BETTER REGULATION IN FRANCE

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A convenient though superficial introduction is to look at terminology as possibly indicative of deeper trends, offering initial hints about specifics to the French approach to Better Regulation[2]. In France, the search for better quality regulations does not refer to OECD concepts (regulatory management, regulatory governance, reform, etc.) nor to European Union catchwords (Better/Smart Regulation, in French *"Mieux Légiférer")*. The closest policy is *"qualité de la réglementation,"* (including primary legislation) and the most often quoted goal for the policy is "*réduction de l'inflation normative*", i.e. a focus on stemming the flow of new regulation, more prominently than addressing their relevance and efficiency. As regards the context of regulatory quality in France, the moving principle is not "struggle against bureaucracy" like in Germany, or alleviating burdens on the economy (UK, NL) but "administrative modernisation" including reducing budgets. This vocabulary sums up the specifics of the French approach and provides an indication of trends that will be explored in this analysis. The main actors consider that regulation is intrinsically useful and they tend not to pose the question of relevance or economic impact. Criticism is however regularly levelled at its complexity of the legal corpus, which is explained by officials as a consequence of excessive political activity, and the consequence of pursuing too many substantive policies simultaneously. Others blame the taste for "legal security" (risk-aversion) by those in charge of public services.

This analysis will examine successively the classic sequence of policies, institutions and tools to assess the recent evolution and situation of regulatory quality in France and the extent to which it may contribute to international best practice. The reference "baseline" against which current French practice will be assessed is provided by the conceptual work published by OECD. This chapter will make full use of the remarquable reviews conducted by the that organisation in 2003[3] and 2010, the latter being published as "Better Regulation in Europe: France (2010)[4].

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[2] Throughout this chapter, the concepts are used according to their meanings defined by their main proponents : « Regulatory Reform » as understood and defined by the OECD, Better Regulation as the European Union version of regulatory reform, Regulatory Quality (RQ, "qualité de la réglementation") its French counterpart. The whole point of this chapter is to examine to what extent French regulatory quality applies the principles of Better Regulation, and what may distinguish it from the international concepts.

[3] http://www.oecd.org/dataoecd/42/9/32495607.pdf

[4] http://www.oecd.org/document/63/0,3746,en_2649_37421_45394687_1_1_1_37421,00.html

Before examining the current situation of better regulation and recent reforms in France, it can be helpful to briefly recall the status report published by OECD in 2003, which had been drafted in consultation with the French authorities.

The situation in 2003 according to OECD (authors' summary)

Regulatory policies are driven by:

- a structured legal system, but a fragmented approachh to regulatory quality ;
- no reform policy initiative in the wake of the OECD report in 1995;
- transposition of some of the principes after the Mandelkern report;
- emphasis on the management of the stock of legislation ;
- regulatory impact assessment has had weak results, there is no central body in charge nor methodology ;

Regulatory institutions are marked by :

- a complex insitutional setup, with an efficient interministerial coordination ;
- structured management procedures, but they do not garantee regulatory quality ;
- weakness of the consultation process.

One of the main points that will be made in this chapter is that the regulatory management setup currently in place in France reflects, as in many other countries, historical factors and legal tradidions and that it must be assessed within that framework. For that purpose, here are a few traits usually attributed to the French public governance set-up:

- a long history of central government and authority, from the kings to the 5th republic, recently confirmed by reforms that confirm rather than question centralization;

- a tradition of dirigisme in the economy, not completely offset by recent economic reforms seeking to increase freedom of enterprise;

- specific administrative law and tribunals to judge litigation between public authorities and the citizens.

- a rather legal approach to public policy-making and reform;

- top down consultation of stakeholders (committees of experts or representatives) rather than multi-channel dialogue or partnership with citizens;

- good support for a specific civil service in the social body, with the consequence that "reform of the State" remains a relevant issue and a framework for economic reform.

POLICIES

Inspiration from the highest level

On occasion, the president of the Republic, Mr N. Sarkozy, has shown some inclination to endorse deregulation,[5] thereby placing himself ahead of other politicians in France, who are more intent on introducing new legislation. Recent remarks show that Mr Sarkozy is keen on this policy and wants change before the end of his mandate.
During his live TV interview on 16 November 2010, while listing policies for the last two years of his administration, and in a short list of four topics, he mentioned deregulation (in French "délégiférer"), giving a specific example of town planning. Strangely, this item was absent from all reports of the event published by the media and was only quoted in Le Monde's pre-event analysis, probably from press-briefing material;
In September 2010, he had been more explicit in a public speech[6] where he said he was reflecting on the possibility of asking Parliament to devote time in 2011 to rescinding obsolete laws. He compared the legal corpus to a "legal cathedral… where no-one can find the exit".
In spite of its unusual use of the word deregulation, Mr Sarkozy's position is in-line with the prevailing view in France that the legal corpus is over-abundant and over-detailed and that "normative inflation" must be curbed. The goal is however to clear the legal body and improve access to the law for citizens, rather than use better regulation tools to achieve economic objectives.

Absence of an overall Better Regulation strategy

In its 2010 review, OECD concludes that in spite of the development of several BR tools since 2004, France can be said to still not have an overall regulatory governance strategy, but rather a set of measures intended to improve regulatory quality. Building on traditional strengths, especially in the clarity and consistency of a well published legal corpus, recent achievements include strengthening *ex ante* impact assessment and an active simplification . The organisation also notes th special efforts 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.

The absence of an overall BR strategy comes first from the widespread belief that the main issue is the overproduction of regulations, due to excessive political reaction to current events, and other structural causes. The economic dimension and the economic cost of excessive regulation or of "poor" regulation have not, to our knowledge, been officially identified as problematic, and consequently a BR strategy is not really needed, in the official view.

If there is no explicit BR strategy, what is the closest substitute? The most comprehensive document adressing regulatory quality is the ensemble formed by the two circulars in 2003[7] aimed at "controlling normative inflation and improving the quality of regulation." These texts, now somewhat out of date and

[5] http://regplus.blogspot.com/2010/03/french-president-announces-time-to.html
[6] http://www.mediapart.fr/club/blog/freddy/140910/delegiferer-le-nouveau-credo-liberal
[7] Circulaire du 26 août 2003 relative à la maîtrise de l'inflation normative et à l'amélioration de la qualité de la réglementation and Circulaire du 30 septembre 2003 relative à la qualité de la réglementation

never referred to, do not meet the criteria of an "explicit whole-of-government policy for regulatory quality" mentioned in many OECD guidance documents.

A second indications that priorities are elsewhere in France is the choice of the general review of public policies (RGPP) as the overarching strategy to encompass regulatory reform issues. This has somewhat further obscured or hindered the development of regulatory quality as a initiative in its own right.

In summary, the absence of an explicit policy goes against current international best practice as expressed in OECD recommendations; it is both cause of consequence of there being no overall overarching institution taking responsibility for quality of regulation in its full meaning. The issue of an independent supervisory body has never been raised and could even be seen to be anathema. In spite of that, the main common tools of RQ (simplification, administrative burdens, consultation and access) are all in place, but they do not pursue common policy objectives, especially not predominantly economic ones, as will be seen later.

Regulatory management in search of formal excellence[8]

All observers foreign and domestic concur on celebrating the high quality of the French regulatory management system.

- Scrupulous attention to the drafting quality of legal texts: traditionally, France prides itself on the quality (in the formal sense) of its legislation. The brevity and clarity of founding texts such as the Code Civil are often praised, with the famous article on the guilloting in 8 words: "*Tout condamné à mort aura la tête tranchée.*" Though there appears to be no connection with BR policies, the support tools for drafting laws have been strengthened in recent years. The rules for drafting legal texts have been grouped in the "legal drafting manual" (*guide de légistique*[9]), which doubles up as a manual of regulatory procedure. The 2010 OECD report notes that it which would need to adopt a more comprehensive approach to the production of new norms.

