

Executive Summary

Economic context and drivers of Better Regulation

Since the return to democracy, Spain has enjoyed one of Europe's highest economic growth rates, and developed into the world's 12th largest economy. The Spanish government has implemented a wide range of economic and structural reforms over the last three decades, focusing on deregulation and liberalisation, which has reduced the role of government in the market. These reforms helped the economy to grow steadily at around 3% p.a. The situation changed dramatically in the wake of the global financial crisis. Spain was one of the European countries most affected by the crisis. In 2009, GDP dropped by 3.6%, reversing the healthy pattern experienced between 1994 and 2008. Unemployment is now a major concern, and is expected to peak at nearly 20% in 2010. Actions are needed to tackle labour markets (notably its dual structure of protected and precarious contracts), the fiscal challenge of reducing the large government deficit, the housing market, as well as further structural reforms to develop new sources of growth after the collapse of the housing construction sector. There are underlying issues of weak productivity growth. Although per capita income differences between regions have diminished over the last decades, some areas of Spain remain very poor, especially in the south.

The adoption of the Spanish National Reform Programme in 2005, in fulfilment of the European Lisbon Agenda, provided a focus to work in further support of ensuing effective competition in the goods and services markets; improving and provide greater transparency in sectoral regulation; increasing efficiency and modernising the public administration; and improving the commercial balance, by increasing the competitiveness of companies. This framework applies both to the central and subnational levels of government.

Spain has generally based its Better Regulation agenda on the EU Better Regulation policy. A key driver of Better Regulation over the last few years has thus been the EU. Spain is conscious of a lag in adopting European best practices. This has helped to move Better Regulation further up the government's agenda, as evidenced in recent major initiatives to strengthen programmes for the reduction of administrative burdens on business and the reinforcement of impact assessment for new regulations, as well as actions taken in the regions to strengthen regulatory management. In some areas Spain has set ambitious targets (notably the 30% reduction target for administrative burdens, for all levels of government), which goes beyond that set by the European Union.

Internal drivers are weaker. The economic focus remains relatively muted, and many Better Regulation policies are aimed more broadly at citizens and users of the public administration, although this is partly driven by an understanding that an efficient public administration will contribute to competitiveness. The Ministry of the Presidency is conscious that the crisis should encourage a greater economic awareness of the cost of regulations, especially for SMEs (which account for an especially high proportion of business activity in Spain), and this positive view of Better Regulation is shared by

officials in core ministries. However, despite strong engagement of the business organisations in the burden reduction programmes, the business voice for change is not as strong as in some other European countries. At the political level, the idea that Better Regulation can provide real support for economic recovery needs further reinforcement. Some high-level government declarations that cite Better Regulation as an important aspect of effective economic reform have started to emerge. More are needed. There does not appear to be any significant debate or studies by academics regarding Better Regulation and the links with growth and productivity.

As in several other European countries, e-Government has expanded significantly within the public administration, especially in the national government where nearly 90% of all administrative procedures (equivalent to 98% of case handled) have a fully implemented online version (see Figure 1.1), and in so doing has helped to support aspects of Better Regulation. One clear internal driver is a growing awareness that the government needs to tackle legal complexity, including the complexity arising from decentralisation and the distribution of legislative and administrative competences between levels of government. Overall, however, a sustained commitment to Better Regulation remains fragile and uneven across the administrative and political class.

Public governance context for Better Regulation

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

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

administration is important for competitiveness, of the need for change and the importance of broader (economic as well as social) perspectives. Public governance modernisation remains a major focus of government policy, and e-Government is being deployed to good effect to encourage change.

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

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

There have been a range of positive developments since the OECD's 2000 report, especially in the recent past. Spain was a relative latecomer to Better Regulation. Overall, awareness of Better Regulation has risen significantly. In some aspects, such as administrative burden reduction, Spain is now setting ambitious targets. The Royal Decree to strengthen impact assessment is less ambitious, but does appear to signal a change of gear, based on a collective decision of the government that action was needed. Other issues are addressed such as EU management and legal access. The OECD peer review team were told that Spain is now “working very hard” to address issues and to make up a perceived lag compared with the rest of Europe, setting the basis for progress in the future.

The political commitment to Better Regulation, and the importance of an effective regulatory policy for economic revival, needs to be brought more to the fore. Political commitment to Better Regulation is starting to take hold, as evidenced by the adoption of the National Action Plan for burden reduction by the Council of Ministers. This constituted a strong impulse forward, but not all actors are yet on board. The process could be encouraged by stimulating further debate on Better Regulation and what it can bring to the economy and society. Elements of this debate are in place. A clear link is made between the administrative burden reduction programme and business competitiveness. There is also a growing awareness of the dangers posed by unrestrained regulatory inflation and complexity.

