations. The success of Sweden's simplification policy rests on an effective use of these instruments. Zero base measurements provide in-depth insight in the government wide composition of administrative burdens – insights which can be used to identify concrete proposals for burden reduction. They are also an essential starting point for effective monitoring of progress.

It seems, however that these instruments are under-used and that the user-friendliness of the Malin database needs improvement. An updated version of the *Malin* database was launched in

spring 2009, with some improvements as regards the user-friendliness. This is important. The OECD peer review team heard from a number of stakeholders that the *Malin* database tends to be under-used for the purpose of identifying simplification actions. The result is that the measurement of burdens on the one hand, and the reduction of burdens on the other hand, are two separate processes in practice, instead of the first adding value to the second. It seems, in short, that the measurements are only loosely linked with the policy. A more user-friendly database would also remove any excuses from reluctant ministries that they are having difficulty identifying burdens. If *Malin* is under used, this also implies that the simulation facility for forecasting burdens in new regulations is not exploited to its full potential. If the facility is not used, then the extent of expected reductions from new regulations will not be known. It will not therefore be possible to identify in a timely manner whether and to what extent the measures are going to be sufficient to meet the target, or whether more will need to be done. A more systematic use of *Malin*, which appears well constructed, would help to identify further possibilities for reductions, as there is some concern at this stage that not enough actions have been identified to meet the target. *Malin* is also especially relevant to the co-ordinating Ministry of Enterprise, which needs to have a detailed understanding of burdens (what burdens, who is responsible etc), not least for monitoring purposes, as well as to back up the efforts of individual ministries to make their contributions to the Action Plan.

Agencies are critical to success, and despite excellent work by *Tillväxtverket*, the framework for securing this needs reinforcement. The serious involvement of government agencies is critical to the success of the Action Plan as the secondary regulations which they produce contain many of the burdens that the government needs to cut. *Tillväxtverket* plays an important and effective central role as co-ordinator and adviser. However, this needs to be systematically backed up by the parent ministries, as the depth of agencies' engagement depends in many cases on the interest of their parent ministry. The OECD peer review team heard that some ministries did not take an especially close interest in the actions of their agencies in this regard. It is important that agencies are given clear instructions on what is expected of them as regards their contribution to the parent ministry's Action Plan.

Horizontal co-operation between agencies and ministries is also important, for those issues which require shared solutions. More shared working is needed across and between agencies and ministries, in order to identify issues that individual ministries/agencies cannot address alone, to share best practice, to eliminate overlap (for example, multiple requests for the same information), and not least, to prevent the syndrome of expecting someone else to take responsibility for action. Co-operation is happening where ministries and agencies are motivated, but the OECD peer review team heard that it was, overall, a weakness.

Local governments need to be encouraged into making a contribution to the programme. A successful Better Regulation policy requires the involvement of all relevant actors. The municipalities, which are the primary interface for SMEs and responsible for licences and planning, are not sufficiently integrated into the policy. This is a significant weakness. The process is, however, at an early stage, and in the Swedish context of autonomous local government (a situation that is similar to that of several other European countries), making progress is inevitably slow and complicated. An important institutional issue slowing progress is the lack of resources within the Government Offices, and the fact that no government agency has a clear mission to support the process.

The Riksdag is a key source of support as well as an increasingly necessary partner in securing the changes that need to be made. As in other countries, once the low hanging fruit have been picked, progress is likely to depend increasingly on legislative changes. The government already makes annual reports available to the *Riksdag*, albeit with a certain time lag. The parliament seems well disposed to offer support. It was instrumental in encouraging the government to step up work on

regulatory simplification in the first place (with public requests in 1999 and 2002). It is aware of the fact that part of the programme requires changes in legislation.

The government has encouraged regular communication with the business community, and a number of ministries and agencies have established robust consultation arrangements. In setting up the programme, the government has promoted the development of structures to gather the views of the business community. So called reference groups were set up to help establish the baseline measurement. The Ministry of Enterprise has established a central working group with business representatives and this is flanked by the working groups of a number of ministries and agencies (who have to report on what they have done). A majority of ministries now engage in a "continual dialogue" with the business sector, although approaches differ, and the quality of the interaction appears to vary. Around half of the agencies now arrange consultation devoted to Better Regulation. The experience of other European countries is that a critical success factor of a well run regulatory simplification programme is effective government-business communication, which instills mutual trust.

Securing the continued support of key external stakeholders needs the anchor of an enhanced effort in communication. The timely presentation and communication of developments and results from the Action Plan needs to be boosted. Although the roots of the current Action Plan go back a number of years, it is only with the current government, from 2006, that the programme has taken serious shape and obtained effective political support. As in other European countries, the results of this kind of programme can be frustratingly slow to take effect. The business community has been quite patient so far. The main current vehicle for communicating results seems to be the annual report to the *Riksdag*. This may not be enough. Perceptions of progress matter. The Better Regulation Council could be helpful in this regard.

The current programme addresses a wide range of issues and is on the right track in its scope. The Action Plan for Better Regulation extends a considerable way beyond measures to reduce administrative burdens, covering issues such as simpler regulations, improved service and accessibility, and shorter processing times. Its scope reflects the feedback from the business community on what is important for them. The next step might be to consider identifying further specific targets for the programme, in areas other than administrative burdens, against which progress could be more effectively measured and evaluated.

Evaluation of the Action Plan is important, to check that it is on course to deliver real benefits in support of competitiveness. The *NNR* has drawn attention to the need for systematic evaluation of progress and results, not least to check that the latter are of real use to business. It plans some evaluation work of its own. The Swedish National Audit Office was pro-active at an early stage, presenting a report to the government in 2004 (Regulatory Reform for Enterprises) in support of the *Riksdag*'s own pressures for government action. Could it be persuaded to do more and to evaluate the programme on a regular basis?

The EU dimension is important. About 50% of the administrative burdens are of EU origin. Swedish efforts (as in other EU countries) depend in large part on corresponding efforts at the EU level and the EU's own administrative burden reduction programme. Burdens stemming from EU origin regulations may take longer to unwind than ones generated entirely within Sweden.

So far, the Swedish regulatory simplification programme only covers business needs. There was no evidence picked up by the OECD peer review team that Swedes are demanding more. The effective deployment of e-Government may be a reason for this. Area 4 of the e-Government project aims to produce visible results for citizens as well as businesses in terms of simplified contact with the public administration, and Sweden ranks well in international comparisons. Nevertheless, some other

European countries have set up specific programmes aimed at simplifying life for citizens. Should one be considered for Sweden?

There is no specific programme for the reduction of administrative burdens inside government, although there are several initiatives. Sweden might usefully consider strengthening its work on regulation inside government, given the public policy challenge of sustaining high levels of social welfare against the background of an ageing population, and the significant role of the state in the economy. Consideration might be given to developing a specific programme, as several other European countries have done (such as the United Kingdom). A stronger policy in this area could release public sector employees from unnecessary tasks so that they can focus on service delivery. This may be an issue of interest at the local government level.

Compliance, enforcement, appeals

Data on compliance with regulations is not collected on an aggregate basis, however the compliance record is assessed to be good. Sweden, like most other European countries, does not monitor compliance rates, yet this could be important in order to evaluate the effectiveness of the current regulatory system in this regard, and to guide next steps in enforcement policy. The issue could also be built into to the impact assessment process, via a requirement to review *ex post* the actual effectiveness of adopted regulations compared with expectations, as well as an emphasis in *ex ante* impact assessment to consider likely compliance and enforcement issues downstream.

The current approach to enforcement is complex and widely acknowledged to be in need of reform. Enforcement responsibilities are spread across a range of bodies, and regulated in different ways through more than 230 laws. This makes it hard to identify the best from the "not so good" performers and to promote new, more efficient and streamlined approaches to enforcement. The issue has also been highlighted in the 2007 Parliamentary Committee on Public Sector Responsibilities. The government has started to take steps to rationalise and clarify responsibilities, through organisational changes in some specific sectors. The general direction of further reforms has been expressed in a report by the government to Parliament in December 2009. Reform would, in particular, lay the groundwork for encouraging the further deployment of approaches such as the use of risk analysis to determine the optimum frequency of inspections.

The Swedish appeal system is strongly rooted in a culture that protects citizens' rights, and an issue with appeal delays is being tackled with noticeable effects. Swedish appeal processes for contesting administrative decisions are well established and well structured. The government is aware that there is an issue of delays in reaching decisions on appeals, partly due to a rise in the number of cases, and it is taking action.

The interface between member states and the European Union

The EU dimension is a prominent aspect of Swedish preoccupations over Better Regulation. The EU was a prominent topic of discussion with the OECD peer review team at most of its meetings with Swedish stakeholders. In Sweden, as in other EU countries, and a high and rising proportion of regulation is of EU origin, and is estimated to account for at least half of administrative burdens. The EU dimension is perceived to be growing in importance, with a corresponding need to manage issues more effectively at all stages of the process.

