

FOREWORD

The current document presents the executive summaries and detailed assessments of the OECD reviews of Better Regulation in Denmark, the Netherlands, Portugal and the United Kingdom. Full reports are available in separate documents.

The OECD reviews of Better Regulation in Denmark, the Netherlands, Portugal and the United Kingdom are the first four of a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in 15 member states of the European Union (EU),¹ 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 project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews on regulatory reform, for those countries which were part of this process,² and to find out what has happened in respect of the recommendations made at the time. The multidisciplinary review on regulatory reform in the Netherlands was published in 1999, the review for Denmark in 2000, and the review for the United Kingdom in 2002.³

The 15 completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out perspectives for the next ten years of regulatory reform.

Regulation: what the term means for this project

The term "regulation" in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.⁴

Methodology

Project baseline

The starting point for the reviews is a "project baseline" which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD's 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD's multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.

- The recently completed OECD/SIGMA regulatory management reviews in the 12 “new” EU member states.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasizes actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.
- The European Commission’s 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially SMEs, drawing attention to the need for a reduction in administrative burdens.
- The European Commission’s follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.
- The European Commission’s development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.
- The OECD’s recent studies of specific aspects of regulatory management, notably on cutting red tape and e-government, including country reviews on these issues.

Peer review and country contributions

For each country review, an OECD peer review team was set up, combining the OECD secretariat and up to three peer reviewers from other European countries:

- OECD Secretariat:
 - Caroline Varley, Project Leader for the EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
 - Sophie Bismut, Policy Analyst, EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Peer reviewers for Denmark:
 - Sjur Eigil Dahl, Senior Advisor, Regulatory Impact Unit (ORAKEL), Ministry of Trade and Industry, Norway.
 - Panagiotis Karkatsoulis, Lawyer, Policy Adviser and Task Force Member to the Ministry of Public Administration and Decentralisation and other Greek Ministries.
- Peer reviewers for the Netherlands:
 - Andrew van der Lem, Director and Head of International (Europe) Team, Better Regulation Executive, Department for Business, Enterprise, and Regulatory Reform, United Kingdom.
 - Triona Quill, Head of Better Regulation Unit, Department of the Taoiseach (Prime Minister), Ireland.
- Peer reviewers for Portugal:

- Michel Hainque, Head of Quality and Simplification Division, General Directorate for State Modernisation, Ministry of the Budget, Public Accounts and Civil Service, France.
- Mercedes Rubio, Deputy Director of Better Regulation, Ministry for Public Administration, Spain.
- Peer reviewers for the United Kingdom:
 - Luigi Carbone, Deputy Secretary General of the Office of the Prime Minister in Italy, and member of its Better Regulation unit. Judge at the Italian Supreme Administrative Court. Member of the EU High Level Group of National Regulatory Experts.
 - Christina Fors, Project manager and co-ordinator, Better Regulation Division, Swedish Agency for Economic and Regional Growth (NUTEK).
 - Dr Markus Maurer, Deputy Director General, German Federal Ministry of Economics and Technology. Member of the EU High Level Group of National Regulatory Experts.

The review teams held discussions in the reviewed countries with officials and external stakeholders in spring 2008. Major initiatives and developments since the missions are referenced in the reports, but have not been evaluated. The reviews are also based on material provided by the countries in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-government and public governance. The reports, which have been drafted by the OECD Secretariat, were the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. They were fact checked by the reviewed countries.

Structure of the reports

Each country report (available in separate documents) is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- *Strategy and policies for Better Regulation.* This chapter first considers the drivers of Better Regulation policies and the country's public governance framework seeks to provide a "helicopter view" of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of ICT and e-government in support of Better Regulation.
- *Institutional capacities for Better Regulation.* This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies. It also examines training and capacity building within government.
- *Transparency through consultation and communication.* This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule-making and public communication on regulatory requirements.

- *The development of new regulations.* This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.
- *The management and rationalisation of existing regulations.* This chapter looks at regulatory policies focused on the management of the “stock” of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.
- *Compliance, enforcement, appeals.* This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.
- *The interface between the national level and the EU.* This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.
- *The interface between subnational and national levels of government.* This chapter considers the rule-making and rule-enforcement activities of local/sub federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and coordination mechanisms between the different levels.

Notes

1. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom.
2. Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews.
3. OECD (1999), *Regulatory Reform in the Netherlands*, OECD, Paris. OECD (2000), *Regulatory Reform in Denmark*, OECD, Paris. OECD (2002), *Regulatory Reform in the United Kingdom: Challenges at the Cutting Edge*, OECD, Paris.
4. The term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).

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LIST OF ABBREVIATIONS

ACTAL	Adviescollege toetsing administratieve lasten – Advisory Board on Administrative Burdens (Netherlands)
AMA	Agência para a Modernização Administrativa – Agency for the Modernisation of the Administration (Portugal)
BERR	Department for Business Enterprise & Regulatory Reform (United Kingdom)
BRE	Better Regulation Executive (United Kingdom)
CEJUR	Centro Jurídico da Presidência do Conselho de Ministros – Legal Center of the Presidency of the Council of Ministers (Portugal)
DCCA	Erhvervs- og Selskabsstyrelsen (Danish Commerce and Companies Agency)
ICT	Information and Communication Technologies
KREVI	Det Kommunale og Regionale Evalueringsinstitut – Danish Evaluation Institute for Local Governments)
LBRO	Local Better Regulation Office (United Kingdom)
LGDK	Local Government Denmark
MDW	Marktwerking, Deregulering en Wetgevingskwaliteit – Competition, Deregulation & Legislative Quality Programme
NAO	National Audit Office (United Kingdom)
NAOD	Rigsrevisionen – National Audit Office of Denmark
NCA	Algemene Rekenkamer – Netherlands Court of Audit
RRAC	Risk and Regulation Advisory Council (United Kingdom)
RRG	Regulatory Reform Group (Netherlands)
SCM	Standard Cost Model
SEMA	Secretária de Estado da Modernização Administrativa – Secretary of State for Administrative Modernisation (Portugal)
STS	Steering Group for Cross-National Initiatives (Denmark)
VAKKS	Vurdering of Administrative Konsekvenser for Kommunerne ved ny Statslig Regulering – Administrative Impact Assessment of State Regulations on Municipalities (Denmark)
VNG	Vereniging van Nederlandse Gemeenten – Association of Netherlands Municipalities

REGULATORY MANAGEMENT IN 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 coordination 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.

Assessments in detail

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 the national level 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 sub national 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.

REGULATORY MANAGEMENT IN THE 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 (Marktwerving, Dereguleren 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 coordination 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.

Assessment in detail

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 not 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 the national level 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 sub national 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.

REGULATORY MANAGEMENT IN 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.

Assessments in detail

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 sub national 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.

REGULATORY MANAGEMENT IN THE 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.

Assessment in detail

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 online, 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 coordinate 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, online, 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 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 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 to 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 the national level 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 embed 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 sub-national 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 uncoordinated. 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.