There is an increasingly important need for a clearer and more integrated Better Regulation strategy. This could be said of several other EU countries, although strategies are increasingly evident. Spain started with a range of separate policies, which in themselves highlight the progress made. The current approach seeks to remedy this situation. The National Action Plan for Burden Reduction is intended to be a comprehensive strategy that links several aspects of the Better Regulation agenda including not only burden reduction, but also impact assessment, co-operation, communication, training and evaluation. The recommendation of the 2000 OECD report for the adoption, at the political level, of a broad policy on regulatory reform that establishes clear objectives and frameworks for implementation remains however relevant, as there is some way to go on integration in practice. The OECD peer review team judged that more work is needed to connect the different elements, notably burden reduction and impact assessment. There is, as yet, no net target for burden reduction which would clearly signal that the

two policies are well joined up. The title of the Action Plan also implies that the main emphasis is the reduction of administrative burdens, whilst a fully rounded regulatory policy is much more than that. The need to encourage economic recovery is an opportunity to explain how a stronger overall strategy would contribute to this. For example, emphasis could be laid not only on the cost cutting aspects of an integrated strategy via administrative burden reduction, but also its capacity to stimulate entrepreneurship, and to increase the efficiency of the public sector.

Some important aspects of an effective Better Regulation strategy are missing, or need reinforcement. These include the need for a clearer policy on public consultation, a modernisation of the approach to enforcement, and a stronger approach to legislative simplification and legal quality. There is also a need to strengthen connections between related processes, for example ensuring that *ex post* burden reduction processes are fully joined up with *ex ante* impact assessment.

Spain faces significant structural challenges for the development of Better Regulation in a decentralised state, an issue which is fully recognised. The central government understands that leadership from the centre is important. In the recent past it has launched a series of promising meetings and structured dialogues to take this forward. It has also taken initiatives through the development of covenants on Better Regulation with the Autonomous Communities (one has been signed with Cantabria and others are expected to follow). It is too early, however, to offer a view on the results, and close monitoring will be necessary to secure firm progress. Decentralisation has developed rapidly and the systems for managing its consequences need to catch up, in a context where there are relatively few institutions that encompass the whole of the country (the judicial system is one notable exception). The central state often cannot impose, but must co-operate with and encourage the ACs. This provides a challenge to the roll out of Better Regulation across levels of government. The unfinished decentralisation process has also meant difficulties in effective management of the regulatory cascade, and the regulatory inflation which has inevitably accompanied the devolution of competences. For progress to be made the approach needs to be firm and bold. The OECD peer review team considered that the disconnection between the central level and what happens at the sub national level is still significant.

Decentralisation also, however, provides opportunities which need to be exploited. The potential advantages include the scope for friendly competition in the development of good Better Regulation practices, which has not yet been fully exploited.

As there is, as yet, no clear strategy on Better Regulation, communication is weak. Without a clear strategy, no clear communication is possible and none was evident. There is significant communication on e-Government initiatives, but not much beyond this. This affects not only external stakeholders who might wish to “buy in” to Better Regulation if they knew about it, but also the different levels of government, and of course ministries. The OECD peer review team heard from a wide range of stakeholders inside and outside government that communication is not strong, and the full picture of what is being done, and by whom, is not clear. There is no significant academic debate on Better Regulation (the focus is more on public policy), which could contribute to raising the profile of Better Regulation. It appears, however, that communication has recently improved, both between ministries through implementation of the burden reduction programme, and between levels of government.

There is a need to plan systematic and objective evaluations of the main Better Regulation policies and programmes. As matters stand the system is self referential, with no clear accountability mechanism (audit office or through the parliament, for example). Evaluation helps to raise standards, awareness and consistency, sustain momentum, and also to pinpoint what is working well and less well. With the change in status of AEVAL, it is not clear which institution could perform this function.

As in some other countries, e-Government is a driver to unlock blockages and introduce change. There is a strong interest in, and support for, the development of e-Government in general. E-Government rests on apparently well rooted and wide ranging policies and programmes, within a strong legal framework. The emphasis is explicitly on improving the transparency, efficiency and quality of the assistance and services provided to citizens and businesses. Online public services have been significantly developed in the recent past. There is extensive use of e-Government to implement the Action Plan on administrative burdens. It was beyond the scope of this review to test the depth of engagement and practical outcomes, however. It is important that the rights established in the 2007 law on citizen access to the administration are translated into concrete realities. Implementation is well advanced, according to the government at the national level. It is also important that the law is implemented at the regional and, especially, local government tiers.

Institutional capacities for Better Regulation

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

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

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

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

into a stronger role. This may be the case for example of the Ministry for Territorial Policy which is responsible for collaboration with the Autonomous Communities.