There are clear formal processes for setting strategic decisions in the negotiation of EU directives, but capacities for effective negotiation in practice may need reinforcement. There are clear formal processes for allocating and managing responsibilities for negotiation, and for setting

negotiating positions (which also engage the parliament). But the framework appears less strong once a specific negotiation has started, and external stakeholders raised a number of concerns. Public consultation by the government is not systematic. Adopted directives may raise a range of problems. These include the level of detail and specificity of many directives, leaving little room for adaptation to the Swedish context, unclear language, and the frequent requirements in directives for the provision of reports, which adds to bureaucracy. Although these are issues which are beyond the capacity of one member state to resolve, they do suggest that more could be done in negotiation to minimise the problems. A requirement for the *ex ante* impact assessment of draft EU directives (at least the key ones) would also help to identify important issues for the attention of negotiators.

The transposition of EU directives also raises some issues. Transposition deadlines are monitored by the Prime Minister's Office but there are no formal or systematic mechanisms for requiring timely and effective transposition by responsible ministries. An issue raised by a number of stakeholders concerns gold plating (going further in transposition than is strictly required by a directive). It was difficult to form a clear view of whether, and why, goldplating does occur. Factors which obscure the picture include the fact that transposition may be used as an opportunity to review a range of related national regulations, efforts to maintain Swedish standards, and a clash between EU and Swedish legal frameworks.

Local governments, through their responsibilities for implementing EU origin regulations in a range of important policy areas, are important actors. The EU regulatory influence on local governments is significant due to their role in the enforcement and execution of regulations in key policy areas such as the environment, food policy, public procurement and regional development. Although there are formal processes for involving them in the development and transposition of EU regulations, there appears to be a deficit of resources and capacities for effective participation by this level of government.

Sweden attaches importance to the interface with EU Better Regulation processes, and puts significant effort into supporting the development of these processes. Some Swedish ministries and agencies are very active in their own policy areas. Efforts have been made to support the EU administrative burden reduction programme with Swedish measurement inputs, and significant progress on the EU's impact assessments is acknowledged. The *NNR* (Board of Swedish Industry and Commerce for Better Regulation) which advocates for a large part of the business community, has been especially active in developing and presenting proposals, both strategic and detailed, for improvement. The general consensus is that there is important further work to be done at EU level, for example ensuring that all significant draft directives are the subject of an impact assessment and that this is updated to capture the effects of major amendments on the way to adoption.

The interface between the subnational and national levels of government

Strong traditions with deep historical, legal and cultural roots define the interface between central and local government. There is a considerable degree of constitutionally protected decentralisation and municipal autonomy to reflect local conditions, compared with many other European countries. This sits alongside the principle of homogeneity in living conditions across the Swedish territory. The two principles are a challenge to reconcile. In the same way, significant independent powers of taxation are mitigated by a tax equalisation scheme to even out inequalities. Regulatory effects on local governments can be contradictory as a result, as the result may be a mix of detailed regulation from the centre for some areas, and no central direction in other areas. This is further reinforced by the traditional autonomy of central government ministries and of their agencies, meaning that a very large number of players are taking regulatory actions in relative isolation from each other. The 2007 Parliamentary Committee on Public Sector Responsibilities report put it this

way: “Little consideration is given to the aggregate effect of individual measures on each other, and approaches can be contradictory… central government should develop a complete and coherent strategy for governance of the local government sector… there is a great need to reunite the state”.

This framework, together with other structural factors, presents challenges for the effective and timely roll out of Better Regulation at the local level. There is also a complex subnational geography, highlighted by the 2007 Parliamentary Committee report. The structure of government and agency offices in the regions is a complicating factor (each government agency, for example, is organised to fit the needs of its own functionality). The inefficiency of the current geography is recognised by the government. Another deep seated structural factor is the traditionally significant role of the state in the economy and society, which is also reflected at the local level. Municipalities are major providers of public services, and may compete with private entrepreneurs, undermining efforts to promote SMEs.

Yet municipalities play a critical role in the interface with citizens as well as businesses, which necessitates the application of Better Regulation principles. Municipalities have a broad range of tasks, mostly concerned with the execution and enforcement of national regulations, which includes the delivery of public services, the management of planning, and the allocation of a range of permits and licences. Fundamental decisions about how to use “soil and water” are made by the municipalities. A number of stakeholders, including the business community and *Tillväxtverket*, underlined the growing need for this level of government to engage in the Better Regulation agenda, despite the difficulties. Municipalities are not yet firmly linked up with Better Regulation, compared with the situation in a number of other European countries.

The central level of government needs to consider how to develop a stronger integrated framework and vision for the management of policies and regulations affecting municipalities. The conclusions of the Parliamentary Committee in this regard are highly relevant, and were already picked up in the 2007 OECD report. The Ministry of Finance, as overall co-ordinator for local government issues, has a potentially important role to play in this regard.

The autonomy of municipalities means that central Better Regulation policies do not automatically apply directly at this level, yet some are highly relevant. For example, municipalities are not directly involved in the central government’s Action Plan for regulatory simplification, despite being a major source of burdens on business through their application of higher level rules, according to the measurements carried out by *Tillväxtverket.*

Locally generated Better Regulation is also important, and efforts are being made, but there is some way to go. Efforts, mainly orchestrated by *SALAR*, are being made by the local level itself to adopt Better Regulation best practices. *SALAR* is increasingly active, for example seeking to encourage its members to standardise on approaches to the interpretation and enforcement of regulations. This review was not able to go into detail about the actions of specific municipalities but the overall sense is of very uneven progress, and some reluctance to adopt best practices. Yet sharing best practice is proving a powerful lever in some other European countries such as the Netherlands, the United Kingdom and Denmark. Benchmarking is used in some countries to encourage change, such as in Germany.

There is no specific framework or forum that would provide a mechanism for discussion between the national and local levels on Better Regulation. There does not appear to be any change since the 2007 OECD report, which recorded the unusual absence of such a mechanism “to manage issues and build a common purpose”. There is no forum, as exists in many other European countries, to bring together the national and local levels of government for regular debate on issues of shared

interest. This might aid progress in a number of directions such as the integration of the local level into the Action Plan for business burdens, and the best way to ensure that the local level is effectively consulted on draft regulations of special importance to that level, given capacity constraints.

Key recommendations

Strategy and policies for Better Regulation	
1.1.	Build on the effective foundations that are now in place. Keep a careful watch on the speed and effectiveness with which the new framework is delivering results so as to take rapid corrective or reinforcing action as needed. Check, at regular intervals, whether there is a need for further investments to strengthen major processes such as *ex ante* impact assessment.
1.2.	Increase resources in support of regulatory simplification. Ensure that each ministry has its own individual target to encourage buy in. Arrange for an evaluation of the programme to make sure that it is on course to deliver real benefits in support of competitiveness.
1.3.	Monitor the institutional framework for oversight of *ex ante* impact assessment and be ready to strengthen it quickly if impact assessments fail to improve. Address weaknesses such as the quantification of costs and benefits. Ensure that the full range of impacts (not just impacts on business) is addressed in a balanced way.
1.4.	Address the missing links in the current Better Regulation policy (see more detailed recommendations below) and pull this together into a "whole of government" strategy for Better Regulation. Consider whether the Better Regulation Council should be formally asked to advise on further development of the policy.
1.5.	Strengthen commitments to other societal groups and interests, beyond the business community.
1.6.	Consider whether it would be helpful to establish updated detailed consultation guidelines covering key aspects of good practice. Encourage the use of new approaches, such as Internet consultations, when there is a real need to reach out to a broader audience. Ensure that government agencies apply best practice as well.
1.7.	Announce a clear formal commitment to broadening participation in Better Regulation processes across all the levels of government. Strengthen discussion with local government to establish a plan for including them in the programme. Establish a forum for the regular exchange of views between central government and the municipalities

	on Better Regulation.
1.8.	Consider a White Paper on management of the EU dimension of Better Regulation, to capture both detailed and strategic issues that need attention at this stage. Include a review of transposition, which appears to raise issues.
1.9.	A persuasive explanation of the reform agenda to the widest public needs to be articulated by the government, explaining that the objective is Better Regulation in support of societal as well as economic objectives, going beyond the creation of a better regulatory environment for business.
1.10.	Ensure that all major regulatory policies and processes are evaluated. Publicise the fact that this will happen, and the results when they emerge. Consider whether to strengthen links with relevant research institutes for specific evaluations. Consider a strategic evaluation of the whole Better Regulation agenda.

Institutional capacities for Better Regulation	
2.1.	Consider whether any aspects of the Better Regulation Council's mandate need to be strengthened. Ensure that its existence and advice are well publicised, for example by drawing attention wherever relevant to its website.
2.2.	Ensure that any observations which emerge from the work of the National Audit Office (*Riksrevisionen*) that are relevant to Better Regulation are incorporated into government strategic thinking on the further development of Better Regulation.
2.3.	Ensure that the surveys carried out by business organisations and feedback on business views are used in shaping the next steps for Better Regulation policies.
2.4.	Boost the resources of the Ministry of Enterprise Better Regulation team and form it into a proper unit, focused solely on Better Regulation. Consider how the Ministry of Finance and the Prime Minister's Office can be more closely and visibly associated in support of its work.