- Good regulatory planning: there the government's work programme is drawn up every six months to establish the government's overall direction, and to list upcoming legislation, including bills, orders and decrees. The distinction between policy-making and legal drafting may be somewhat hazy, but the regulatory workflow, which supports the formulation, is closely managed, with excellent government-wide coordination. A sophisticated application supports the regulatory workflow from the policy desk officer to the print-run in the Journal Officiel (SOLON). It is a pity that the government work programme, without being in any way secret, is not given more publicity, for the sake of transparency and information of stakeholders.

- Close concern for implementation of primary legislation: as in many Western democracies, the production of regulation relies on both Parliament to adopt the new general norms through primary legislation (article 34 of the Constitution) and Government to enact the specific rules for implementation. One of the unfortunate consequences of "normative inflation" has been the difficulty for ministries to draft and enact secondary legislation (article 37 of the Constitution) in a timely manner. The Prime minister has addressed the issue on several occasions, including the circular of 29 February 2008 which invoques the three principles of « democratic requirement,

[8] For background on legal quality in France, see online dossier on the official information site: http://www.ladocumentationfrancaise.fr/dossiers/qualite-normes-securite-juridique/index.shtml

[9] http://www.legifrance.gouv.fr/html/Guide_legistique/accueil_guide_leg.htm

legal security and political responsibility » to ask ministries to make an effort in writing implementation measures in time.[10] A monitoring tool keeps track of progress and publishes statistics every six months. This tool is supposed to act as an incentive to regulators to actively pursue the implemention of voted legislation, rather than immediately start revising it, as still often happens in France. There is also an objective to reduce the time to implement application decrees.

The French approach to "regulatory quality"(RQ): the 2003 circulars

At the time of the preparation of the OECD of review of "national capacities to produce regulations of high quality," the French authorities (Prime Minister's office) set up an apparently fairly complete RQ system in 2003. As befitted proposed improvements to administrative methods of work, the changes were introduced by non-binding internal guidelines ("the 2003 circulaires", see footnote n°7). These two texts give perhaps the best illustration of some permanent features of the French approach to RQ, which could be termed "enhanced regulatory management". The main innovations at the time were:

- the appointment of a a senior official in charge of RQ in each ministry;
- the commitment to discuss and formalise a "charter" of RQ suited to each ministry's production;
- the re-statement of the importance of RIA.

However the concepts remained difficult to accommodate in French administrative culture and were not well applied, especially impact assessment, until recently. Only two ministres published a charter of RQ[11].

The establishment of this initial RQ policy had been made possible by the evolution of mindsets since 2000. The French higher administration had been well represented during the finalisation of the European version of regulatory reform, i.e. Better Regulation. A senior member of the Conseil d'Etat, Mr. Dieudonné Mandelkern chaired the inter-governmental consultative group that first listed the principles of BR at the European level, [12] which were to be so successful in Brussels. In 2001, he drew up a similar report applying the principles to the improvement of French regulatory production[13]. This seminal text was followed by several other studies, including the Lasserre report[14].
Most of the projected actions were implemented, but the statement of intent did not bring about any major substantive changes in working methods. The legal corpus continued to grow, RIAs were still not drafted. In parallel, and without a formal link, and as a natural evolution from previous Reform of the State projects, efforts were directed, from the Prime Minister's office to commence the sequence of legal simplification laws, which were supposed to be annual.
This phase can be seen, retrospectively, to have culminated with the publication of the report "legal complexity and security" in 2006[15].

Administrative simplification, a component of the "reform of the State" policy

From 2008, the ministry of finance shifted the emphasis of the existing RR efforts (simplification and administrative burden reduction) by bringing them under the aegis of the the over-arching and politically

[10] Circulaire du 29 février 2008 relative à l'application des lois.
http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000018217158&dateTexte=&fastPos=1&fastReqId=450678213&oldAction=rechTexte
[11] see footnote 43.
[12] http://ec.europa.eu/governance/better_regulation/documents/mandelkern_report.pdf
[13] http://www.ladocumentationfrancaise.fr/rapports-publics/024000213/index.shtml
[14] http://lesrapports.ladocumentationfrancaise.fr/BRP/044000158/0000.pdf
[15] http://lesrapports.ladocumentationfrancaise.fr/cgi-bin/brp/telestats.cgi?brp_ref=064000245&brp_file=0000.pdf

well supported concept of "general review of public policies" (http://www.rgpp.modernisation.gouv.fr/) which stresses:

- internal change: more efficient government departments, by shifting to performance based budgeting (applied from 2006) and streamlining of public services (as a result of the comprehensive review of policies);
- better public services: with rapid progress on on-line procedures, France is now placed among the top performers for IT based services. Around 8 million taxpayers filed their returns on line last year.

The new approach has now delivered results, which are listed in a March 2011 status report of the Council for the modernisation of public policies[16] (a body chaired by President Sarkozy himself). In its 5th meeting since the project was launched three years ago, it reviewed projects under way and vetted another batch of 50 measures aiming at streamlining administrative action, improving public services and enhancing efficiency, bringing the total to 400 measures. The programme is based on three commitments: the improvement of the quality of public services, the reduction of public spending and the modernisation of the civil service. The extension of on-line administrative services is one of the main instruments for delivering the administrative simplifications: currently two-thirds of most common procedures (such as registering on polling lists) can be handled from home, a figure that should reach 80% by the end of the year. The most impressive facility is the online submission of the income tax return which is used by 10 million tax-payers. Also 40% of farmers already use the internet to apply for grants.

This progress report shows that the ministry of finance no longer deals with legal simplification. Administrative simplification is based on opinion surveys of which procedures are most irritating, not on measuring time and resources spent on complying with information obligations.

This work is well communicated to the public. The DGME regularly publishes the status and output of this project.[17] The January 2011 report summarizes progress made since 2008.[18] The study examines how simplification measures taken since 2008 have been perceived by the target audiences, on the basis of a sample of 10 procedures related to most current "life-events" and demonstrates that complexity as perceived by the public is down for 6 out of the 10 procedures. For instance, following a simplification of planning permission for new buildings, the complexity index is down 13 points, which means fewer citizens reported the procedures as "complex". Similar effects were achieved for other procedures such as renewing ID cards, looking for a job, going on pension. The DG's website also describes the distinctive methodology, which relies on professionally conducted opinion polls to direct the simplification efforts, and measure their effects. Experts interested can find additional details concerning the organisation of stakeholder panels,[19] the online consultation ("Ensemble Simplifions,"[20] which collects suggestions from four types of users: citizens, companies, associations and local authorities) and how the project involves local authorities. In addition to the work on the procedures themselves, the DG has also been managing an ambitious (and successful) programme to use plain language[21] in dealing with users, an

[16] http://www.rgpp.modernisation.gouv.fr/index.php?id=50&tx_ttnews[tt_news]=569&tx_ttnews[backPid]=2&cHash=278aaf6c9c

[17] http://www.modernisation.gouv.fr/piliers/simplifier/la-simplification-des-demarches-pour-les-usagers/index.html

[18] http://www.modernisation.gouv.fr/piliers/simplifier/ensemble-simplifions/demarches-administratives-une-complexite-en-baisse-pour-les-usagers/index.html

[19] http://www.modernisation.gouv.fr/index.php?id=944

[20] http://www.modernisation.gouv.fr/index.php?id=844

[21] http://www.modernisation.gouv.fr/piliers/simplifier/la-simplification-des-demarches-pour-les-usagers/un-langage-clair-ca-simplifie-la-vie/index.html

initiative conducted in connection with partner agencies in other francophone countries (i. a. Quebec,[22] Belgium).[23]

What is the impact of the reform? The business world is not over-interested, and often shrugs off this umpteenth promise of change to administrative mores. One telling assessment, delivered by a leading management consultancy CEO who has worked with many ministries, Bernard Bruhnes, draws a bleak picture of the policy[24], branding it as a technocratic exercise, aiming at justifying reform, but failing to convince those would have to change, the civil servants.

The SME policy

Though it is not listed as a key objective of the existing regulatory policy, the preservation or enhancement of domestic competitiveness is nevertheless a component of economic policy that is regularly recalled and developped[25]. Regulatory reform measures can be enlisted in that combat, as was the case recently, when the Prime minister announced within a package of measures to stimulate the export drive and businesses productivity, the institution of common commencement dates[26] for business related new legislation, to "contribute to their legal security." . Implementation rules have just been issued by a circular dated 23 May 2011[27] and include inter alia the deferral of new measures concerning business for at least two months to facilitate implementation within the targeted companies. The scheme is operated by the Commissioner for simplification (see page 11.)