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

In the first place, the Presidency ministry role as co-ordinator and advocate for Better Regulation needs to be strengthened. The Presidency ministry's expanded responsibilities for Better Regulation appear to have been acquired more by default than design, a core priority of the government reshuffle behind it being an upgrade of territorial policy, rather than Better Regulation as such. The Presidency unit on Better Regulation is small relative to the size of the country and compared with established units in some other European countries. It does not yet match the proposals set out in the 2000 OECD report, for an oversight unit with legal authority to make recommendations to the Council of Ministers, adequate capacities for co-ordination, and enough resources and expertise to provide an independent opinion on regulatory matters. But it does now regroup key Better Regulation portfolios including impact assessment, administrative burden reduction strategy, simplification, and consolidation of e-Government strategy. It has important links to other key functions within the Presidency ministry such as relations with the Parliament and management of the agenda for the Council of Ministers. One small but significant issue is the name of the unit, which does not reflect a forward looking core responsibility for Better Regulation.

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

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

There is no specific external watchdog for Better Regulation, although part of this role is covered by the Council of State and AEVAL. A growing number of countries have either established an autonomous body external to the administration to encourage pressure for change, and publicise developments, or are getting the support of national audit offices for evaluating progress, or both. For example, the Netherlands ACTAL and the United Kingdom National Audit Office have played a

significant role in support of Better Regulation developments. The Council of State is, however, an important external influence.

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

Transparency through consultation and communication

Public consultation has traditionally been based on legal requirements and structured processes. A general requirement to consult is enshrined in the Constitution and in the 1997 Government Law, together with specific legal requirements (mainly in respect of secondary regulations). Checks are made as to whether the legal requirements have been met, and failure to do so is judiciable. There is an extensive network of advisory groups, and a formal requirement to consult these. The social partners (which include consumers as well as unions and employers) also play an important role.

The processes for public consultation are quite varied, and transparency has been established as a key principle in recent years. The central government notes that the Good Government Code, approved in 2005, establishes transparency as one of the ethical principles guiding the behaviour of government members, along with integrity and responsibility. A wide range of processes has been deployed for some time, from the consultation with organised groups, to processes targeted directly at interested parties in society, notice and comment procedures, and e-consultation which opens the process to a broad public. Reduce the number of advisory bodies, as already recommended by the 2000 OECD report. Consultation also unfolds on an informal basis.

Nevertheless, it seems that processes and overall transparency could be improved. The OECD peer review team heard from several stakeholders that there was room for improvement. It appears that there can be problems of exclusion, quality of information received, lack of feedback, and consultation that takes place too late and does not allow adequate time for response. It was pointed out that there is no structured approach, with autonomous ministries making their own decisions. There are no guidelines, formal or otherwise, beyond the legal requirement that a consultation must take place, and ministries broadly do as they see fit. As in other countries where ministries are left to determine for themselves what processes they use, there appears to be wide variability in performance. Some ministries appear to be deeply conscious of the potential for e-consultation for example, others not. As already proposed in the 2000 OECD report, a useful improvement would be a clarification of the consultation principles established in the government Law, and encouragement in the use of more open methods alongside the traditional processes.

Public communication on regulations has improved since the 2000 OECD report, and could be even stronger. The 2000 OECD report recommendation for a single authoritative source for regulations to enhance transparency for users and encourage a rationalisation of ministry rules has been implemented. This is a major step forward. Access to legislation remains an issue. Based on the positive experiences of other countries, further steps could be taken such as the establishment of a single portal for accessing the stock and flow of new regulations, and common commencement dates (fixed dates for the entering into force of new legislation).

The development of new regulations

Regulatory production is increasing steadily and this is a cause for considerable concern. A 2009 report suggests that regulatory production has grown tenfold since the early 1980s, much of it accounted for by the Autonomous Communities, linked to the process of decentralisation. The OECD peer review team heard that constant production of regulations is complicating the legal system. Many

rules are obsolete, changes are frequent, and many interviewees said it was critical to prevent unnecessary new burdens. There is a clear link with the need to establish a well functioning impact assessment process for new regulations, which the government has taken on board, as well as the reinforcement of other regulatory policies such as legislative simplification.

Forward planning of new regulations is a weak part of the law making process. The government's general policy programme sets out the broad lines of what can be expected, but there is little beyond this. Information is not made public. Transparency and a more efficient approach to policy and rule making would be supported by a strong forward planning mechanism. A growing number of European countries have this.