2.5.	Ensure that the work of the Ministry of Justice on legal quality and plain language continues to be fully supported, and that its views on developments are integrated into strategic thinking on Better Regulation. Consider whether it would be appropriate to establish regular feedback from the Council on Legislation on its perceptions of developments.
2.6.	Encourage all ministries to further enhance their internal arrangements in support of the Action Plan and the preparation of *ex ante* impact assessments, and to boost these as necessary. Consider whether any incentives and sanctions can be put in place to encourage a strong performance across the board. An obvious one is to confirm individualised targets for ministries in support of the Action Plan – see Chapter 5 – but there may be other useful mechanisms to promote consistently good performance.
2.7.	Consider how horizontal co-operation across ministries can be further boosted.
2.8.	Review the key levers available to parent ministries for setting agency performance, including especially the annual appropriation directions and annual reports, as well as funding. Consider, together with the Ministry of Finance, whether these can be used more strongly, for example whether there is scope through the annual budget round to apply pressure, or whether Better Regulation can be embedded as part of the performance evaluation of agency heads. Ensure that cross agency co-operation is part of the requirements that will be followed up.
2.9.	Ensure that the reports to the *Riksdag* on progress with the Action Plan get a wide circulation among the parliamentary committees. Consider whether it would be appropriate to encourage the parliament to set up a Better Regulation committee (as exists in some other countries such as the United Kingdom).
2.10.	Evaluate the current resource situation, specifically with regard to the Ministry of Enterprise (see above) and the resources of other ministries for Better Regulation, and take steps to strengthen key actors where this is needed. Prioritise the further development of training courses and supporting guidance for Better Regulation and ensure that this is offered to, and taken up by, ministries and agencies.

Transparency through public consultation and communication	
3.1.	Review the Committee of Inquiry process to check for issues that make it hard for stakeholders to participate effectively (deadlines for comments, feedback processes, starting consultation at an earlier stage). Consider whether there is a need to review the way in which the general public may access the Committee of Inquiry process in order to make its voice heard. Encourage the use of new approaches, such as Internet consultations, where there is a real need to reach out to a broad audience.
3.2.	Consider whether it would be helpful to provide consultation guidelines focussed specifically on covering key aspects of good practice such as timing, scope, methods and feedback (the United Kingdom guidelines provide a good example). Consider how to ensure that such guidelines are respected.
3.3.	Consider how to ensure that government agencies systematically apply best practice principles for public consultation, at least as regards their more significant draft regulations.

The development of new regulations	
4.1.	Review the processes which are currently in place for forward planning of new laws and secondary regulations, in consultation with interested parties (such as the parliament and the business community) and take steps to remedy weaknesses.
4.2.	Monitor closely the institutional framework for overseeing *ex ante* impact assessment and be ready to strengthen it quickly if impact assessments fail to improve.
4.3.	Review the arrangements under which both *Tillväxtverket* and *ESV* have responsibilities for advising on agency impact assessments, and address any issues that are found.
4.4.	Reassess the provisions as regards quantification of costs and benefits.
4.5.	Ensure that the full range of important impacts, costs and benefits is addressed in *ex ante* impact assessments.

4.6.	Plan for a full evaluation of the new policy in the near future.

The management and rationalisation of existing regulations	
5.1.	Ensure that efforts at codification and spring cleaning of the regulatory stock continue, in support of and alongside the strategy for regulatory simplification.
5.2.	Increase the resources available to the Ministry of Enterprise for its co-ordination and support role. Encourage key contributing ministries to review whether they are adequately structured and resourced to make an effective contribution to the Action Plan.
5.3.	Individual, or even differentiated targets should be defined for each participating ministry. Alternatively, it should be stated explicitly that every ministry will have to deliver 25% unless stated otherwise and confirmed by the Cabinet. Consider also other measures to encourage buy in, such as a link to the budget setting process for government offices, and acknowledgment of individual contributions to the success of the Action Plan through the performance appraisal system.
5.4.	Require the systematic use by ministries and government agencies of the *Malin* database for identifying simplification actions, and for forecasting burdens in new regulations. Ensure that *Malin* is exploited fully for monitoring purposes.
5.5.	Ensure that parent ministries' instruction ordinance and/or the annual appropriation direction to agencies contains clear objectives for a contribution to the Action Plan and what is expected of agencies in this regard. Back this up with other actions such as regular update meetings based on ongoing and transparent monitoring of activities, where these do not already take place.
5.6.	Develop discussions with local government to establish a plan for strengthening their involvement in the efforts at regulatory simplification. Consider, as part of efforts to increase central resources for Better Regulation, how resources could be made available for this work, and whether a government agency could be given a mission to support it. Encourage the involvement of the Ministry of Finance.

5.7.	If possible and subject to resources move from annual to bi-annual reports to the *Riksdag*. Ensure that the reports are available quickly. Review the content and presentation of the reports, to ensure that relevant information is presented that distinguishes plans from achievements, and explains clearly what is required of different actors including agencies. Ensure that the information is clearly set in the broader context of what the government is seeking to achieve for the economy and society.
5.8.	Ensure that all participating ministries and agencies have established robust structures for communicating with the business community, and that the latter is provided with regular feedback on developments.
5.9.	Develop a communication strategy, in order to draw attention to the progress and emerging results of the Action Plan.
5.10.	Consider whether it would make sense to define specific targets for actions, to add to the target already set for administrative burdens, drawing on the experiences of other European countries such as the Netherlands.
5.11.	Consider how the programme could be evaluated (objectively), and by whom, on a regular basis. Use the results to guide adjustments to the programme in order to maximise its impact.

Compliance, enforcement, appeals	
6.1.	Consider a review of compliance rates, based as far as possible on data that is already available, in order to guide further steps for enforcement policy, and to feed back into the framework for *ex ante* impact analysis (paying more attention to issues of compliance and enforcement when a new regulation is under development).
6.2.	Continue the efforts at reform in order to streamline the enforcement system and improve efficiency. As part of this, consider how to encourage the spread of risk based approaches to inspection, as a means of minimising burdens on companies and improving public sector efficiency, using the experience of other European countries such as the Netherlands as a guide.

The interface between member states and the European Union	
7.1.	Consider a White Paper on management of the EU dimension in Better Regulation, to capture both the detailed and strategic issues which need attention at this stage.
7.2.	Carry out a wide ranging consultation of both internal and external stakeholders over the issues raised by draft EU directives, as part of the White Paper proposed above. Consider how current mechanisms, such as the role of the Prime Minister's Office and its guidance on negotiations, might be strengthened to provide more active support to negotiating ministries and agencies. Consider whether key ministries and agencies have adequate capacities for effective negotiation. Prioritise efforts on key issues for Sweden, and make impact assessments a requirement for draft directives that fall within these priority areas (the Better Regulation Council could play a prominent role here). Develop contacts with like minded member states to address issues such as potentially excessive reporting requirements.
7.3.	Include, as part of the proposed White Paper, a review of transposition, including oversight provisions to ensure that transposition is timely, and potential issues arising in the transposition of directives.
7.4.	Establish whether there is an issue of effective input by local governments to the negotiation and transposition of EU directives, and if so, consider what action could be taken to facilitate their input, perhaps by targeting the key areas for this level. This could be part of a white paper. Encourage *SALAR*, the local government representative association, to include EU issues in its annual list of priority areas.
7.5.	Continue the efforts to support and influence the development of EU level Better Regulation processes.

The interface between subnational and national levels of government	
8.1.	Consider, in discussion with the Swedish Association of Local Authorities and Regions (*SALAR*) and interested individual municipalities, how to bring the local level into the Action Plan for Better Regulation, and other relevant initiatives by central government (such as impact assessment of draft regulations that will have significant consequences for municipalities in terms of

	enforcement). Consider how issues of capacity and resources can be addressed.
8.2.	Encourage *SALAR* and interested municipalities to pursue their own efforts at developing and sharing best practice, drawing on the experience of other European countries.
8.3.	Establish a forum for the regular exchange of views between central government (including key agencies) and the municipalities on Better Regulation.

Better Regulation in Europe: United Kingdom - *Executive Summary*

Drivers of Better Regulation

Better Regulation is headlined as a central element of the government's economic policy, linked to an ongoing drive to further improve productivity, via the simplification of taxes and regulation, and policies to improve the regulatory environment for employers. Improving public services and bringing them closer to the needs of citizens and businesses also has a direct link with Better Regulation policies. Finally, regulatory reform is seen as a process that can help to meet the broader challenges faced by the United Kingdom and shared with other OECD countries, including climate change, the intensification of cross-border economic competition through globalisation, the need to improve prospects for deprived regions and communities and, not least, to promote economic recovery in the wake of the 2008 financial crisis.