Another instance of similar initiative was the package of measures in favour of "industrial competitiveness[28]" announced by the minister of industry in October 2010, following a report by Laure de la Raudière,[29] MP. On the basis of a reference to the reduction of administrative burdens, several administrative simplification measures are expected to make life easier for industrial concerns, including a rare reference to gold-plating avoidance.

Though rarely presented as a Better Regulation initiative, and not specially coordinated with the projects conducted by SGG and DGME discussed above, the work conducted by the business minister, Frédéric Lefebvre and his predecessors, to make life easier for business, is a direct contribution to better regulation aimed at the business community. On 20 December 2010, a few weeks after his appointement, he published an action plan[30] to facilitate administrative support to SMEs, which in summary includes:

- the appointment of an SME contact point in each département who will be required to stay in touch with business realities by spending time in companies;
- the appointment of dedicated officials to specially assist 2000 high potential SMEs in their paperwork;

[22] http://www.culture.gouv.fr/culture/dglf/terminologie/rediger_simplement.pdf
[23] http://www.simplification.fgov.be/doc/1206617781-7846.pdf
[24] http://www.lajauneetlarouge.com/articles/societe--les-risques-de-la-methode-3594/politiques-publiques.html (Sept. 2009)
[25] See report by Clarisse Reille: « Complexity : a hidden evil that threatens our economy » (October 2008) http://www.pme.gouv.fr/simplification/complexite-mal-sournois.pdf
[26] Prime minister speech to business representatives, 10 September 2010 : http://www.gouvernement.fr/premier-ministre/renforcer-la-competitivite-est-absolument-complementaire-du-redressement-des-financ
[27] http://www.circulaires.gouv.fr/index.php?action=afficherCirculaire&hit=4&retourAccueil=1
[28] http://www.minefe.gouv.fr/actus/10/101027renforcement-competitivite-pmi.html
[29] http://www.economie.gouv.fr/services/rap10/101027rap-delaraudiere.pdf
[30] http://www.economie.gouv.fr/discours-presse/discours-communiques_finances.php?type=communique&id=4859&rub=1

- a cycle of Simplification Sittings[31] (in French “Assises”), where stakeholder are invited to address cutting red tape issues for SMEs.

The Sittings were held on a regional basis, from January to March 2011. To feed the discussion, the minister had commissioned reports from ministry staff recently "embedded" in companies in a bid to document the difficulties that entrepreneurs face in their daily relations with administrations. A life-cycle approach (in French "moments de vie") helped focus on the hurdles faced by companies at key stages such as the setting up and operation of the firm. The series of regional sittings was crowned by National Sittings on 29 April where all the proposals from business were listed and prioritised, and the minister announced 80 new measures to reduce burdens by 1 billion euros. The ministry website[32] provides details including recent press releases.

The European dimension of regulatory quality

The French national initiatives for regulatory quality have never lost sight of the European dimension. France was involved from 2000 in reforming European governance and made a significant contribution to the development of the original Better Regulation strategy, during the first term of President Barroso: a French public law magistrate, D. Mandelkern, listed the key principles of BR at the European level, and later rated the French administration against the same baseline[33]. This agenda has since become one of the top priorities of the European Union, but it has not not been so pivotal in France.

- there is a lively discussion about the responsibility of European institutions in creating an abundance of norms that then need to be incorporated into national law. The Warsmann report[34] (2009) tackles as a priority the transposition of EU law in France;
- the 2005-2008 administrative burden programme was coordinated with the Commission’s Action Plan, until the approach was modified. It is not clear how the new projects ties in with the 25% reduction target that will need to be reported to the Commission at the end of 2012.
- along with the concern for implementing decrees, the Prime minister’s office closely monitors the transposition of European directives.

The multi-level dimension

The issue of regulatory power at sub-national level is, in France, very complex. The official starting point is that France is a unitary country, with decentralised authorities which run a number of economic and social services, but do not regulate, for the sake of uniformity of rules across the territory. This obscures the fact that implementation can widely differ, and that very little is done to cater for the difficulties this may cause to business.
The discussion about powers transferred to local authorities (“collectivités territoriales” to avoid the negative connotation of “local”) is very lively, with regular reforms such as the November 2010 overhaul which introduced many interesting and useful changes. But it seems as if the main issue was a struggle for political power, not the desire to deliver better services to the population or to streamline the legal order. The biggest debate is about the number and level of local councillors, and some hair-rising combinations or amalgamations of local authorities[35].

[31] http://www.pme.gouv.fr/simplification/index.php
[32] http://www.pme.gouv.fr/simplification/index.php
[33] http://www.ladocumentationfrancaise.fr/rapports-publics/024000213/index.shtml
[34] http://www.gouvernement.fr/premier-ministre/rapport-warsmann-sur-la-simplification-du-droit-remis-au-premier-ministre
[35] See blog article: http://smartregulation.net/2010/06/france-restructures-local-government.html

Assessment

From this panorama of RQ policies, it appears that the goals and main drivers of better regulation in France are quite specific, compared to other European countries.

- there is little criticism of regulation in general and it is not so much the quality (defined as high relevance, low administrative and compliance costs), but the proliferation of legislation that is criticized in France: most official reports, starting with those from the Conseil d'Etat,[36] lament the "normative inflation", i.e. the continuous rise in the number of laws and regulations, which make it difficult for citizens and companies to identify which norm to applies to their case and may impede economic initiative;
- policies seeking the improvement of regulatory management cannot be considered to be addressing the full spectrum of better regulation objectives. They concern regulatory quality in the narrow sense, i.e. showing a concern with legal consistency and accessibility, but an insufficient effort to take on board the economic consequences of regulation. In its 2010 report, the OECD noted an "increased but not widespread recognition of relevance of effective regulatory governance for economic performance... 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."
- also indicative of the formalistic approach is the considerable effort devoted to codification. However, in spite of impressive results, which contribute both to simplification and to improving access to legislation, the overall image and relevance of regulation are not significantly improved.
- There is little or no reflection on risk and regulation. A number of recent crisis, such as the BSE, or the contaminated blood, have been used exclusively to bolster the case for more stringent regulation.

In conclusion, policies concerning regulation in France unfortunately seem to address the effects rather than causes of bad legislation, and preserve the emphasis on legal expertise at the expense of a more balance interdisciplinary outlook. There are however positive effects: the body of law is well documented, it has been brought closer to the citizen, by online information, and assistance to understand it. This achievement was highlighted during the French presidency of the E.U., with an effort to transpose it at European level[37].

INSTITUTIONS

The quality of regulation is highly dependent on the consistency and efficiency of the regulatory management structure and the expertise and working methods of regulators. In that sense, the quality of the product (regulation) reflects the quality of the process, and the faults of the product can be traced in part to institutional weaknesses. In the case of France, the main deficiencies (complexity, possible lack of economic relevance) can be seen as the result of the fragmented institutional framework for delivering and managing regulation.

[36] See landmark report by the Conseil d'Etat : « sécurité juridique et complexité du droit » (20 March 2006) : http://www.conseil-etat.fr/ce/rappor/index_ra_li0600.shtml

[37] See conference on legal access, December 2008
http://www.legalaccess.eu/IMG/pdf/Prgrmcomplet_EN_15_11_08v1.pdf

The absence of a central body in charge of BR.

Up to an including 2005, RQ was principally quasi-exclusively handled by the Prime minister's office, the legislation and quality of the law service in the General Secretariat of the Government (SGG)[38], and handled principally as an issue of regulatory management in connection with the *Conseil d'Etat* (Council of State*)* and the General Secretariat for European Affairs (SGAE). The SGG deals mainly with the flow (production of regulations), the SGAE covers the transposition of EU legislation. The Council of State can be seen as the final guarantor of formal RQ, 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 cooperation between these three bodies is facilitated by the common recruitment and internal mobility, giving the Conseil d'Etat a casting vote in all matters related to regulatory management.