The 1997 Government Law was a milestone in establishing important principles for the preparation of regulations. The Law embedded a number of important principles including consultation, and regulatory impact assessment. However, the OECD peer review team heard that the administrative culture remains formal and legalistic, with "internal gold-plating", and there is a need for further public administration reforms to embed good regulatory practices as well as practical support. In particular, there may be a need to back up the 1997 principles with stronger monitoring and support to ministries, to ensure that the principles are embedded in practice. A weakness of the Spanish public governance system would appear to be difficulties and delays in fleshing out laws with implementing regulations and guidelines (it took well over ten years to agree a Royal Decree implementing the 1997 Law's provisions on impact assessment) which means that useful laws are not always translated into practice.

Legal quality appears to be an issue requiring further attention. The 2000 OECD report expressed concern about this aspect of regulatory quality, and the OECD peer review team heard that it was still an issue, although it was beyond the scope of this review to go into any depth. The government set up guidelines in 2005 to standardise approaches to law drafting, but further initiatives may be needed. This is particularly the case for SMEs. Several other European countries are taking substantive steps to secure better legal quality. One aspect is to improve the readability of legal texts by non-experts, through policies to promote plain language. Complex or unclear regulations tend to increase compliance costs, because specialists are required to interpret them. Other aspects relate to legislative simplification (reviewed in Chapter 5). It is unusual that the Justice ministry does not play any role in legal quality, as its perspective is important.

A significant potential boost has been made to the policy on impact assessment. It is widely acknowledged that the previous system was ineffective. A new Royal Decree based on the 1997 Government Law which established impact assessment as a principle was approved in 2009, together with Guidelines issued by the Presidency ministry, aimed at encouraging a more systematic and integrated approach. This is considered by the government to be a flagship new Better Regulation initiative. A wide range of stakeholders told the OECD peer review team that they supported impact assessment and that the new proposals had potential to encourage it to be taken more seriously.

Impact assessment can be expected as a result to have a stronger shape and coherence. The new process has a number of strengths compared with the previous system. It promotes an integrated approach (at least for the mandatory impact assessments) as the new requirements consolidate existing obligations into a single report; the economic impact of regulations is emphasised, beyond financial impacts, and there is a specific link to burden reduction; the institutional centre of gravity is now at the centre of government, with the Presidency ministry; and *ex post* evaluation is covered as well. A system which was largely assessed as informal and *ad hoc* is now set up to work more effectively. The government hopes this decree will be considered as the point of no return in its commitment to Better Regulation.

There is further work to anchor the new system, however, and fill gaps. For this to be a point of no return the new system needs to be strengthened further. The 2000 OECD report made a number of proposals on how to strengthen impact assessment, including public consultation, and the progressive reinforcement of analytical and quantitative skills in the administration. These issues remain valid. The previous approach was criticised for not providing explicit and standardised analytical methods, and guidance on how to develop the assessment. This remains a weakness. Not least the provisions for public consultation are not clear: there is no specific requirement for this. Yet public consultation is important to communicate with stakeholders that efforts are being made and engage in a two way dialogue for strengthening the approach to development of regulation. Parliament should also receive impact assessments on draft laws.

In particular, institutional capacities and processes for culture change need reinforcement and incentives strengthened for the use of impact assessments. The experience of other European countries is that impact assessment requires commitment to change attitudes and overcome resistance over a long period, framed by effective institutional mechanisms and by supporting tools and guidelines. In Spain, as yet, there is no explicit or formal provision for quality control. The institutional support framework is largely based on existing, pre-Royal Decree provisions. Although the centrally placed Presidency ministry is responsible for overseeing the process, it is not clear how this will be done, and resources for effective oversight appear to be limited. The Ministry of the Presidency leverage is political rather than prescriptive. Encouragement and sanctions for ministries to move away from an overly legalistic approach and to make effective assessments are not clear. Beyond some committed parts of the administration, there is no shared culture or toolbox as yet for impact assessment. Effective support for line ministry officials on what they need to do is a related issue. A further option is to set a net target for the reduction of administrative burdens which would require ministries to pay attention to production and quality.

Evaluation of the new system will help to keep it on track to deliver real change. The plan is for the Presidency ministry to prepare an annual report on the quality of the impact assessments and to submit this to the Cabinet. This is a positive initiative, which could be complemented by giving the report a wider audience.

The consideration of alternatives tends to be a formality. A common view is that “most laws are necessary”, despite the widespread concern over regulatory inflation. The new impact assessment Guidelines make the justification of a legislative proposal the first stage in the process. But they put less emphasis on the identification and description of the problem. This may imply (as it does in many other countries) a certain bias towards regulatory intervention as the preferred option. On the other hand, the central government notes that the consultation process and stakeholder involvement in the development of regulations can be a helpful counter to the assumption that regulation is necessary.