The potential economic benefits of pursuing a Better Regulation agenda have been assessed as significant. The government for example estimates that further efforts to reduce administrative burdens could lead to direct savings for business and consumers of around GBP 4 billion (0.3% of GDP).

Public governance framework for Better Regulation

The United Kingdom's public governance framework is based on traditions of market openness, and a relatively low proportion of state ownership. Its common law driven judicial and regulatory framework, its well-functioning tradition of collective responsibility for decision making within government, and its political system which usually gives the ruling party a clear majority in the parliament, are other important features that condition the way in which Better Regulation is taken forward. There have been important recent developments in the institutional and decision making framework, with the establishment of elected assemblies and devolution of power for parts of the United Kingdom, as well as "work in progress" constitutional developments which are changing the way in which the different branches of government interact.

Developments in Better Regulation

There has been significant progress on a number of fronts since the 2002 OECD report on regulatory reform in the United Kingdom. The areas with major developments include *ex ante* impact assessment, policy on enforcement, engaging the local authority level, addressing issues in the management of EU origin regulations and more broadly, culture change. Regulatory reform continues to be underlined as a priority in the aftermath of the financial crisis. The government announced in April 2009 a number of actions designed to reinforce Better Regulation in light of the current economic situation. In particular, a new government committee for Better Regulation will be established, with responsibility for scrutinising planned regulation and proposals for new regulation that will impact on business and an external Regulatory Policy Committee will be established to advise government on whether it is doing all it can to accurately assess the costs and benefits of regulation. In addition, the government plans to work closely with EU partners to embed the EU Better Regulation agenda, and to publish a forward regulatory programme of existing and possible regulatory proposals.

Main findings of this review

The vigour and breadth of the United Kingdom's Better Regulation policies are impressive, which makes it well placed to address complex regulatory challenges such as climate change and the regulatory management issues flowing from the financial crisis. An effective balance, rare in Europe, has been achieved between policies to address both the stock and the flow of regulations. Progress has been especially significant as regards *ex ante* impact assessment and enforcement which is increasingly risk based. The United Kingdom is also very active in promoting the development of EU level Better Regulation. Policy is business-oriented and initiatives for citizens and frontline public sector workers could usefully be reinforced. Transparency is generally strong, and the United Kingdom has a well-established culture of open consultations, supported by a code of good practice. The gap between principles of good consultation and processes as experienced by stakeholders in practice needs continuing attention. The development of a more integrated and strategic vision for the longer term would be helpful, not least to confirm priorities and target remaining challenges.

The Better Regulation Executive has spearheaded a revitalised drive for Better Regulation and is one of the best examples of an effective central unit for Better Regulation in the OECD, bringing the key elements of Better Regulation under a single roof. It represents a new institutional phase, operating at the centre of a radial network of relationships with other key actors. It continues to promote this, for example at the local level via the establishment of the Local Better Regulation Office. The United Kingdom's complex institutional architecture requires active management and also the need to promote rationalisation, where possible. Further development of the BRE's networks would reinforce the culture change that is already taking place, but which remains an issue, as in other OECD countries.

Recent developments to strengthen *ex ante* impact assessment signal clearly the energetic promotion of a new approach to the development of regulations, and the United Kingdom is one of the OECD leaders in this respect. Major efforts are being made to integrate impact assessment into the policy making process. Impressive institutional and methodological support is in place. Quality assurance, however, needs sustained attention, to tackle variability in current performance. Whilst the application of impact assessment to EU regulations is noteworthy relative to some other EU countries, this aspect could benefit from further attention. Within the framework of well-established institutional structures, capacities to manage EU processes may need reinforcement, notably as regards transposition of EU origin regulations into national law.

The simplification programme for the reduction of administrative burdens on business is well structured, has already delivered savings and promises more. The current target is a 25% net reduction of burdens by 2010 and the programme has a broad scope. Some aspects need further attention including the engagement of local levels of government, as some other countries are doing, and a continuation of the efforts started to ensure that the burdens which matter most to business are addressed.

Strategy and policies for Better Regulation

The vigour, breadth and ambition of the United Kingdom's Better Regulation policies are impressive. This makes the United Kingdom especially well placed among EU and other OECD countries to address complex future regulatory challenges, such as climate change and the regulatory management issues flowing from the financial crisis. The United Kingdom also provides a positive lesson for other countries: it is possible to strengthen Better Regulation policies over time in the absence of any crisis that forces the need for reform. The United Kingdom experience of regulatory reform goes back over 20 years, with a steady strengthening and broadening of Better Regulation policies, processes and institutions.

Progress over recent years has been especially significant and ground breaking, by international standards, in the areas of enforcement and *ex ante* impact assessment. The

publication of the Hampton report in 2005 was a milestone in changing attitudes to enforcement, toward a risk-based approach. Processes for the *ex ante* impact assessment of new regulations have been steadily strengthened and brought closer to the policy making process itself, to maximise their influence at an early stage, and to encourage a change of attitude among policy makers. The simplification programme for the reduction of administrative burdens on business is well structured, setting a net 25% reduction target by 2010, spread among most departments. Other recent developments aim to spread Better Regulation across a wider range of players, including local authorities and regulatory agencies. Important efforts have also been made to tighten up the approach to negotiation and transposition of EU directives, and the United Kingdom is a major influence in the development of Better Regulation at the EU level.

An effective balance has been achieved between policies to address the stock and flow of regulations. Compared with many OECD countries the United Kingdom has been successful in moving forward simultaneously on two key fronts: simplification of existing regulations through the reduction of administrative burdens on business, and *ex ante* impact assessment of new regulations. The government announced an institutional reinforcement of this approach in April 2009, via the establishment of a new external Regulatory Policy Committee, whose role will be to advise government on whether it is doing all it can to accurately assess the costs and benefits of regulations.

There are nevertheless some challenges which need attention. Some of these were already identified by the 2002 OECD report. They include managing and restraining the complexity of the regulatory institutional environment, including the stock of regulations. Support for EU-related work is in place, but there are some issues which need to be addressed. Culture change in support of Better Regulation practices within the administration, as in most other countries, still has some way to go. There may also be a need for a more structured approach to the development of e-Government at local level in support of Better Regulation.

The rapid succession of initiatives reflects the importance of continuous improvement, but stability is also important for stakeholders. Better Regulation is not a "one shot" policy, and should be part of a continuous evolution. This has been well understood by the United Kingdom. At the same time, there is a need for stability, so as to allow enough time to learn effectively from past Better Regulation initiatives. The policies may not be fully appreciated as a result, which is likely to be a factor behind sometimes negative perceptions of progress and the government's achievements in the effective management of regulations.

Policy on Better Regulation is business-oriented; ensuring that a broader focus is sustained and developed would help to sustain long-term support for Better Regulation. The main focus at this stage is the business community, with Better Regulation firmly linked into government objectives to sustain the competitiveness of the economy and raise productivity. This is fully coherent with the EU's Lisbon agenda, and an essential anchor for any Better Regulation strategy. The initiatives aimed more directly at the needs and perspectives of citizens, employees, consumers and public sector workers are also important. They could be reinforced, and given greater prominence in government announcements on Better Regulation.

An integrated strategic vision of Better Regulation policy, its contribution to public policy goals, and where it is headed in the longer term needs to be more clearly laid out at this stage. There is no lack of material explaining the policies. United Kingdom leadership in many aspects of Better Regulation would, however, be reinforced if the overall picture could be conveyed more strategically. Strengthened regulatory management should be embedded in a vision which includes key aspects such as the benefit side of the equation and the multilevel dimension (EU and local levels). As well as explaining how the different policies reinforce each other, more effort should be made to demonstrate the link between Better Regulation and the achievement of public policy goals (and if necessary, develop the analysis that demonstrates the link). The publication in 2008 of the Better Regulation Executive (BRE)'s first annual review is an important step forward.

A complex institutional environment, combined with the rapid succession of initiatives, generates communication challenges. The United Kingdom has a complex institutional environment relative to some of its neighbours. The BRE needs to be encouraged in its wish to be more proactive and give a stronger lead to departments and agencies on how to communicate more effectively and consistently with external stakeholders in this environment, avoid unnecessary duplication of messages across documents, facilitate co-operation, and rationalise communication activities. The development of a more integrated vision will help with this.

The real challenges with the Better Regulation agenda need to be acknowledged more clearly. The business community and others are aware that there is unfinished work and an ongoing challenge to deliver Better Regulation. A key aim of communication is to highlight achievements, and to ensure that businesses have heard of the changes which are beneficial to them. It is also important to make sure that the agenda is honest about the challenges and what is left to be done. This should instill greater trust in government and help to manage expectations. The negative perceptions of achievements under the simplification programme are partly due to overoptimistic messages about the delivery of burden reductions.

Support for the long term will be sustained by engaging with a range of stakeholders more deeply, beyond the business community. Several groups, who already interact with the BRE, would welcome the opportunity for even greater interaction. These include the unions, consumers and the parliament. Reaching out to ordinary citizens, perhaps via the local level and the newly established Local Better Regulation Office (LBRO), should also be addressed.

