OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN SWITZERLAND

GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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ORGANISATION FOR ECONOMIC CO-OPERATION

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government capacity to assure high quality regulation* analyses the institutional set-up and use of policy instruments in Switzerland. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Switzerland* published in March 2006. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 22 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform.*

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Delia Rodrigo in the Public Governance and Territorial Development Directorate of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Switzerland. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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CHAPTER 2: GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION IN SWITZERLAND

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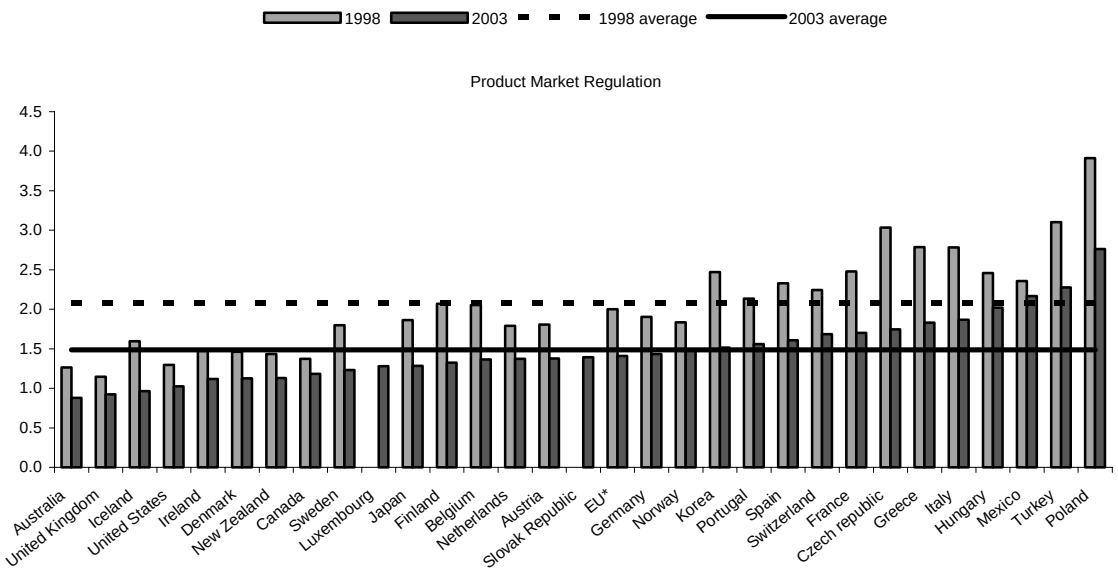
1. REGULATORY REFORM IN A NATIONAL CONTEXT

1.1. The administrative and legal environment for regulatory reform

Switzerland has a strong institutional framework which promotes respect for law and participatory democracy. Federalism and frequent consultation of the voters are part of the constitutional order. Although numerous amendments have modified the Constitution, important features like federalism and the referendum have been basically unchanged since 1874. The long history of the constitutional order permeates the institutional context of reform. Political consensus and political commitment by the citizens are key elements of the Swiss political system. Strong federalist principles highly influence the legal and administrative environments for regulatory reform.

Over the last decade, Switzerland's economy was characterised by weak growth and comparatively high prices.[1] Accordingly, low productivity growth has become an increasing source of concern for policy makers. The adoption of reforms is time consuming, and there are limitations to how much can be achieved incrementally. Consequently, product market reform in Switzerland lags behind other European countries (see Figures 2.1 and 2.2), suggesting a number of regulatory challenges.