The management and rationalisation of existing regulations

Some efforts have been made on legislative simplification, more is needed to boost legal access, security and clarity. The issue was raised by a number of stakeholders. It had already been picked up in the 2000 OECD report, which noted the lack of a consolidated code or registry, that revision of regulatory frameworks was not systematic, and that tools such as sun setting or mandatory periodic reviews were absent from the legal tradition. Simplification appears difficult to achieve in the Spanish environment, and this undermines easy access to the legal stock, legal clarity and security. Issues include laws which cover a range of different issues, and not least, the rapid shifts in the distribution of regulatory competences across levels of government, which has increased the complexity of the legislative process with a variable geometry of actors involved, depending on the issue. Although some progress has been made since the 2000 report with consolidated texts and databases, a more

comprehensive policy is needed. A number of European countries (including Portugal, Germany and France) are, for these reasons, taking steps to reinforce provisions for assuring legal quality.

The policy on administrative burdens has been substantially reinforced since the 2000 OECD report. This is especially important in Spain, as administrative burdens on business are estimated to be above the international average. Since 2007, Spain has sought to catch up with other parts of Europe and has established a comprehensive Action Plan aimed at revitalising business and boosting competitiveness. The objective is to reduce administrative burdens on business by 30% by 2012, from a baseline of May 2007, a more ambitious target than the one set by the European Commission. The programme comprises a suite of well defined elements. Good use is made of e-Government in support of simplification measures. Most of the fast track measures use ICT or the introduction of online services.

The institutional support framework appears sound. It is framed by the establishment of a high-level group of secretaries of state, a unit of officials in the Presidency ministry, and contact points in each ministry. This reflects good practice in other European countries.

The structured arrangements for consultation with the business community are also a sound starting point for picking up business views. Spain has opted to work through structured co-operation with key stakeholder representatives (the Higher Council of Chambers of Commerce, the CEOE-Spanish Confederation of Employers' Organisations, and the CEPYME – Spanish Confederation of Small and Medium- Sized Companies), backed up by formal agreements. These organisations are firm supporters of the need to reduce burdens as a priority for boosting competitiveness. In many other countries, consultation with the business community rests at least in part on more direct contact with individual firms in order to confirm real needs. This could be a useful complement to the structured arrangements. The 2000 OECD report proposed strengthening linkages between simplification policy and SME policy, and this implies making sure that the views of SMEs, in particular, are effectively captured.

The principle of a country wide target is commendable, but needs vigorous follow through. Few EU countries have yet gone so far as to extend formal coverage of their administrative burden programmes to all levels of government. Since the majority of burdens on business are considered to derive from regulations issued by the ACs and local levels of government, this is important. The issue is how effectively this is being taken forward in practice. Since the central state cannot dictate to the ACs, it will take action only on national regulations, and a non binding co-operation agreement is in place with the ACs to encourage the latter to apply their own reductions, based on their own measurements and definition of burdens. The OECD peer review team heard from some ACs that further harmonisation of terms and methodologies would be desirable. Communication seems to be an issue. Some of the ACs met by the OECD peer review team seemed to know little about the programme.

Although burdens in new regulations are to be measured, the target is not a net target. Many EU member states now have net targets, in recognition of the fact that it is important to capture the potential burdens in new regulations and avoid a situation where new burdens cancel out the positive effects of dealing with existing burdens. In countries suffering from regulatory inflation, such as Spain, this is all the more important.

Communication of the programme, its objectives and achievements appears to need attention. Communication is woven into the daily work of the officials in the presidency ministry responsible for the simplification policies and there are frequent meetings. Nevertheless, there does not appear to be a clear communication strategy drawing attention to the programme, its objectives and potential benefits (as exists, for example, in the Netherlands). A report will be drawn up every six months by the Presidency ministry on progress with the Action Plan, but this will only go to the Cabinet.

The Action Plan needs to deliver results as soon as possible, in order to sustain momentum. The arrangements in place (such as institutional support, structured consultation) are generally sound in principle but now need to show that they are functioning effectively in practice. Some aspects need fixing now. The reduction target is not divided between ministries, which reduces the incentive to take action. Methodological support for ministries also appears to be an issue, although training courses have been established and are being further developed.

Other actions to support business needs are being taken forward, with mixed success. One-stop shops providing support and information for business start ups have been set up in a number of ACs and the evidence is that they are having a positive impact, for example on company creation. On the other hand, challenges which were already picked up in the 2000 OECD report regarding licences and permits remain.

The government's initiatives for the reduction of administrative burdens generally cover citizens as well as businesses. Many of the projects in the Action Plan also have some effect on citizens. The 2007 Law on electronic access of citizens to public services was an important milestone in defining citizen rights *vis à vis* the administration. However, it was beyond the scope of this review to form a view as to what extent these rights have been translated into practice.