Good initiatives have been taken to evaluate specific policies, but there is also a need for strategic evaluation of the big picture. The United Kingdom is ahead of many other OECD countries with its understanding of the importance of *ex post* evaluation of specific Better Regulation policies, in developing processes for this, and in using the results to strengthen specific policies (such as *ex ante* impact assessment). Good use is also made of the evaluation work of the independent National Audit Office (NAO). The depth and number of individual policies which have been launched underlines the need for a strong and sustained *ex post* evaluation of their effectiveness. The missing link is an overall evaluation of the Better Regulation agenda, an issue which was already picked up in the 2002 OECD review.

Transparency is strong, but websites are not well joined up and the development of e-Government in support of Better Regulation may need attention. It was beyond the scope of this report to address the issue of e-Government in any depth. Transparency and the availability of material on line, including and not least for public consultation exercises, is impressive. Websites are not always well joined up and the links can be difficult to follow. Some confusion between the BRE and the Department for Business Enterprise & Regulatory Reform (BERR) on the web may be undermining the BRE's separate identity. Local level e-Government initiatives may need review.

Institutional capacities for Better Regulation

The United Kingdom presents a complex but well articulated institutional environment which requires active management. The United Kingdom's institutional framework is the product of a complex evolution over centuries. There are a large number of regulators of different sorts. The Hampton and Macrory reports underlined that a key challenge for Better Regulation in the United Kingdom was to work with very different legislative structures and institutional arrangements across the country, as well as noting that there are many common issues in the regulatory field that cut across geographical and sectoral boundaries. A very positive aspect is that the institutional architecture is, in many respects, well articulated and functions with a smoothness that is impressive relative to some other "simpler" jurisdictions. The development of institutional complexity has been matched by the development of a capacity to ensure that the machinery of government does not seize up, not least through the system of collective decision making orchestrated by the Cabinet Office. Likewise, the

institutions supporting Better Regulation have evolved and developed since the 1990s to address the challenges.

Given this starting point, it will be important to avoid further complexity wherever possible. Some recent institutional developments (the growth in the number of agencies, devolution, and the growing influence of the EU) complicate the task of better regulatory management. Frequent changes in the institutional architecture and structures for promoting Better Regulation itself generate further potential difficulties. The Hampton report put it clearly: some of this complexity cannot be avoided, but wherever possible there should be streamlining. The 2002 OECD report had already picked up this important issue.

The Better Regulation Executive has spearheaded a revitalised drive for Better Regulation. The BRE is an influential, energetic, well-resourced and well-connected central unit, with well connected and high-level leadership. It is one of the best examples of an effective central regulatory unit across the OECD, both in terms of its influence and of its broad remit which brings the main aspects of Better Regulation under "one roof". Its establishment as a successor to the Regulatory Impact Unit with a broader mission, more staff, and improved tools and processes for the promotion of Better Regulation, has been a positive development.

The United Kingdom appears to have entered a new phase in the institutionalisation of Better Regulation. The BRE itself does not deliver Better Regulation. It operates as the centre point of a radial network of relationships drawing in other important actors, not only within the central government executive but beyond (the parliament, the NAO, national regulatory agencies) as well as at the local level. At the end of the day it is a (relatively speaking) very small central entity seeking to influence a very large and disparate set of actors. Structures such as the identification of a minister responsible for Better Regulation in each department contribute to the strength of the system. The complexity of the institutional architecture suggests that this evolution is particularly necessary for the United Kingdom, but it does also offer a valuable model for spreading Better Regulation that might be of interest to other countries.

The engagement of local levels of government is progressing; this is essential to the success of Better Regulation. The responsibility of local authorities for the enforcement of national regulations, as well as their responsibilities for licensing and planning, puts them at a critical interface between central government and local stakeholders who stand to benefit from Better Regulation. Recent important initiatives to rationalise and co-ordinate the approach to local regulatory enforcement, such as the Rogers review and the establishment of the LBRO, represent an important extension of Better Regulation policy to this level of government, which needs to be developed in other areas too.

Reinforcement of the network of Better Regulation relationships across all branches of government is needed. Although the BRE has been successful in developing a range of contacts and relationships (including through secondments from other departments), the overall picture remains uneven. Its "horizon scanning" abilities to spot relevant policy developments around departments have improved but could be even better. There is scope to develop stronger relationships and spread best practice with certain key actors beyond those central government departments and agencies which have developed a special interest in the subject.

Significant progress has been made to progress culture change. A network of structures operating at different levels have been set up across central government, including Better Regulation ministers, board level champions (officials to support the ministers), impact assessment sign off by ministers, and Better Regulation Units to support and deliver Better Regulation processes and programmes. Training for the application of Better Regulation tools and processes is also well-developed, on line, through the support of specialists, and as part of general training programmes for civil servants which tackle issues such as impact assessment and consultation. A highly structured performance measurement system is in place, covering the main dimensions of Better Regulation.

There remains a culture /capacity gap, and the carrots and sticks for better performance may not be strong enough. Tools and processes are increasingly sophisticated, and they need commitment, as well as professionalism and expertise. The BRE does not dispose of any formal powers to call departments to account, and the real effectiveness of its role with departments during the policy development process is hard to judge from the outside, absent any clear sticks (such as budget cuts) if performance is inadequate. It is also not clear how good work by officials on Better Regulation is rewarded in the current performance appraisal system and career postings.

Independent regulatory agencies can help to define effective practical strategies, but fragmentation of their own Better Regulation efforts needs to be minimised. The capacity of regulatory agencies to assess what works best may be stronger than that of departments, because they are closer to the ground. At the same time, the wide variations in their status and powers means that Better Regulation policies such as impact assessment may automatically apply to some regulators, but not to others. The issue of fragmentation (or simply the lack) of Better Regulation initiatives, for those regulators which are not constrained by central government policies, reduces transparency and increases complexity for stakeholders. One of the criticisms of the Macrory report was the significant differences in powers and practices among regulators, causing inconsistency and detriment to business. The agencies appear somewhat sensitive in this regard, wanting to ensure that their independence and statutory mission is not compromised by centralised Better Regulation management.

The parliament's interest in Better Regulation is helpful, especially as regards feedback on the quality of consultation and impact assessments. The parliament's role in scrutinising secondary legislation is important. Several parliamentary committees, in both houses, are active in this regard. In addition, there are parliamentary committees with specific responsibility for Better Regulation.

The National Audit Office is a valuable asset for Better Regulation. The NAO provides an external, professional, concrete, independent view on the quality of regulatory management. It has provided, over the last few years, valuable input to key Better Regulation programmes and processes such as impact assessment and the simplification programme. It has recently been engaged in joint review activities with the BRE. Its independence is an asset that needs to be preserved.

The interaction of the judiciary with regulatory developments is also important. The judiciary, especially in a legal system based on common law and precedent, should not be neglected in the pursuit of Better Regulation. They are at the frontline of important issues such as the trends in litigation and appeals, and what this reveals about the regulations that are being challenged. These insights could provide valuable feedback to the further development of Better Regulation policies.

Transparency through consultation and communication

The United Kingdom has a well established culture of open consultations aimed at maximising transparency in the process. The framework for promoting public consultation on regulations via the Code of Practice on Consultation is well established and promotes a very open approach. Government departments are expected to consult widely and carefully, and if they do not take this approach and apply the code's criteria, they are expected to explain why. The sample of recent consultations reviewed for this report suggests that consultation documents for major issues are clearly written and should be easily digested by stakeholders. The recent consultation with stakeholders on the code and its effectiveness is also very positive evidence of the United Kingdom's search for continuous improvements in its Better Regulation tools and processes. The latest version of the Code of Practice on Consultation is brief, clear and to the point.

There is, however, evidence of an important gap between the code of practice principles and stakeholder views on the process in practice. The recent review of the Code of Practice on Consultation showed that there was concern at the way consultations are carried out in practice. The OECD team picked up a general desire from stakeholders for improved consultation, and a certain

fatigue linked to too many successive initiatives. Some stakeholders complained that the government sometimes appears to consult at a time and on issues of its choosing, that response times are sometimes inadequate and that consultations methods are not always well chosen. There was some concern that the voice of business might be too strong, business associations being effective and powerful lobbyists with an ability to influence consultation processes to strengthen their case, and having the ready ear of the government.

Communication on aspects of the regulatory stock and flow is good, and would be even better with a consolidated database of regulations. There is as yet no consolidated government register of all primary and secondary regulations, which means that the regulatory stock is not easily identifiable. Work to develop such a database should be continued.

The development of new regulations

The production of explanatory guidance notes is receiving welcome attention. The recent Anderson review includes a number of practical measures to ensure that guidance is helpful and remains up to date, which the government is following up. The BRE's Code of Practice on Guidance of Regulations aims to improve the quality of guidance notes so that businesses spend less money on external advisers. The widespread use of guidance notes does raise some issues, as it seems that guidance is increasingly judiciable, meaning in effect that it becomes a form of "tertiary" regulation. Some other countries have sought to control the amount of guidance required.