From 2000 onwards, a parallel concern for quality (to be achieved by simplifying legislation) emerged as an off-shoot of the search for "quality of service" and improving the relationship between the administration and citizens, which was formalized in 2003 with the creation of a new task force "delegation for users and administrative simplification" (DUSA)[39] under a junior minister in charge of "**Reform of the State**." At this time the agenda was widened, under the inspiration of the Mandelkern report (see footnote n° 12), and apart in addition to legal simplification, the DUSA launched a projects to reduce the number of permits, constrain the use of consultative commissions, and measure administrative burdens. This form of enhanced regulatory management reached its peak with the decision to produce annual simplification laws, under DUSA management, drawing on the Prime minister's office's experience of policy coordination and regulatory management.

From January 2006, DUSA was amalgamated with the E-gov agency into the general directorate for state modernization (DGME), with **political accountability shifted to the minister of finance**. The transfer to the ministry of finance of all the Reform of the State resources has not been fully explained officially, but it may be seen as an attempt to enrich the approach beyond regulatory management, to better include economic purposes and constraints in new regulation and in legal stock management. This has not proved entirely successful, as the new management has not been able to maintain the pace of annual simplification laws, and the initiative for legal simplification had somehow to be moved away from Government to Parliament. The move has also caused, or has been influential in bring about, a shift in content away from traditional BR policies, with a new subordination to civil service reform and budget objectives, by including it in the over-arching policy of "general review of public policies."

In summary, in taking such an approach (creating a second pole of responsibility for some aspects of regulatory quality or reform,) France has chosen a compromise solution which is not generally considered optimal. The new OECD principles under discussion recommend setting up a single entity under a dedicated cabinet minister. Many countries have gone further and subjected regulatory production to the scrutiny of an independent body.

The Commissioner for Simplification

In this context, what meaning can we attach to the appointment of a Commissioner for Simplification, Mr R. Bouchez [40]. The first incumbent of this new position belongs to the Conseil d'Etat, the highest

[38] http://www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/premier-ministre/gouvernement-fonctionnement/quel-est-role-du-secretariat-general-du-gouvernement.html

[39] Good historical summary on:
http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/reforme-etat-administration.html

[40] http://www.gouvernement.fr/presse/francois-fillon-nomme-remi-bouchez-commissaire-a-la-simplification

administrative court, and has in the past contributed to compiling the "guide de légistique" which is the bible for drafting regulation, with its emphasis on formal regularity. The official mission of the commissioner, includes checking that impact assessments have made sure that no new administrative burdens is imposed on local authorities and businesses[41]. There is however no reference to better regulation principles in his mandate. The commissioner will also be endeavouring to enforce common commencement dates[42], and the moratorium on new regulatory burdens on local authorities. However interesting from a policy point of view, this new actor does not seem, because of the lack of resources, to be in a position to act as an efficient agent of change.

The network of correspondents in the ministries

The 2003 circulars asked each ministry to appoint a senior official in charge of regulatory quality issues. Their first task was to draw up a ministerial "charter" formalising the search for quality regulation in the specific context. Unfortunately, only two such documents were published (Agriculture, and Ecology), which might indicate that this excellent initiative was not followed up with sufficient dedication.[43] Membership of the group seems to be limited to the directors of legal affairs of the ministries, which again highlights the juridical approach to RQ.
Since the network was set up, it has not published any information or policy document, nor has it made known any contribution to the discussion on regulatory quality. It has not played any role in improving the transparency of regulatory policies.

The growing role of Parliament[44].

As has been made clear in previous developments, normative inflation is viewed in France as one of the chief defects of the regulatory system. Observers remarked that the Parliament, bogged down by government bills, was suffering most from the phenomenon in its daily operation and in its image as legislator. This view may have been instrumental in bringing about the constitutional reform imposing RIAs on all bills of government origin. This major reform had been preceded by the transfer from government to parliament of the initiative of legal simplification.

In Parliament, the commonly held view is that the legislative procedure has become a nightmare owing to the sheer volume of bills and amendments. Viewing law-making as a "production line," which has turned into a "legislative jungle," observers unanimously denounce the backlog of proposals to be discussed and voted, and especially the lengthening of the texts (often over 200 pages) with superfluous detail and esoteric wording. An article in "Le Monde" dated 23 January 2007[45] can be seen as a summary of the ills which may have been one of the origins of the constitutional reform in 2008.
At about the same time, the Government's practice of legal simplification laws seemed to be running out of steam, with the third bill stuck in the preparatory stages. The initiative was taken over by the Legal Committee of the National Assembly and since then the instrument has become a standard feature of the legislative landscape (see section on Tools below.)

[41] For the mandate of the commissioner, see circular dated 17 February 2011 on www.circulaires.gouv.fr , which includes supervision of impact assessments on draft legislation concerning businesses and local authorities.
[42] See circular dated 23 May 2011: http://www.circulaires.gouv.fr/pdf/2011/05/cir_33143.pdf
[43] http://agriculture.gouv.fr/IMG/pdf/saje20040001z.pdf , and
http://aida.ineris.fr/aida/?q=consult_doc/version_imprimable/2.250.190.28.8.4793/false/pdf (Ecology)
[44] For the National Assembly approach, see http://simplifionslaloi.assemblee-nationale.fr/
[45] Online access to this article requires subscription, but similar content can be found on http://www.20minutes.fr/article/141590/France-Au-Parlement-la-jungle-de-la-loi.php

What may appear rather strange is that because of the lack of resources to conduct the screening of the legal corpus that is necessary to produce simplification bills, Parliament has had to contract private consultancies to do the background research. In a country with plenty of experts in the ministries this has caused a row recorded with interest by the press.[46]

The pursuit of simplification of the legal corpus by the legislator does possess several advantages:

- The ministries had shown, during the preceding period (2003-2005) a rather defensive attitude to simplification, and a tendency to use the legislative vehicle to pass new rules under the guise of simplification;
- The selection and discussion in Parliament of the content of the simplification laws includes to some degree in-built consultation of civil society. This input has been enhanced by the adoption of online consultation by the National Assembly.

There are, however, shortcomings to the procedure:

- Many rules that need simplifying do not belong to the realm of primary legislation, and would need to be pursued by government regulation (at décret level). In spite of the idea having been raised several times, it has never been implemented (a regulatory simplification omnibus);
- The simplification effort cannot be fully successful without government support. Matters are so complex and technical, the articles requiring modification are so numerous, that it makes sense to use the ministries to conduct the studies and draft the revision. Long past are the time when quick wins could be rapidly drawn up and voted in parliament. For this reason, each simplification law has contained articles empowering the government to review primary legislation by ordinance to introduce streamlining of clearly identified procedures or schemes, subject to final ratification in parliament. When it was first used, this new practice was considered an innovative interpretation of the constitutional clause on *habilitation* (devolution)

Multi-level regulatory governance in France and its impact on the quality of regulation

The French model of public governance is generally viewed as based on the principle of unity of the territory and centralization of the normative power. This slightly obscures the amount of devolution to regional and local entities, which has been actively pursued for over 200 years under the concept of "*décentralisation*" with a number of important reforms in the last decades. The discussion of the most recent bill reforming the distribution of competences between the various levels of government has been extremely lively.
Fuelling this interesting debate, the "institut de la décentralisation[47] (a think tank on public action at subnational level) published a report, unfortunately not on-line, entitled "public governance: consequences of a regional legislative power on public policies."[48]
The difficulty of delegating regulatory power to local authorities is deeply engrained in French administrative culture, but governance realities, including the expectations of large sections of the public, may still force moves in this area. For the moment, the constitutional principle of reserving the power to issue regulations to the PM is still intact, and this is quite a major contribution to the quality of regulation.