Figure 2.1. Regulation in 1998 and 2003



1. Sorted by 2003 values. The scale of indicators is 0-6 from least to most restrictive of competition.

* EU 15 (simple average)

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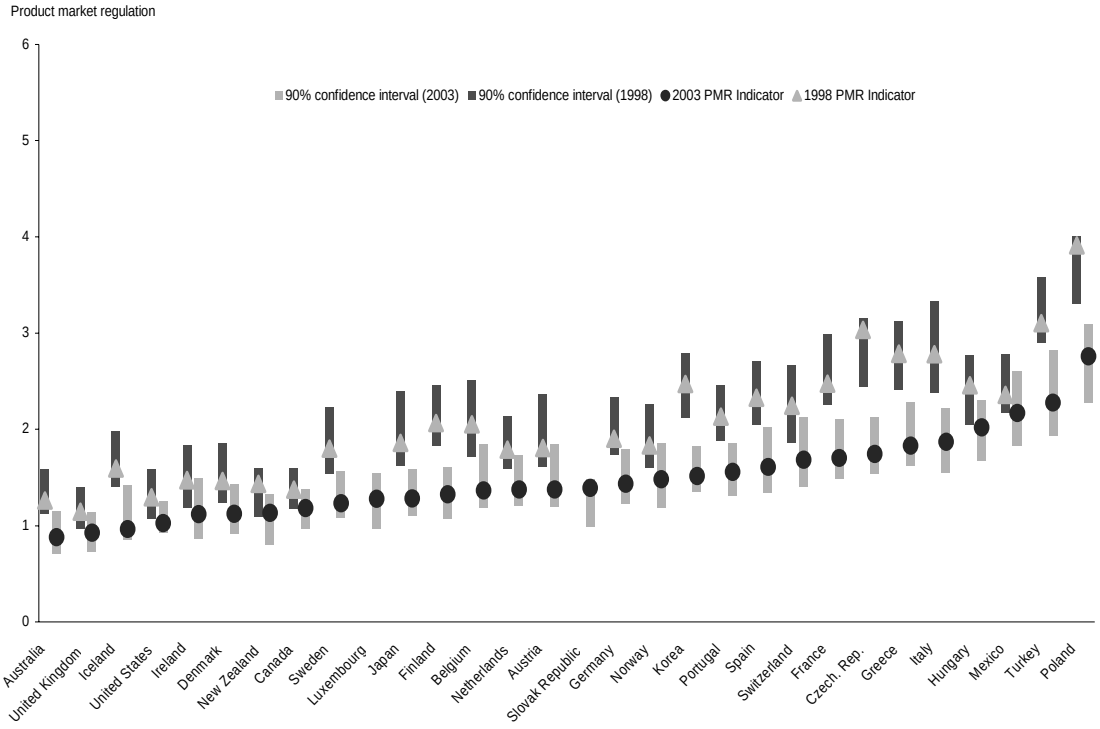
Figure 2.2. Confidence intervals for the PMR indicators, 1998 and 2003

Overall PMR Indicators, 1998 and 2003[1,2] (at 90 per cent levels)



1. The confidence intervals are calculated using stochastic weights on the low-level indicators to generate a distribution of overall PMR indicators for each country. The 90 per cent confidence intervals are calculated from that distribution.

2. The scale of the indicators is 0-6 from least to most restrictive of competition.

Source: Conway, Paul *et al.*, *Product Market Regulation in OECD Countries: 1998 to 2003*, Economics Department Working Papers, No. 419, OECD, Paris.

The main challenge is to find ways of improving the decision-making process, contributing to increase Swiss competitiveness in a globalised world, while continuing to draw on the strengths of its political system. An overall strategy to enhance the economy's performance, reform product markets and adapt to changes in the international environment is essential. This report is an attempt to assess the quality of the regulatory framework and to explore the options which could enhance its impact on long-term economic growth. The 2005 OECD Guiding Principles for Regulatory Quality and Performance offer an analytical framework for analysing the capacities of national administrations to assure regulatory quality. The analysis developed in the current chapter follows this analytical framework.[2]

Switzerland's federal system is characterised by a structure consisting of three different political levels: the Confederation, the cantons and the municipalities. From a regulatory perspective and in terms of participation in federal decision making, there is an evolution towards co-operative federalism for the implementation of tasks as the dominant mode of the division of labour between two state levels (Confederation and cantons).[3] The Confederation only has authority in those areas in which it is empowered by the Constitution. All other tasks are dealt with by the cantons. In some areas, the Confederation and the cantons share certain responsibilities. This institutional design has had an impact on the Swiss federal centre, which has sometimes limited possibilities of coercive implementation of federal programmes.