Forward planning for important policies and legislation has recently been strengthened. Forward planning of secondary regulations has been much less developed than for primary laws. There is now a commitment by the government to publishing a forward regulatory programme that will include existing and future regulatory regulatory proposals.

Common commencement dates are a positive development. The United Kingdom was ahead of other European countries in the introduction of common commencement dates. These are fundamentally helpful to business. The presentation to the business community with a set of new regulations in "one shot" may need some management to ensure that that it does not (perversely) contribute to poor perceptions of the government's success in regulatory management. The EU's Small Business Act for Europe adopted in 2008 sets out that the European Commission will now introduce common commencement dates and it encourages member states to follow suit.

Recent developments to strengthen *ex ante* impact assessment signal clearly the energetic promotion of a new culture for rule making. There has been considerable progress on *ex ante* impact assessment since the 2002 OECD report. The United Kingdom is doing far more to promote this than many other OECD countries. Unlike many other countries, it also seeks to learn and apply lessons from the *ex post* evaluation of past approaches. The message is that Better Regulation does not just mean "producing good piece of regulation", but provides evidence-based support for the development of public policy (whether or not it results in a new regulation). Major efforts are being made to integrate impact assessment into policy making, so that the two processes are interwoven. With this approach, "Better Regulation" is a way of helping governments to frame a policy issue, to discuss it with interested parties, to measure costs and benefits of the different options for addressing the issue, and to secure effective implementation and enforcement of the process for doing this.

Impressive institutional, methodological and support arrangements are in place. The strengthened approach includes substantial efforts to allocate responsibilities appropriately, with economists to support the monetisation of costs and benefits, departments to take responsibility for doing impact assessments with the help of their Better Regulation units, ministers to take political accountability, and for BRE to be the "helpful policeman". The introduction of a summary sheet has made the process clearer and more transparent, with a greater focus on the costs and benefits of intervention. A suite of comprehensive and accessible guidance has been developed for non-specialists. The guidance is detailed and comprehensive, covering every kind of situation. It would

seem hard to "escape" from doing an impact assessment the correct way. There is some overlap in the guidance, which is extensive, and the need for a roadmap to signal the important links, and what should be tackled first.

Transparency is an important feature of the process. The Code of Practice on Consultation must be followed, the aim being to put the initial analysis out for public scrutiny and to gain new evidence. The BRE lists all final impact assessments produced by departments on its website. These arrangements take the United Kingdom some way beyond those of many other OECD countries.

Quality assurance is, however, a major issue that needs sustained attention. To secure progress and maintain its leadership in this area, the United Kingdom should increase quality control of impact assessments. There appears to be a variability in performance not just between departments but within departments, and linked to this, the supporting arrangements within departments. The amount of data and quantification provided is variable. Proportionality of effort based on a careful evaluation of the relative importance of proposed regulations also needs close monitoring, as carrying out an effective impact assessment is resource intensive work.

Measures of success for the strengthened approach should be developed. The test will be whether any (important) proposals are turned down or modified because of the process, and whether the process provides a real and enforceable challenge to the development of new regulation. Will policy proposals be developed in such a way that the most effective solutions are identified (regulatory or non-regulatory)? Trends in the production of secondary regulations still appear be upwards, suggesting that departments are still too enthusiastic about regulating in response to a policy issue.

The Better Regulation Executive pilots for dealing with interlocking policies look promising, and are an obvious extension of the impact assessment concept for complex policy areas. The proposals for a new approach to the impact assessment of proposed regulations that are linked but which cut across departmental boundaries is increasingly important for the effective management of complex policies such as climate change. This will be a test of institutional capacities to work together, and requires a significant commitment of co-ordinated effort by participating departments. The traditional Cabinet committee system is not geared to this challenge (it is not used to evaluating multiple initiatives, just one policy at a time).

The parliament plays an increasingly important role in the *ex ante* review of new regulations. A number of committees (the Joint Committee on Statutory Instruments, the House of Lords Merits of Statutory Instruments Committee, the House of Commons Regulatory Reform Committee and House of Lords Delegated Powers and Regulatory Reform Committee) have developed a substantive interest in regulatory quality, and there is evidence of considerable efforts to scrutinise secondary regulations.

The new impact assessment form does not give enough prominence to the option of alternatives to regulation. The new form does not directly draw attention to this aspect, asking why government intervention is necessary, and for analysis of the "zero option" or other "regulatory options", which are not quite the same thing. It does not raise the possibility directly of applying alternatives to "command and control" regulation.

The work of the Risk and Regulation Advisory Council (RRAC) for the development of new risk-based approaches is potentially groundbreaking. The RRAC initiative is important, not just for the United Kingdom but also for other countries that are interested in this approach. The results of its work will need to be translated into the "practical" regulatory policy framework when they come through. The impact assessment process already includes a request to policy makers to consider and assess options from a risk based perspective.

The management and rationalisation of existing regulations

The simplification programme for the reduction of burdens on business is well-structured, has already delivered some savings and promises more. The programme has an overall net reduction target of 25% by 2010. A wide variety of burdens is addressed, with some proposals extending to cover full compliance costs. Although savings are "backloaded" so that a large part is expected to be delivered closer to the target deadline, some departments have already delivered significant savings and the plans of some others look promising.

Although measurement was apparently a challenge initially for departments, they now appear to be coping well. The BRE provides good support for departments in the development and adjustment of their simplification plans, as well as an incentive to meet the target through its performance assessment measurement of departmental Better Regulation achievements. The programme is transparent, open to public scrutiny, and there are significant efforts to reach out to stakeholders so as to better identify their needs.

Some aspects need further attention. There is a need to find ways of engaging local governments in administrative burden reduction, as some other countries are already doing with their programmes. Local governments are the main interface with the large majority of businesses. Developing an approach to take more effective account of the impact of major new EU-origin regulations is also important, as the roots of some burdens predate the start of the simplification programme.

Business is fundamentally supportive of the initiative, but perceptions of achievements appear relatively poor compared with the objective progress being made. This is a complex issue, not unique to the United Kingdom. The fact that a large part of the savings under the programme will only be delivered nearer to the end date of 2010 is not helpful when expectations appear to have been fuelled for quicker results. Part of the problem appears to be that business does not distinguish between different costs or policies and, for example, may react angrily if corporation tax goes up, linking this to a failure in Better Regulation. Also, benefits are quickly taken for granted, and attention turns to the next wave of irritants. It suits some businesses to keep regulation as a barrier to entry, and trade associations may want to keep their advisory work by exaggerating the difficulties that still exist. One challenge is to show a meaningful impact for individual businesses. Presenting total cost savings in government publicity is meaningless for individual businesses (especially SMEs) whose share will only be a small proportion of the whole. There is an inherent difficulty in the fact that part of the argument for the programme rests on a counterfactual: it could have been worse without the efforts. There are some United Kingdom-specific elements to the situation. The popular media may exaggerate difficulties compared with the reality, which is often more positive. There are some important underlying differences compared with other European countries, in terms of the traditional relationship between the government and the business community, which is largely in private hands and does not consider itself to have any special ties of loyalty to the state.

Although there are a number of useful initiatives, there is no systematic effort to consolidate or simplify the regulatory stock. Parts of the simplification programme for reducing administrative burdens include important initiatives to simplify areas of the regulatory stock. Other initiatives such as the Legislative Reform Orders to remove unnecessary burdens in existing legislation, post-implementation reviews of regulation, and the use of sunset clauses are also helpful. But simplification is not the main aim of the simplification programme, and the overall approach is not systematic. The lack of any systematic effort to map and consolidate regulations in the United Kingdom's common law based structure, which also relies heavily on secondary regulations, may be of some consequence as there is a risk of significant regulation overload over time.

Negative business perceptions have roots in substance as well. It is important to focus on what business actually wants, and to distinguish between the needs of different types of business. The OECD team heard that businesses are worried about the flow of new regulations and their quality. The

NAO's recent review of the programme found that when asked, businesses felt that burdens have increased. It has also highlighted the importance for departments to develop a thorough understanding of business concerns as the key to delivering real impacts on business, by working more directly with businesses. The programme has been adapting to the fact that the business community is not a homogeneous mass. This is helpful, as there is a gulf between the micro business offering a local service and the large multinational, as well as important differences between firms operating in different sectors.

Further development of initiatives aimed at citizens as well as frontline public sector workers, as some other OECD countries have done, would help to redress the balance of a business oriented agenda. It would also have the advantage of engaging local governments, a key interface for citizens, further into Better Regulation. The Service Transformation Agreement Action Plan to promote public services that are more personalised to the needs of citizens and businesses is a step in the direction of a more citizen-oriented Better Regulation agenda. Cutting bureaucracy for public services is another important and ambitious initiative which helps to redress the balance. It may also shed some light on the sources of unnecessary regulations emanating from a range of different regulatory agencies and central government departments. There is an ambitious commitment to reduce by a net 30% by 2010 the data that central departments and agencies request from frontline public sector workers.