An important reform of the structure and competencies of local government[49] was voted in Novermber 2010 by the Parliament[50] to introduce some historical changes in the structure and competencies of French

[46] http://www.easydroit.fr/news.afp/2009-12-07_simplification-du-droit-un-cabinet-d-experts-a-bien-ete-consulte-warsmann-ump_7923/
[47] http://www.idecentralisation.asso.fr/index.php
[48] http://www.idecentralisation.asso.fr/actualites.php?id=57
[49] http://www.interieur.gouv.fr/sections/reforme-collectivites/actualites/adoption-reforme-collectivites-territoriales

local authorities. It is one of President Sarkozy's flagship initiatives, and has been quite laborious in getting through Parliament. Will it help tackle the regulatory quality challenges? Answers are of course not ready, but we can take a look at the innovations, as they currently stand:

- reduction, nearly by half, of locally elected officials: 3500 conseillers territoriaux, acting at both département and region level, replacing two corps totalling 6000 councilors, a move welcomed by taxpayers;
- the possibility for départements and regions to amalgamate, by no means a panacea for those who consider that there are too many small non viable regions; the purpose of the change is to sooner or later combine the two levels, where it would be more efficient;
- a count-down towards a clarification of the competencies of regions and départements with 2014 as the target for clearing any misunderstandings;
- various technical measures to improve the management of larger cities, including a new type of authority, "metropolis", for conurbations beyond 450,000 inhabitants, that could be granted a wide range of powers beyond those of a group of communes (including transfers from the département, the region and even central government).

All in all, the reform of local government, though conscious of regulatory issues (there has been a long discussion in trying pilot schemes to test regulatory powers) has not yielded any significant change, and the central management of regulation has not been seriously challenged.

TOOLS

The tools which can be most relevant to draw up a picture of what is specific to the French approach Better Regulation are:

- RIA, which a recent constitutional reform has raised to a stake in the control of the legislative agenda;
- Legal Simplification which France has practiced extensively with 5 omnibus simplification laws, but which may be running out of steam;
- Administrative burden reduction, which after a promising start applying the SCM, has reverted to conventional administrative simplification, under the banner of public service reform;
- Consultation, where efforts are still primarily directed at managing the extensive network of advisory bodies;
- And finally Access to Legislation, where a major investment on online dissemination of the law confirms the perceived importance of stock management, but has yielded few BR benefits.

[50] For the legislative process, see National Assembly dossier: http://www.assemblee-nationale.fr/13/dossiers/reforme_collectivites_territoriales.asp

REGULATORY IMPACT ANALYSIS (RIA)

France is probably one of the rare countries to have chosen to write the duty to draw up impact assessment into the constitution. [51] The change which came into effect on 1 September 2009 was, significantly, part of a package seeking to enhance the role of Parliament. This section will examine what is specific about French RIA compared to the international standard, not describe it in all its features.
The choice of using such a powerful legal instrument is officially explained by the centre of government's repeated failure since the 1990's[52] to enforce the production of RIAs in ministries by way of internal government instructions, in spite of their widespread adherence to the principle of evidence-based decision making.

RIA in the "inter-institutional balance"

A major difference with systems in place in other countries is the official purpose of the new RIA, which is to justify to Parliament the need for and the content of the planned legislation. This was originally related to the perceived need to curb normative inflation, but also to the political will to reinforce parliamentary scrutiny, two issues not usually associated with this decision-making tool.

The singular link to parliamentary process has far-reaching consequences on the spirit and content of RIA:

- the need for RIA is still not fully internalized in decision making within the ministries, and appears more as an extra step in the legislative process rather than an aid to policy making.
- the new powers resulting from the scrutiny of Government RIAs have been fully incorporated into the internal workings of both chambers of Parliament.[53] The assessment criteria used by Parliament in checking the quality of impact assessments are well documented. A report published online by the National Assembly recalls the justification of RIAs, referring mainly to OECD recommendations[54] and gives a suitably broad definition of what is expected. But because RIAs are only used during the parliamentary phase, there is an added risk that the assessment may be more a political than a technical issue. The report is first scrutinised by the conference of presidents of the parliamentary chamber to which the bill has been initially referred, which 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

[51] Organic law dated 15 April 2009:
http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020521873&fastPos=1&fastReqId=850521400&categorieLien=cid&oldAction=rechTexte and the parliamentary scrutiny (including a history of RIA in France) by Mr Etienne Blanc: http://www.assemblee-nationale.fr/13/rapports/r1375.asp
See also the circular of the Prime Minister dated 15 April 2009 "on the implementation of the constitutional revision" (also covers an instruction to ministers to participate in committee meetings in Parliament) : http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020522151&fastPos=1&fastReqId=1494198841&categorieLien=id&oldAction=rechTexte
[52] Circular dated 26 July 1995 : see http://www.regplus.eu/documents/textes.pdf
[53] See National Assembly's view on the importance of RIA: http://www.assemblee-nationale.fr/connaissance/etudes-impact.asp
[54] National Assembly report dated 19 December 2009: http://www.assemblee-nationale.fr/13/rap-info/i2094.asp

- the scope of RIA encompasses only draft primary legislation, and though this is discouraged in standing instructions, drafting the RIA can be left to late in the policy making process, as it is linked to the presentation of the new piece of legislation; the study of options runs the risk of being largely formal;
- the preparation of RIAs is well integrated into ordinary regulatory management, and managed by the same centre of government authorities with its emphasis on legal issues. In this context, RIA appears as a more evolved form of the "motivation note" (recital) that has always, in a few pages, given a "citizen's summary" of the content of the reform;
- an immediate benefit of the new scheme is an improvement of transparency. The reports can be consulted online at Legifrance[55], which is in keeping with good practice. After nearly two years of operation, it seems impact assessment findings have started to be used during the parliamentary debate, and are also taken into consideration in the broader public debate.

Expected improvements of the current system

The scheme is however still quite new and should be given some time before it can be fully assessed. Improvements to be expected if the scheme is operated in the appropriate intention, and without any legal changes, could include:

- contrary to general practice, the methodology is not published: it had been under preparation for quite some time, and the ministries did not show any reluctance to start producing RIAs. The checklist of impacts is comprehensive. The need to justify the use of legislation and to study options are stressed, but with perhaps an insufficient insistence on the "zero option." The methodology has however not been made public, but is readily accessible to officials in the ministries on an intranet. The list of impacts that may need to be addressed is comprehensive, and resources, in some caseswith the names of the experts in the ministries are made available to assist with data collection. With regard to administrative burdens, a specific tool, OSCAR, has been developed using results from the 2006-2008 baseline measurement, which now needs to be updated.
- The scope needs to be focused on the more relevant bills. The "blanket" approach (all bills must have a RIA) is not suited to a BR tool, where selectivity and proportionality should prevail. A perusal of the published RIAs shows that out of 83 reports published in the first year of operation of the scheme, half concern the ratification of bilateral tax agreements with foreign countries, which seems to be a regularization rather than a decision in principle. A high profile text which went on to pose enormous difficulties was the reform of retirement age, had been preceded by an innocuous RIA, where none of the later difficulties seem to have been anticipated. More picturesque, the law forbidding wearing the Islamic veil in public is also examined in detail.

Further necessary improvements

Judging from an international best practice outlook, a number of improvements could be envisaged, but they would need an adaptation of the legally binding framework:

[55] See http://www.legifrance.gouv.fr/html/etudes_impact/accueil.html

- Scope: rather than insist on submitting to RIA all legislative proposals from government, including the most formal or purely procedural ones (such as the numerous international agreements), it would be necessary to widen the scope of RIA to include more significant texts:
    - legislation of parliamentary origin. This is a real gap, all the more for that the 2008 constitutional revision purported to widen the scope for parliamentary initiative. Past practice shows that the government can get friendly MPs to table its drafts (example the third simplification law), and there is the risk of a "fast-track" procedure developing to avoid RIA discipline.
    - parliamentary amendments are not subject to a revision of the corresponding RIA. There is no provision for updating the impact assessment following a substantial amemndment, whether during the discussion or once the text has been voted, in order to faciliate later evaluation of the reform
    - secondary legislation ("décrets") are not covered by the legislation on RIA, whereas there is plenty of power vested in the Executive under article 37 of the constitution to take economically significant reforms. The Government seems aware and the Commissioner on Simplification has been mandated to check that impact assessments are conducted on any new norm affecting business (see footnote n°41.)
- Focus: as they currently formulated, the assessments do not give sufficient prominence to economic and competitiveness impacts, which are the main purpose of the exercise in international best practice. Secondly, in best practice, impact assessments incorporate the findings of an effective public consultation on the issues at stake. Such is not the case in the French model, which only requires "a list of statutory consultations." and it therefore further diminished by the weaknesses of the French approach to consultation.