The government does not at this stage have a specific programme for administrative burdens within the administration. The Administrative Information System (AIS) does, however seek to map procedures. The value of a programme to address regulation inside government is that it can release resources for other work, such as front line teaching or policing, by reducing unnecessary burdens and improving productivity. This can also help to drive the ongoing efforts at modernisation of the public service. A study from the business community suggests that business suffers from inefficiencies in the public administration.

Compliance, enforcement, appeals

Compliance rates are not monitored and there may be a compliance issue. As in most other EU countries, Spain does not keep any systematic record of compliance rates. However this may be particularly relevant in the Spanish context. As the 2000 OECD report had already noted, the complexity of the regulatory system may put pressure on the rate of compliance, and the Spanish government has not yet emphasised the need to design compliance friendly regulations. There are also recorded instances of mismanagement and corruption. The OECD peer review team was not able to examine this issue in any depth but it seems that compliance needs attention.

The approach to enforcement varies significantly across the national territory, and risk-based enforcement has some way to go. Variations in approach, due in large part to delegated responsibilities, cause significant variations in quality of services provided, and there are no minimum standards. Efforts have been made to improve enforcement strategies, but these tend to focus on increasing controls (more inspectors, and databases) rather than adopting a more efficient risk-based approach as in some other EU countries (varying the rate of inspection to the risk of non compliance). The OECD peer review team also heard that the State peripheral administration often implements central regulations but has little voice in shaping it, as it is not consulted in the development of legislation.

There is a comprehensive and diversified appeal system, but delays are a major issue, which the Justice ministry is addressing. The situation as recorded in the 2000 OECD report still appears to be valid. Spain's appeal mechanisms are accepted as fair, but also criticised as complex, slow and costly. The citizen is protected against possible abuses by the administration, but it is a difficult process. The main issue is delays, with a slowing up of some procedures over the last ten years. The cost of pending judicial claims has been estimated at EUR 6 billion. Litigation is rising. The Justice ministry has recently established a modernisation plan to address issues and update the framework.

The interface between member states and the EU

The EU is a major driver of Better Regulation in Spain. Implementation of the Services Directive was mentioned by a number of stakeholders as a driver of positive internal change. It is less clear whether the EU is considered a major source of regulations (a point which is often emphasised by other EU countries), with most interviewees expressing greater concern about Spanish production.

The State has overall responsibility for the negotiation and transposition of EU directives, and the system seems to be broadly effective. There is a clear central co-ordination framework for negotiations. In particular, Spain has a good record in transposition, ranking fourth in the EU's latest Internal Market scoreboard. This positive achievement would appear to be based in part on supporting tools and processes, including a centralised database and correlation tables, which have been mandated by the 2009 RIA Guidelines. Unlike in some other EU countries, gold-plating (going beyond the strict requirements of a directive) does not appear to be a major issue. Impact assessment is applied as a matter of course (as for domestic origin legislation) for both the negotiation and the transposition phase, which many other countries do not do.

Spain's decentralisation nevertheless can pose challenges for the efficient implementation of EU policy. Because in many policy areas competences are allocated at different levels, transposition can be complex, and as the OECD peer review team were told, "there is no magic solution" to address the issues arising from a split in responsibilities across the levels of government for the same directive. The institutional mechanisms for bringing the State and the ACs together (Conference of European Affairs and other mechanisms) are not always effective. In some cases, *ad hoc* Committees are created in order to guarantee the correct implementation of directives among all Public Administrations. An example is the "Better Regulation Committee" related to the transposition of the Services Directive. There can be failures to transpose all the provisions of a directive, with the issue ending up in court.

A further strengthening of the framework seems desirable. The Council of State suggests that areas for attention include late participation in the negotiating phase; the lack of a sound basis for negotiations; and internal disconnection between the negotiating and the transposition phase. Among other recommendations, it suggests a more structured forward planning, and enhancing RIA practices applied to EU legislation. The OECD peer review team also heard that public consultation and communication on EU matters can be ineffective and cut short prematurely.

Spain is one of the larger EU member states and its voice needs to be heard in Brussels. It is understandable that Spain's voice has so far been relatively muted, as many of its own Better Regulation policies are only now being strengthened, and there is an issue of resources. However it is not the only country to face resource issues. Making a contribution to the future of regulatory management by the EU institutions would contribute to a stronger domestic regulatory management, given the importance of EU regulations.

The interface between subnational and national levels of government

There have been important developments since the OECD's 2000 report, with a progressive but far reaching devolution of powers to the Autonomous Communities. A progressive decentralisation process has been taking place based on provisions of the 1978 Constitution, and the ACs have acquired a growing number of competences. The speed and depth of this process has varied across the ACs. As a result, Spain presents an asymmetrical institutional landscape across the two main levels of government. There has, however, been some convergence since the early 1990s. The Spanish public governance framework is now highly decentralised. Aspects of the process remain a work in-progress.