Compliance, enforcement, appeals

The practical roll-out of the Hampton recommendations is a fundamental and comprehensive effort to embed risk-based regulatory management at ground level. There have been significant developments since the 2002 OECD report, and steady progress in taking forward the 2005 Hampton review recommendations, which proposed the adoption of common principles of regulatory enforcement based on risk assessment. The changes proposed by Hampton were innovative and have been a source of inspiration to other countries. Change was particularly necessary in the United Kingdom, given its complex and overlapping structures for enforcement. Consistent change across all regulatory agencies and local authorities will take time. The recent BRE/NAO reviews of progress note this issue in relation to the five non-economic regulators. The mix of initiatives which has been put in place, including statutory requirements on regulators (the Regulators' Compliance Code) as well as softer approaches such as the Regulators Hampton Implementation Network Group to exchange views seems appropriate to the challenge. The new regulatory sanctions regime is another positive development. The new regime will give regulatory agencies new, more flexible civil administrative sanction powers as an alternative to criminal prosecution. It is too early to assess its effectiveness in practice.

Rebalancing enforcement resources away from inspections in order to put more effort into preventative advice on compliance is a major step forward. Rebalancing resources is one of the most important developments following the Hampton report, even if its application remains uneven. The new approach does not invalidate monitoring of compliance rates. Compliance is not monitored as such (some countries do this). A clear picture of compliance rates could help in evaluating the effectiveness of current enforcement initiatives, and guide next steps in enforcement policy.

The Hampton recommendations relating to regulatory structures and the need for agency rationalisation remain important. The United Kingdom's crowded regulatory structure would be made more manageable with further rationalisation wherever this is possible. The Hampton report spoke of the "right regulatory structure" and recognised that there was a limit to what could sensibly be done, but still drew attention to the problem. It advocated consolidation of national regulators, better co-ordination of local authority regulatory services, and clearer prioritisation of regulatory requirements. These comments remain valid.

Recent developments appear to be reinforcing the judiciary's engagement in regulatory issues. The Human Rights Act has extended the role of the courts in areas such as data protection and

civil liberties, and the courts appear to be increasingly involved in rulings on guidance materials produced by the government, as well as experiencing a rise in litigation.

The interface between member states and the European Union

EU-origin regulations make up an important and growing share of the regulatory stock, and the EU dimension of Better Regulation is rightly emphasised. The effective management of EU-origin regulations is vital if the United Kingdom is to control its regulatory burdens. The EU is currently sometimes perceived as an "add on" to domestic work. The management of EU regulations has been picked up by the government's April 2009 statement which includes a commitment to "working closely with EU partners to further ember the EU Better Regulation agenda and to ensure that current pressures on business are taken into account when new European Regulation is being considered."

The institutional structures for handling EU regulations are well established and appear to work smoothly. The orchestrating role of the Cabinet Office, combined with support from the BRE's Europe team, and clear guidance, appear to be appreciated and provide the right balance in principle between central direction and departmental ownership of the process. The 2006 Davidson review picked up weaknesses in the process and this has now been turned into a clear guide for departments (covering both negotiation and transposition). Linking *ex post* transposition with *ex ante* negotiation of EU regulation is a good idea, perhaps especially important in the United Kingdom context of frequent staff changes, but also relevant for the consideration of other countries where the processes are disconnected.

Nevertheless, capacities to manage EU regulatory processes may need reinforcement. It is important that departments should own the process of managing EU regulations falling within their remit have the capacities and internal structures to do this well. It may be a reflection of this that the United Kingdom's record of transposition is mid ranking. The civil service tradition of short postings (for fast track and senior civil servants, often not more than three years in one place) raises a continuity challenge. The official responsible for negotiating a draft EU directive is unlikely to be the official carrying out the transposition. There is a need to secure continuity of information and understanding across the two processes when this happens. Legal resources for supporting policy officials in the negotiation phase may also need reinforcement. Lawyers' input is needed at this stage as well as for transposition, for example to ensure that non-controversial technical aspects such as transitional provisions are drafted so as to avoid problems at the implementation stage. Departments with a particularly heavy load of EU regulations, for example the Department for Environment, Food and Rural Affairs need the capacities and resources to do a consistently good job.

The United Kingdom is one of the few EU member states to require *ex ante* impact assessment of EU regulations, but the approach could be strengthened. The United Kingdom requires *ex ante* impact assessment of EU regulations to inform decision making throughout the process, from establishing the negotiating position in the European Council through to deciding on the best way to transpose and implement the directive in the United Kingdom. Its efforts in this regard need to be encouraged. It is not clear that the approach works well in practice.

Monitoring of transposition is fragmented and lacks formality. Monitoring is perhaps not strong or systematic enough to capture emerging issues. Transposition rates are monitored by the Cabinet Office and the BERR Europe team (responsible for Single Market policy), not the BRE. The Cabinet Office keeps in touch with departments and informs the European Commission when directives have been transposed. No single central record is kept of transposition rates. There is no dedicated page on departmental websites for EU regulations and how they are to be transposed.

The United Kingdom is commendably active at the EU level, but the approach could benefit from prioritisation. The issue of impact assessment, by the European Commission as well as at national level, should be a priority, alongside the current focus on reducing administrative burdens.

Encouraging the European Parliament and the European Council to take a greater interest in Better Regulation is also important. The Council is of course made up of United Kingdom and other member state representatives, so more effort might be needed to ensure that important Better Regulation issues embedded in draft texts for Council approval are vigorously defended. A strong forward look mechanism to catch upcoming EU issues is important.

The interface between subnational and national levels of government

A large number of diverse players are engaged at the local level, generating a complexity that needs to be managed. The local landscape is complex, both institutionally in terms of the number of actors and their relationships, and in terms of the range of regulations enforced at local level. The Hampton report highlighted that the present complex approach to local authority regulation allowed wide variations and inconsistencies and that the system as a whole was unco-ordinated. The Rogers report also highlighted the complexity facing local authorities in terms of the range of legislation which they enforce, and the fact that this legislation is owned by a large number of central government departments as well as agencies of various kinds. The LBRO used a jigsaw puzzle image to convey the dense network, breadth and complexity of all the actors engaged at the local level.

The Local Better Regulation Office is a very promising initiative in this regard. The LBRO was set up in 2008 by the government as a lever of change for Better Regulation at the local level. Its core objective is to support the improvement of local authority regulatory services, especially as regards enforcement. It has the powers, among others, to nominate a "best practice" local authority as the one whose interpretation of national regulations will be followed by other local authorities.

The United Kingdom has engaged in a vigorous effort to strengthen both the national-local and local-local interfaces in Better Regulation. Previous initiatives seem to have failed to deliver effective results, and co-ordination between local authorities themselves is not a strong feature. The initiatives which are now being taken forward (establishment of the LBRO and its power to designate a lead authority, streamlining enforcement priorities, the Retail Enforcement Pilot) look promising, and well-designed to take account of the underlying complexity. Many local authorities have already been encouraged to move towards risk based enforcement. Culture change among local authorities seems to have taken off, though this report is not able to judge how far it has spread. Culture change among the central departments and agencies which set the framework for local authority activity is also evident.

Local level regulatory activities seek a balance between the needs of citizens and businesses, in the interests of strengthening the whole community. The local level is necessarily more directly engaged in citizen related work (for example protecting vulnerable people and consumers). This provides a good counterpoint to the work undertaken to address business needs in order to secure the economic health of local communities.

Better Regulation policies are aimed at local authority regulatory services, a definition that may not capture all of the relevant initiatives and activities at this level. As well as the BRE's own initiatives, there are other developments that affect local authorities which are being carried forward by other central government departments, such as the Department for Communities and Local Government update of the local authority performance framework and indicators. Licensing and planning – a vital interface with government for local businesses – are not directly targeted by the current Better Regulation agenda, and may require specific initiatives for improvement.

Some national Better Regulation initiatives such as the simplification programme for businesses are also relevant for local authorities. Some national initiatives which might be expected to be relevant to the local level such as the reduction of administrative burdens on business are not yet linked up with the local level.

Use of e-Government to support simplification may need further development. Use of e-Government to support simplification is not highlighted in Better Regulation programmes and project literature. This contrasts with some other OECD countries which have given this issue greater prominence, via initiatives such as data sharing, online applications for licences, and interactive administrative procedures. The efforts of some individual local authorities to streamline licence applications and address other burdens may need encouragement and a more structured framework for effective development.