In conclusion, the RIA system may still evolve, but the choice of making it a constitutional-level lever in the balance of power between the two branches of the State, in their search for control of the legislative agenda, is at least unusual, at worst alien to normal RIA goals and possibly not suited to the purpose of improving the evidence base of policy-making.

SIMPLIFICATION

This section examines how specific are, in France, the tools used to simplify, streamline and lighten both the legal texts and their administrative implementation.

The importance of legal simplification in public service reform can be seen as a further illustration of the predominantly legal approach to regulatory quality already identified as a characteristic of Better Regulation à la française. And it is true that by involving all the major institutions of the Republic, in competition on the agenda with current affairs, it has been supported by the highest authorities. But this high profile also raises expectations, which are seldom fulfilled by the publication of lengthy esoteric texts which seem to add, rather than reduce the complexity of the legal corpus. And finally, has society at large drawn any substantive benefit from the effort?

Overview of regulatory simplification in France[56]

1953: Decree on the simplification of administrative formalities.
1966: Creation of an Administrative Forms Registration Centre (CERFA), responsible for compiling a register and controlling the publication of officials forms by government departments.
1981: Business Formalities Centres (CFEs) set up under Chambers of Commerce and Industry.
1983: Commission for the Simplification of Formalities for Business (COSIFORM) set up; its responsibilities were extended to all users in 1990.
1995: Commission for State Reform set up with responsibility for administrative simplification.
1997-98: New administrative simplification programme, decentralised to the ministries and coordinated by a new body, the Commission for Administrative Simplification (COSA), attached to the prime minister's Office.
2002: Launch of the business simplification initiative (MISSE) in the Ministry for the Economy, Finance and Industry.
2003: First simplification law (Law No 2003-591 of 2 July 2003 giving the government powers to simplify legislation).
2004: Launch of the Administrative Burden Measurement and Reduction Programme (MRCA programme).
- Second simplification law (Law No 2004-1343 of 9 December 2004 on the Simplification of the law).
2005: Directorate General for State Modernisation (DGME) set up.
2007: MRCA programme included as one of four priority area in the General Review of Public Policies (RGPP) (June) and France commits to reducing the administrative burden by 25% at the meeting of the Council on Public Policy Modernisation (12 December).
- Third simplification law (Law No 2007-1787 of 20 December 2007 on Simplifying the Law and Streamlining Procedures).
2008: DGME reorganised.
2009: Fourth simplification law (Law No 2009-526 of 19 May 2009 on simplifying and streamlining
7/8/2009: Sixth simplification bill tabled in national assembly.
2011: Fifth simplification law (law N°2011-525 of 17 May 2011 on on simplication and improvement of the quality of the law.

The five simplification laws

As this is the flagship of French regulatory simplification, it is worth taking a quick look at each of the texts, which are all, according to international terminology, of the "omnibus" type.
1/ 2 July 2003[57] (Government initiative). The shortest (37 articles) and diverse in content, it inaugurates the format which will be used by all following examplars, creates a new Committee on Simplification comprising MPs and national stakeholder organisations and empowers Government to take ordinances to simplify procedures subject to ratification by Parliament.
2/ 9 December 2004[58] (Government initiative). Measures are listed under three chapters devoted to citizens, businesses, local authorities (94 articles.)
3/ 20 December 2007[59] (Parliament initiative, on the basis of a largely Government draft). Includes the repeal of 127 obsolete or irrelevant texts.
4/ 12 May 2009[60] on the simplification and clarification of the law, and streamlining of procedures. Parliamentary origin. 63 articles. It suppressed 102 government reports to parliament. It incoporates

[56] Based on OECD "Better Regulation in Europe (France) 2010" p. 128
[57] http://www.assemblee-nationale.fr/12/dossiers/mesures-simplification.asp
[58] http://www.assemblee-nationale.fr/12/dossiers/simplification-droit.asp#041504
[59] http://www.assemblee-nationale.fr/13/dossiers/simplification_droit.asp
[60] http://www.assemblee-nationale.fr/13/dossiers/clarification_droit.asp

measures taken at the suggestion of citizens, collected through the dedicated website "Simplifions la loi.[61]" It also includes several measures to clarify of the Code Pénal or increase its consistency in view of recent substantive reforms (such as the responsibility of moral persons).
5/ 17 May 2011[62] (parliamentary initiative), on simplication and improvement of the quality of the law, is the most elaborate of the texts so far. It enacted some of the findings of the Warsmann report, in a catalogue of 150 articles which was grossed up to 200 during the discussions. It has met unprecedented difficulties and was only finalized after 18 months of discussions, because of disagreements between the two chambers on the substantive content of the text.

The future of the regulatory simplification effort could however be uncertain, judging by the vehence of a parliamentary report in the Senate[63] in October 2010 listing a number of drawbacks of the procedure[64] weighed up against the scarce directly perceived benefits of the simplification effort. This catalogue of shortcomings confirms some of the perceptive findings of an internal scrutiny in 2006 that showed that simplification efforts were too focused on introducing legal changes, and did not sufficiently address implementation issues by sound project management. [65]

Codification: too successful?

Codification of approved texts is the second pillar of legal simplification, and has absorbed enormous efforts over the last two centuries. Along with normative inflation, it could also be listed as a French disease. 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 has been perceived so successful for having giving identified groups of stakeholders their very own tables of the law, that there is popular demand for ever more codes, leading an eminent lawyer to ironically remark: "we now know that there is a code of the mountain, as the legislator has decided that there should be one; now, it is up to us to draft it."[66] The author was right to take a sarcastic tone: five years later, there is still no code of the mountain, in spite of the announcement. We may make our own the OECD[67] recommendation that "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".

Administrative simplification

France, with a well-established and professional administration, has taken the turn of modernity and has for many years been attuned to the notion of "quality of service" as a headline goal for reform, and one of the components of public service reform (RGPP). Three main improvements were achieved in making life easier for citizens and business:

- e-government solutions: great improvements for citizens have been achieved by large-scale computerization of public services, placing France among top-performers in e-

[61] http://simplifionslaloi.assemblee-nationale.fr/
[62] http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024021430&dateTexte=&categorieLien=id
[63] http://www.senat.fr/rap/a10-006/a10-006.html makes interesting reading as it describes in great detail the rationale, but also the limits of simplification laws as practiced since 2003.
[64] See also smart regulation blog : http://regplus.blogspot.com/2010/12/senate-slams-national-assembly.html
[65] http://www.ccomptes.fr/fr/CECRSP/documents/divers/SimplificationDroitOrdonnances022006.pdf
[66] La semaine juridique, 13 February 2006 p. 235
[67] OECD, Better Regulation in Europe: France (2010).

governement. It can be said that nearly all common administrative procedures, and a few high profile ones like the yearly income tax declaration, can now be carried out online.

- simplifying the administrative language: the authorities have invested much time and resources since 2002 into trying to combat administrative/legal jargon in communicating with the general public. Under the general banner of simplification, the use of "plain French" has been promoted by several means[68]:
    - an attractively presented "administrative lexicon" which is of real value as it explains frequently used words and phrases, with a "translation" into everyday language;
    - tools to support re-training officials to express themselves simply: a guide to "administrative drafting" and a guide to creating official forms. At one stage there was even a piece of software that could automatically replace jargon by its everyday synonym, to help letter-writing.
    - A committee of language experts[69], including a popular singer, volunteered, between 2001 and 2007, to re-write a number of official forms, but now seems to have given up.
- streamlining procedures, on the basis of a measurement of administrative costs (see next section.)

ADMINISTRATIVE BURDEN REDUCTION

After being one of the early adopters of SCM, and contributed some improvements to the acknowledged methodology, the French commitment to the administrative burden approach seems, following its subordination to the general review of public policies, to be flagging.