The engagement of the Autonomous Communities in Better Regulation is crucial. The ACs now have numerous and significant responsibilities, notably in areas such as planning, local government, public safety, and the environment. They also provide major public services such as education and

health. Not least, from the perspective of Better Regulation, they account for the majority of new regulations.

The EU Services directive has provided a boost to reform. Implementation of the transposing measures for this directive requires modernisation and simplification of the public administration. It has been used as a driver to unlock blockages and introduce changes, not least with respect to the ACs and municipalities. The Better Regulation Committee, created by Law 17/2009, embedded in the Ministry of Economics and Finance, is a good example. Formed by AGE, ACs and local entities, its main tasks are to foster, in all Public Administrations, Better Regulation in the economic domain to avoid the introduction of any unjustified restriction within markets; to encourage co-operation in Better Regulation of services activities and to monitor and co-ordinate all measures carried out by all Public Administrations to guarantee a correct transposition of the Services Directive.

The devolution and re allocation of competences has, however, raised some complex challenges. As in some other countries with fast evolving decentralisation, the process raises issues, which need to be addressed before they become serious problems. In its 2008 Annual Report, the Council of States noted that there is no conflict prevention mechanism to avoid disputes, or to resolve simple contradictions and overlaps between the State and the ACs, which can occur because there is no obligation for ACs to consult with, or even to notify, the State when they issue a new legislative proposal. Unresolved disputes of this kind end up in court, which adds to the congestion of the judicial system. Other stakeholders drew the OECD peer review team’s attention to the problem of concurrent competences.

Leadership from the centre is important. The 2000 OECD report noted that continued leadership from the centre was important, to encourage the adoption and sharing of good regulatory practices and reform. This remains true today. The central government is taking important initiatives to provide a lead, most notably through the inclusive “whole of Spain” approach to the Action Plan for the Reduction of Administrative Burdens. The review team did, however, hear that central government communication on Better Regulation developments could be reinforced.

Effective co-operation between the levels of government on Better Regulation is another key requirement. Although it was beyond the scope of this review to test their effectiveness, a range of formal and informal approaches to co-ordination between the State and the ACs is now in place.

The Autonomous Communities’ own work on Better Regulation is equally vital. With some important exceptions, Better Regulation practices are not as developed as at State level, but are starting to gain ground, generally building on the programmes for administrative simplification which are already in place. All the ACs have now established Better Regulation programmes. The 2000 OECD report noted that the ACs as innovation laboratories (2000 OECD report underlined this, and gave examples such as “tacit authorisation rule for administrative procedures started outside the central government”. Some of the ACs said that further training would be helpful.

Co-operation between the ACs is also important, to share best practices. Horizontal co-operation between ACs is less formalised than that between ACs and the State. It was beyond the scope of this review to test the success of informal networking but it appears to be an approach that works well for some ACs. There is no formal benchmarking, as in some other countries, which could help to spread best practices as well as encourage innovation.

Some issues may need attention at the municipal level. The OECD peer review team heard that the high degree of autonomy of each municipality to set its own policies and procedures results in different requirements and procedures for the same dossier, causing unpredictable delays. Given that Spain has a higher than average proportion of SMEs in its business community and the fact that this level of government is often the first and most important point of contact for SMEs, the efficiency of municipalities matters.

Key recommendations

<i>Better Regulation strategy and policies</i>	
1.1.	Continue to build on the political commitment and initiatives to promote Better Regulation and why it is important for the recovery of the economy and social welfare. Encourage further debate and the dissemination of information on this issue. Review how the Better Regulation strategy is packaged to avoid the impression that it is only focussed on administrative burdens, as the current name implies. Continue with the central government leadership initiatives to stimulate a closer relationship and co-operation between central government and the Autonomous Communities, and ensure that the initiatives are monitored for their effectiveness.

<i>Institutional capacities for Better Regulation</i>	
2.1.	Strengthen the resources and capacities of the Presidency unit so that it can fully address its new responsibilities, perhaps partly through secondments from the other core ministries for Better Regulation. A change of name for the unit should be considered, to better reflect its real purpose and work.
2.2.	Consider how best to strengthen networks for sharing and overseeing Better Regulation processes, including whether the framework supporting administrative burden policy could be replicated. A specific role could be allocated to the CGSYS to oversee Better Regulation aspects of the dossiers it submits to the Council of Ministers. The Presidency ministry could preside a group of core and interested ministries and agencies, both at political and official level, on impact assessment as well as other elements relevant to the Better Regulation agenda.
2.3.	Continue the work to build up training for officials on Better Regulation processes. This should be a mandatory part of training for new and established officials.
2.4.	Review the role played by different actors external to the administration and consider whether this leaves any gaps. Consider whether an external watchdog to oversee compliance with Better Regulation processes would help.
2.5.	Encourage Parliament to take a closer interest in Better Regulation, for example by sending them individual impact assessments and the planned annual evaluations on impact assessment policy. Consider sending Parliament an annual progress report, in which developments in Better Regulation are linked to progress in economic recovery.