Key recommendations

Strategy and policies for Better Regulation	
1.1	Steps should be taken to address gaps and weak areas. In some cases this may simply mean building on existing initiatives such as the Local Better Regulation Office.
1.2	Ensure that significant new Better Regulation policies and developments do not succeed each other too rapidly, by bearing in mind the perspective of external stakeholders and their need to keep up. This also implies a strategic prioritisation of initiatives over time.
1.3	Aim to reinforce and develop initiatives that reach out to the non-business community. The project on burdens for frontline public sector workers and on the third sector (voluntary and community sector) is a valuable starting point. Citizen and community focused initiatives are also evident across other parts of government and at the local level, and could be given greater support.
1.4	Consider how to consolidate the United Kingdom's strategic vision of Better Regulation in a way that conveys the synergies and interdependence of its different components, and underlines the contribution which it can bring to major public policy goals (economic competitiveness, but also effective public services, and cross-cutting challenges such as climate change).
1.5	Communication strategy should be reviewed to ensure that external stakeholders (not just the business community) are clear about the government's Better Regulation policies, their interaction, and are not overwhelmed with overlapping material. A significant step in this direction was the production of the first annual report on Better Regulation in 2008 (BRE, 2008).
1.6	Communication should be on facts and ongoing developments, as much as on successes, and successes should not be overstated. Communication campaigns need to be based on substantive analysis and explanation of Better Regulation policies and what they can deliver. The use of plain language to explain Better Regulation, dissociated from political messages (overt or implicit) is also important.
1.7	Further efforts should be made to reach out to the non-business community.

1.8	The BRE should review the way in which it is presented and positioned in key documents and on the Internet, with a view to ensuring that stakeholders (internal as well as external) are clear about its distinct role.
1.9	Consideration should be given to reintroducing an independent advisory or scrutiny body (including representatives from outside the business community) or expanding the role of the current Risk and Regulation Advisory Council.
1.10	There should be regular monitoring of the Better Regulation agenda overall for balance, strengths, weaknesses and gaps, alongside the evaluation of specific tools and processes. This would also help to bring the strategic picture into focus, and improve coherence.
1.11	Consideration should be given to reviewing the structures in place for e-Government in support of Better Regulation processes, with a view to addressing weaknesses and strengthening the whole.

Institutional capacities for Better Regulation	
2.1	Consideration should be given, wherever possible, to minimising the complexity of the institutional architecture, for example by continuing to rationalise the number and types of regulatory agencies.
2.2	Ensure that the Better Regulation Executive continues to have the support and resources that it currently enjoys, and are necessary for the accomplishment of its missions. Monitor the staff structure and postings, to ensure that this produces an effective mix of experience and new ideas.
2.3	The Better Regulation Executive and ministers for Better Regulation should take opportunities to explain the institutional approach taken by the United Kingdom and its benefits, which combines a Better Regulation unit at the centre of a radial structure of relationships allowing it to project its reach and influence.
2.4	Among other possible initiatives, the new better regulation subcommittee of the National Economic Council should be confirmed in its role in the review of significant new regulations, and in assessing and arbitrating impact assessments relating to the same set of policies across departments (such as climate change). Further work to consolidate links with the regulatory agencies should also be considered.
2.5	Consider whether the sanctions for poor regulatory performance are strong enough, and conversely, whether good work is adequately rewarded.

2.6	Consider the development of a more integrated framework for the deployment of Better Regulation practices by regulatory agencies.
2.7	The BRE should continue to put efforts into strengthening its relationships with the parliament, via the various committees that take an interest in Better Regulation.
2.8	Care should be taken to ensure that any joint BRE/NAO activities do not undermine the real or perceived independence of the NAO.
2.9	Efforts should be reinforced to associate the local levels with all aspects of Better Regulation.
2.10	Consideration should be given to the best way of engaging the judiciary in a dialogue over their experience of developments, perhaps via the Ministry of Justice, which should be encouraged as a partner in Better Regulation policy.

Transparency through public consultation and communication	
3.1	Given the feedback from stakeholders, there is a need for effective quality assurance of the Code of Practice on Consultation. The BRE should ensure that the practical application of the new Code of Practice on Consultation is carefully monitored, based on the issues raised by stakeholders with regards to poor practice in the past. Experience suggests that departments left to themselves do not always meet the highest standards. The Code is mandatory for all central government departments and this makes it all the more important to have an effective quality assurance mechanism in place, which goes beyond data collection on use of the Code and injunctions to report on its application in departmental annual reports.
3.2	The media could be encouraged to make a positive feature of common commencement dates by publicising lists of the new regulations alongside other positive aspects of Better Regulation.
3.3	The development by the Ministry of Justice of the statute law database to cover secondary regulations should be encouraged.

The development of new regulations	
4.1	The development by the Ministry of Justice of a statute law database, as well as clarifying the law, should be encouraged because it will allow mapping of trends in the production of regulations over time.
4.2	Consideration should be given to carrying out an assessment of guidance notes. Is the flow of guidance increasing? If so why? Should the flow of guidance notes be controlled? Which entities are most likely to be issuing guidance, in relation to which type of regulations? Is there a need to encourage plain language for regulations?
4.3	Consider putting in place procedures for the forward planning of secondary regulations.
4.4	The finishing touch to the comprehensive arrangements that are already in place would be to review the online guidance to eliminate duplication, signal the important links, and ensure that the template is easily accessible from all parts of the system.
4.5	Steps should be taken to strengthen quality assurance in the production of impact assessments, including how senior managers can be encouraged to take a more active role in this (perhaps via their performance evaluation).
4.6	Establish measures of success for the strengthened approach, and a date for evaluation.
4.7	Consideration should be given to whether the role of the new better regulation subcommittee of the National Economic Council which is taking over the role of the Panel for Regulatory Accountability, and will therefore deal with regulatory proposals that will have a significant impact, should be further enhanced.
4.8	Consider whether the impact assessment form should be adjusted to highlight that alternatives to “command and control” regulation could be considered, and link this to guidance on alternatives.
4.9	The BRE should share and discuss the emerging results of its work on risk with other OECD countries that are also interested in taking this approach.

The management and rationalisation of existing regulations	
5.1	An approach tailored to the English legal system might start with the mapping exercise that has been initiated by the Ministry of Justice, followed by an appraisal of what could usefully be done, after taking full account of the work already underway in the simplification programme, and through the other initiatives.
5.2	Consideration should be given to how local authorities can be encouraged into contributing to the burden reduction effort. Efforts should be stepped up to encourage the stronger control of new EU regulations to avoid new burdens from this level.
5.3	Further efforts should be made to structure communication on the programme around business types, rather than departmental plans. This approach would also help in the dissemination of information to the right businesses. Communication should also take account of the potential confusion and irritation caused by changing baselines and departmental structures.
5.4	Departmental efforts to address the burdens that really matter to different kinds of business should be sustained. Broader policies to address the flow of new regulations (ex ante impact assessment, and possibly regulatory budgets) are also relevant.
5.5	A review of licensing should be considered. Action might also include specific initiatives to review and simplify regulations requiring interventions from multiple authorities, as well as non-regulatory measures aimed at reengineering back-office procedures, making greater use of ICT and e-Government processes.
5.6	Consider whether there is a need to reinforce and further develop initiatives aimed at making life easier for citizens.
5.7	Take steps to ensure that the programme can be effectively evaluated, and that departments are well-supported and encouraged to help meet the target, given the absence of a measured baseline and a looser requirement on departments to deliver than is the case for the programme to reduce burdens on business.

Compliance, enforcement, appeals	
6.1	The BRE needs to keep up the pressure in the roll-out of reforms.
6.2	It would be useful to collect data, using the records already compiled by agencies and

	local authorities, in order to have a strategic picture of underlying trends and difficulties.
6.3	Consideration should be given to how the current regulatory structure could be further streamlined, and the creation of any new agencies or other regulatory structures should wherever possible continue to be avoided.
6.4	Consideration should be given to reviewing the changes in the role of the judiciary which may be usefully addressed by Better Regulation processes. The deployment of certain Better Regulation policies could help to address any emerging issues. Setting policy in open sessions for example, makes subsequent challenge more difficult.

The interface between member states and the European Union	
7.1	The management of EU regulations should be a priority for Better Regulation policy.
7.2	An evaluation of the application of the Davidson Review's recommendations in practice would be helpful at this stage.
7.3	Consideration should be given to how departments, especially those with a heavy EU workload, can be better supported in the management of EU regulations.
7.4	The BRE should consider monitoring the application of impact assessment to EU regulations, in order to identify the issues that need attention.
7.5	The United Kingdom should consider whether a more formal approach to monitoring transposition could help in improving transposition rates.
7.6	Actions to help the development of Better Regulation at EU level should be prioritised.

The interface between subnational and national levels of government	
8.1	Wherever possible, efforts should be made to rationalise complexity, for example by closer working between central government departments and between the latter and local authorities, to address complex regulatory and performance demands on local authorities.

8.2	The BRE should consider using the local level Better Regulation work in support of communities to promote a more balanced communication of its own on the targets and benefits of Better Regulation, for citizens as well as businesses.
8.3	The LBRO should seek to ensure that all relevant activities and initiatives at the local level are assessed from a Better Regulation perspective.
8.4	The LBRO should consider how local authorities can be engaged in supporting relevant national initiatives such as the simplification programme.
8.5	A review of e-Government deployment at the local level, perhaps orchestrated by the LBRO, might be considered.