In search of the baseline

In the usual manner, the programme started with a test phase (2004-2005**).** Following contacts with the Netherlands, the measurement and reduction of administrative burdens project (in French MRCA) started in 2004 with the definition of a methodology very close to the Standard Cost Model (SCM) and a test run on 50 procedures. Further batches addressed in total 150 additional procedures concerning business and citizens by the end of 2005. The selection of the procedures undergoing measurement had been made in consultation with a wide-ranging panel of business representatives and public authorities, including Parliament.

With the move of the MRCA project to the ministry of finance in January 2006, the resources were considerably expanded and a 20% target of reducing administrative burdens on business was adopted in January 2006. The project team also started applying simplification tools to the procedures that has just been measured, using the information gathered during the assessment phase. (i.e. without waiting for the full baseline measurement to have been completed.) A major operation was launched in July 2006, with an external contractor, to map the totality of normative texts (some 10,000 information obligations were identified), and to measure the full baseline, estimated at the time at about 60 billion euros.

[68] For more, see DGME site: http://www.modernisation.gouv.fr/piliers/simplifier/la-simplification-des-demarches-pour-les-usagers/un-langage-clair-ca-simplifie-la-vie/index.html
[69] http://www.fonction-publique.gouv.fr/IMG/pdf/cosla_05mars02.pdf

The French SCM operation possessed two specific traits which at the time were considered quite relevant[70]:

- the measurement included not only the costs to business but also the costs incurred by public administrations in the implementation and enforcement of regulation. A specific methodology was published.
- In addition, the project gave consideration to the "cost of delays" caused by the time it takes the administration to respond to requests from business (authorisations, permits, subsidies).

As soon as the mapping was completed, a plan was drawn up to carry out the measurement over a period of four years, and focus the simplification efforts on the 1000 heaviest or most irritating administrative procedures.

Burden reduction as part of public service reform (from 2008)

Following the incorporation of the project into the general review of public policies or RGPP (end 2007), the target reduction was raised from 20 to 25% in January 2008[71] in accordance with the European Council decision of March 2007 and the scope of the project was extended all user categories (members of the public, business, subnational levels and associations). A lighter method was adopted to select areas for simplification (see "Ensemble Simplifions" website already mentioned,) based on user-feedback conducted around "life events " and the SCM measurement was abandoned. By this method, the most complicated, frequent and/or irritating administrative formalities for each category of user, as well as their expectations regarding simplification, can be identified for streamlining.
Findings were processed with the help of ministries and led to the compilation of a simplification of formalities concerning 15 common daily-life of citizens and entrepreneurs.
The change in orientation underscores a willingness to be more responsive 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.

An online support tool: OSCAR

Results of the measurement operation are now used as the reference for a tool used to assist in the assessment of administrative burdens likely to result from planned regulation. The OSCAR[72] database and software is available online on an intranet open to all officials engaged in regulatory impact assessment. The tool is technically supported by the DGME but there does not seem to be any intention of updating the data, with corresponding risks of becoming obsolete.

[70] For more on the French SCM, see (unpublished online) Rapport de l'inspection générale des finances: "L'élaboration d'un outil d'évaluation des coûts administratifs de la réglementation » (December 2007)
[71] Decision in Cabinet: http://www.gouvernement.fr/gouvernement/la-reduction-des-charges-administratives-pesant-sur-les-entreprises
[72] For more on this tool, see http://www.modernisation.gouv.fr/piliers/simplifier/ameliorer-la-loi-et-le-droit/oscar-au-service-des-etudes-dimpact/index.html

Assessment

In its 2010 review, the OECD notes: "More strategically, the policy to reduce administrative burdens is not clearly attached to economic policy objectives … it would be timely to create a more direct and closer link between the policy on reducing administrative burdens and boosting the economy." We have seen that the same comment could be made for the whole regulatory quality policy, but it is especially true for administrative burdens. Other drawbacks of the current policy include:

- the loss of the connection between the national target and the European objective of reducing burdens by 25% before the end of 2012 (agreed by all member states at the March 2007 Council) hangs over the French approach. With results no longer measured, when the national target has not been abandoned officiallly, it is not clear how the new program can be presented as fullfilling the commitment made by France along with the rest of Europe.
- The French government seems to have stopped communicating the simplification effort in terms of administrative burdens, except as regards SMEs, and appears confident that the old-style lists of simplification measures will meet the expectations of the public.

CONSULTATION

Consultation is a good topic to ferret out national specifics, as it highlights how institutions (regulators and other public authorities) engage with civil society and how willing they are to consider and integrate other viewpoints when devising new policy and regulation. Here again, the French approach can be said to be specific.

In its 2010 review, the OECD concludes that "Since the 2004 OECD review, the French approach to public consultation has experienced major changes (and)… moved away from a model based largely on corporatism."
The reference to "corporatism" can be seen as shorthand for a closed consultation system, where decision makers are too cosy with stakeholders. This may be rather unfair a description, as social forces have always been quite vocal in French society, and even within the public service, social dialogue with the trade-unions has been relevant.
The OECD assessment that "major changes" may have occurred since 2004 may on the contrary be over-optimistic. There may have been some changes, but they are more of a technical nature, the climate of consultation has not been transformed in any significant way, and the prolonged discussion in the Senate of a bill offering to allow "open consultation" (i.e. widening the possibility of using internet) is not a good sign.

Consulting through a strict legal framemork

The fact is that in France consultation relies first and foremost on a thick network of standing representative bodies, each endowed with precise statutory rights and obligations. This in France is termed "institutional" consultation, as opposed to "open" consultation which employs a variety of channels, including IT supported media, to collect stakeholder views.
Great attention is placed on the status of the pronouncements of the advisory body, which traditionally distinguishes between boards that *can* be consulted, those that *must* obligatorily be asked for an opinion, and those whose *concurrence* on the project is required.
This rather legalistic approach is not, according to current international standards, considered the most appropriate because of its apparent lack of flexibility and adaptability to new issues. It may also probably still comprise a dose of captive consultation, with most recognised stakeholders having a vested interest in the acquis, or only formally in favour of change. Many French politicians have complained that the weight of vested interests made it difficult to reform anything in the country, as the recent example of the pension

reform has shown. Such a judgment would however neglect the fact that there is plenty of consultation going on in France, especially on high-profile topics, and that the issue of "broadening the public debate" is on-going[73]. In spite of the absence of an overall consultation policy, ministries have de facto developed new consultation methods to involve stakeholders in drawing up public policies prior to the process (the "Environment *Grenelle*", Internet forums on reforms or major schemes under consideration.)[74]

Too many standing consultative bodies?

Effective or not, the consultative committees are considered too numerous by most observers, and all efforts to revitalize consultation have first addressed the issue quantitively. The proliferation is seen as a result of poor housekeeping: new bodies are created but old ones are left to subsist, at least on paper.
Simplifying the consultative process has been underway for a number of years. Following ad hoc inventories and deletions from 2002 to 2005, a more general approach was adopted by a *décret* dated 8 June 2006, which reviewed the operating rules valid for all committees, making it more difficult to create a new body, time-limiting its existence (5 years), and streamlining its operation. In an apparently drastic move, the décret also programmed for the elimination of all existing committees three years later, unless they had been re-instated in the meantime. This approach was necessary, but cannot be counted as a major contribution towards a Better Regulation agenda, as it does not per se improve the quality of the consultation process.
Since then, new ad hoc attacks on commissions have continued, with an estimated reduction of the total number, from 2500 to 1500 bodies, which would be a reduction by about 40%.