<i>Transparency through public consultation and communication</i>	
3.1.	Establish guidelines for public consultation that flesh out benchmarks of good practice on issues such as timelines and the need for feedback. Use green and white papers to promote debate and encourage feedback at an early stage in the development of policy and law making. Establish, via the Presidency ministry, an arrangement for the exchange of information and best and most appropriate practices among ministries.
3.2.	Consider further steps to enhance access to regulations, such as the establishment of a single portal covering both existing and new regulations, and common commencement dates.

<i>Development of new regulations</i>	
4.1.	Consider establishing a monitoring mechanism within the government on regulatory production, or commission this on a regular basis from an outside source, to raise awareness of the situation.
4.2.	Establish and publish a clear annual forward planning timetable for new primary regulations as well as significant new secondary regulations.
4.3.	Consider a review to assess the current situation regarding legal quality, associating this with policies to strengthen legislative simplification, and involving the Justice ministry.
4.4.	Plan to strengthen the system with more specific guidance and capacity building for analysis (including quantitative) within the administration; and with the integration of public consultation as part of the process.
4.5.	Evaluate institutional capacities to support, monitor and challenge the quality of impact assessments and reinforce these. Ensure that line ministries have adequate support and guidance on the process. Aim to set a net target for the reduction of administrative burdens so that new regulations are assessed as well as the existing stock.
4.6.	Consider a wider dissemination of the planned annual evaluation reports, for example to Parliament.
4.7.	Consider how to further promote the assessment of alternatives to traditional regulation, including a scrutiny of whether regulation is needed at all.

<i>The management and rationalisation of existing regulations</i>	
5.1.	Establish a clear and comprehensive policy to address the challenges of legislative simplification in order to support legal security and clarity.
5.2.	Review the practical arrangements for integrating the levels of government into the Action Plan and take action to remedy weaknesses, such as the need for a common approach, and effective communication.
5.3.	Consider setting the current target as a net target as a next step, to take into account burdens from new regulations.
5.4.	Establish a communication strategy so that businesses (and citizens) are fully informed of plans and developments. Engage the parliament, by sending them a version of the progress report to the Cabinet.
5.5.	Monitor and evaluate the effectiveness of the institutional arrangements and of the co-operation agreements for delivering results that meet the needs of the business community. Allocate the target reduction among ministries in order to encourage ownership of the Action Plan across the government. Ensure that ministries are adequately supported in taking forward their part of the Action Plan. If necessary, take action to complement the consultation arrangements, via direct interaction with firms on their needs.
5.6.	Continue the roll out and reinforcement of the one-stop shop network for businesses. Carry out an evaluation of licensing at the municipal level with a view to addressing problems.
5.7.	Consider whether a specific plan to improve the efficiency of regulations inside government would be helpful.

<i>Compliance, enforcement, appeals</i>	
6.1.	Consider whether to set up a system for monitoring compliance rates, starting with the records that may already be kept.
6.2.	Consider a review of enforcement policy, engaging all relevant actors and addressing the scope for evolving towards a more risk-based approach.

The interface between member states and the EU level

7.1.	Consider a review of the framework for the management of EU regulations, from negotiation to transposition.
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The interface between subnational and national levels of government

8.1.	Encourage further multilevel co-operation, including the development of friendly competition, autonomous community “brains” being better than one (Belgium and Germany may offer some examples). This can build on the fora and <i>ad hoc</i> groups which are already underway as a means of by-passing the formalities of the constitution.
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Notes

1. Law 50/1997 *Ley del Gobierno* was an important step in efforts to modernise political and administrative processes in the central administration. The law sets general good practice requirements on ministries for the development of regulations (including on impact assessment and public consultation). The Spanish Administrative Procedure Law of 1958 has been reformed twice in order to increase accountability and transparency across the administration. It modernised decision-making and the functioning of the State.
2. As one interlocutor put it to the OECD peer review team, Spanish society has changed but the modernisation of the public administration has not kept up. Another interviewee put it that “Spaniards are masters in producing laws and then ignore them...”.
3. See: Royal Decree 542 of 7 April 2009.
4. See: www.la-moncloa.es/ActualidadHome/2009/220409Congreso.htm (last accessed 10 August 2009).
5. See: www.plane.gob.es.
6. See: www.la-moncloa.es/ActualidadHome/2009/070409CambioGob.htm (last accessed 10 August 2009).