Towards more effective consultation

A bolder approach was introduced by a short circular from the Prime Minister dated 8 December 2008[75], which "calls for a rapid and in-depth evolution of the practice of consultation," and ushers in the notion of "open consultation" which was only recognized as a viable alternative to institutional consultation two and a half years later (in the fifth simplification law, footnote n°62.)
This circular opens like its predecessors with the fact that there are too many advisory bodies; "modernising consultation entails waiving burdensome formalism and eliminating duplicative and confusing structures. It is both a due to civil society and a condition for a more efficient state" (loose translation). The text announces "a determination to review in-depth the practice of consultation" on the occasion of the repeal of all consultative committees on 8 June 2009, except for those that have been confirmed in the meantime[76]. The novelty lies in the call upon ministers to draw up new consultation channels, avoiding institutional mechanisms and making full use of web technologies. There has unfortunately not been any communication on the result of this appeal.
This change was crowned in the 5th simplification law (17 May 2010) by the recognition of open consultation as an alternative to the compulsory consultation of a standing advisory board, wherever higher norms did not exclude it. This legislative level reform was viewed as necessary in case the use of open consultation invalidated the subsequent regulation for lack of consultation through the required channel.

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[73] http://www.vie-publique.fr/actualite/alaune/reformes-elargir-champ-du-debat-public.html

[74] Examples: http://www.forum.gouv.fr/ http://www.debatpublic.fr/index.html (for environment and transport issues) http://www.impots.gouv.fr/portal/dgi/public/documentation.impot?espId=-1&pageId=docu_textes&sfid=420 (for tax issues.)

[75] http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019900712&fastPos=1&fastReqId=594844277&categorieLien=id&oldAction=rechTexte

[76] It has been stated informally that 40% of advisory commissions failed to obtain prolongation.

Assessment

This overview of official measures to improve consultation shows that steps taken are slowly trying to introduce more modern means of consultation, but without relinquishing the formal cadre which is considered necessary to guarantee legal security. There seems to be little interest in fostering a change of culture, with a more general commitment to results rather than process. [77]

Some improvement may come now that open consultation is legal, though there is still little or no substantiation in official guidance (as exists in the UK). In conclusion, the French approach to consultation still over-emphasizes the legal status of the feedback and the right of the previously recognized stakeholders to be heard. This seems to continue to be an obstacle in the way of an effective dialogue at an early stage of policy-making. It does not encourage decision makers to discuss plans with stakeholders before the policy, and even the new norms, are finalized.

ACCESS TO LEGISLATION

It gives the authors pleasure to conclude this *tour d'horizon* of better regulation in France with a section where the French approach is undoubtedly a success recognised internationally. Access to legislation and corresponding administrative services is provided in France by two major public websites:

- an online database of national law and jurisprudence (www.legifrance.gouv.fr) which is an example of international best practice in the use of information technologies to facilitate access to legislation.
- a single government portal (www.service-public.fr) offering access to all official forms, with explanations in simple language on how to navigate the corresponding administrative procedures; a recent improvement is the offer of a personal space for citizens to keep administrative information and release it on demand to public authorities.

Legifrance

Legifrance has been operating since 1998, but its current legal regime is provided by a décret of 2002[78]. The main features of this public service are the following:

- It is run by the very same service which supervises the "production" of new norms, thereby tapping the historical expertise in developing and disseminating legal texts;
- It makes available to the public free-of-charge most forms of official texts in force (Constitution, codes, statutes, regulations from government and EU), **in their consolidated form**. It is possible to track all amendments of a given article from its initial state to current version. The database covers all texts since the earliest (1537), with full-text search for those published after 1990.
- It provides access to several case-law databases, including judicial decisions issued by the constitutional, law, administrative and European courts; a free daily subscription service to the daily official gazette[79] by electronic mail is offered to users;
- The site is based on the pooling of databases organized insofar as possible as to facilitate research on the Legifrance site; the site is also a portal toward other leading public sites, for example those of the parliaments, and offers the user links to private legal information sites;

[77] Similar to what the European Commission has produced, to great acclaim : the minimum standards of consultation, as a component of its 2002 Better Regulation Action Plan.

[78] Décret n°2002-1064 of 7 August 2002. For a more detailed analysis, see http://regplus.eu/documents/legifrance_cairo.pdf

[79] *Journal officiel de la République française*

- Licenses for re-use of information contained within the public databases are granted free-of-charge to those individuals and businesses who seek to use the information in the scope of their activity, regardless of its commercial nature.

Limits of Legifrance: though it is widely used and acclaimed, the site and database still attract some criticism in the blogosphere[80], summarized in the Wikipedia article. Their merit is to be near perfect legally speaking, but user-friendliness could still be improved, though the sheer bulk of the repository poses technical problems when it comes to improving the interface. The main weaknesses are, according to the Wikipedia summary :

- an unwieldy search-engine, that does not offer wildcards, nor the possibility of saving one's frequent searches;
- excessively short sessions, preventing continuous seamless usage and limiting downloads;
- expensive licenses for external operators (but there is a free license for private use.)

In spite of these shortcomings, Legifrance is still probably the leader among its peers. Though 16 out of the 27 European member states have set up similar databases, only Belgium[81] and Spain[82] have developed such sophisticated applications and rich data repositories. Other countries have set up extensive databases (Denmark, Norway, Finland). With 6 million unique visitors a month, the number of pages consulted is over 50 million a month, showing how useful the site is considered by the public. Much legal drafting in ministries has been considerably accelerated and legal certainty strengthened by this new tool. Since December 2008, standing instructions are now also online on www.circulaires.gouv.fr though the presentation and functionalities are still quite basic.

In conclusion, Legifrance, though undoubtedly useful in managing the stock of legislation, does not constitute per se a contribution to Better Regulation as it does not deal with the relevance of the content. It is, luckily for the citizens, complemented efficiently by the second instrument, service-public.fr.

Service-public.fr

Run by the Documentation française (the French national office for documentary resources), this portal offers private individuals, associations and businesses (with a special section for SMEs) access to practical information about most administrative procedures, including about half (1366 out of approximately 2500) the existing official forms. What makes the site attractive and most useful is that it has been developed by a public service traditionally devoted to informing the public which has well migrated to the new media. There is a real effort to bridge the gap with citizens and business and provide useful and practical, rather than formal and legal, information. For instance, standard letters are offered for all the main administrative claims. Where the Documentation Française cannot manage the original online procedure, it provides a link towards the ministry in charge. The website is not the only means of helping the public: the single phone number 3939 has established its reputation as a major player in navigating people within the maze of administrative offices, and offers special access for disabled users.

More recently, from early 2009 the DGME has offered Internet users new facilities and the opportunity to open a personal account for online procedures at "mon.service-public.fr" (MSP). It includes a personal storage space where citizens can hold official information, and the possibility of releasing it to public authorities, rather than having to copy and transfer the original document in support of a new demarche.

[80] http://frederic-rolin.blogspirit.com/archive/2008/01/17/legifrance-2-0-un-symptome-de-la-mort-du-service-public-a-la.html
[81] www.belgiquelex.be
[82] www.boe.es

CONCLUSION

The French approach to regulatory management offers an alternative, perhaps best suited to its historical legacy and current sociological makeup briefly described at the end of the introduction:

- Good central control by state authorities, but with corresponding lesser emphasis on consultation and consensus-seeking;
- Pride in the quality of the legal corpus; emphasis on the legal quality and certainty, in support of existing social guarantees, rather than on the search for economic performance and competitiveness;
- Growing attention to quality of public services and ease of 'relations' with administrative authorities.

As similar features can be found in other European continental countries, the French practice can be viewed as a relevant alternative to the more generally used OECD-style approach. The "French way", relying on a leaner, more efficient central State, preserving a role in arbitrating between may still have something to offer in the search for improved regulatory environment for business and more open markets.

The French model could however benefit from **applying lessons learnt** from international good practice, as embodied in the OECD new regulatory governance principles (still under discussion.) Some options resulting from this chapter's scrutiny include:

- Defining an overall Better Regulation strategy adopting an integrated approach combining both legal and economic objectives, to move away from the predominantly legal approach;
- Setting up a central unit reporting to the Prime Minister, where all the current public institutional players could cooperate; equally staffed with legal and economic experts, this unit would inter alia issue BR guidelines and control the quality of impact assessments;
- Widening the practice of RIA to include government regulations, publish the methodology and openly apply proportionality rather than an uniform template;
- Reverting to the recognised SCM techniques to identify administrative burdens and completing the red tape cutting programme in keeping with European Union commitments;
- Publishing guidelines on effective consultation to bring about a lasting culture change.