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Some features of the Swiss political system, mainly the power of referenda, are essential to understand the path of economic reforms. A high number of possibilities to apply a veto in the decision-making process, through which policy proposals can be overturned by political opponents, prohibits rapid and wide-ranging policy changes. The Swiss system often achieves change on the "second time" around, *i.e.* in reaction of a successful referendum. Consequently, reforms are generally incremental. The current political and economic debate concerns how much change can be absorbed and at what speed.

As a consequence of numerous veto powers, the Swiss political system emphasises political consensus. Readiness to compromise is one of the most fundamental elements of Swiss politics. There is no opposition party, no presidential veto and no strict party discipline in Parliament. The decision-making process of the Federal Council, which is fully collegial, embodies constant search for majorities, in Parliament and among the voters. Comprehensive consultation mechanisms and transparent procedures are essential to this end. Participation by a wide range of actors is not only a necessary element of the political debate, but also deeply rooted in the values of the society.

The Swiss legal system is based on civil law influenced by customary law. It is a highly developed system of law with a strong focus on the protection of individual rights as well as private investments. This has contributed to a high rate of compliance. There is no general review against an act, but a party concerned may file an appeal. The federal structure of the country greatly influences the legal system: while the Confederation has the legislative power through the enactment of federal legislation in areas defined by the Federal Constitution, responsibility for implementing federal policies resides to a large extent with the cantons, which also have the prerogative to enact cantonal legislation. The Constitution states that cantons respect federal law, but keep autonomy in implementing it.

The development of the regulatory framework in Switzerland has been closely linked in recent years to the need for structural reforms in the economy, and also keeping pace with regulatory developments in Europe. Rapid global changes have generated many challenges for the country, especially in terms of sustained economic growth, attractiveness for business and international competitiveness. Since the 1980s, the Swiss economy has been in a period of slow growth. Even if Switzerland is still one of the richest countries in the world, the lead over most of other OECD countries has diminished during the last twenty years. The pace of technological changes and international developments, mainly characterised by European and global economic integration, demand from Switzerland internal political reforms in order to find long-term solutions, to strengthen the country's profile at international level and to inject dynamism to the Swiss economy.

In 1992, the Swiss people rejected in a referendum the accession of Switzerland to the European Economic Area (EEA).Despite this rejection, internal consensus on reforms was built up and the Federal Council launched in 1993 a "Revitalisation Programme",[4] complemented by the *Swisslex* programme[5] and the announcement of bilateral negotiations with the EU. Some of the measures needed to adapt Swiss legislation to the requirements of the EEA were introduced by the Federal Council and approved by Parliament in the years ahead. In the second half of the 1990s, Switzerland made an effort to make economic criteria more visible and important in decision-making.

Even if regulatory policy has been gradually integrated into the public sector modernisation process, efforts to date have concentrated on deregulation and the reduction of administrative burdens imposed to business. They have often remained piecemeal and fragmented in the standard decision process. There has also been a lack of comprehensive strategy to address the raising number of regulations.

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The demand for policy coherence and the growing complaints about overregulation have suggested the need for a more co-ordinated approach involving various parts of the government at the same time. Efforts have increased since 1992, when a number of programmes have been passed by the government regarding regulatory policy, *e.g.* the "Revitalisation Programme", programmes to relieve companies of administrative burdens, etc.[6] These programmes have been prepared by interdepartmental working groups which are a way for strengthening the co-ordination of government action and policy-making.

1.2. Recent and current regulatory reform initiatives

Since the mid-1990s, the Swiss government has been confronted with economic constraints and slow growth. A first set of wide ranging initiatives was introduced in the 1990s through the "Revitalisation Programme" and consequent reforms. In 2001, the Federal Department of Economic Affairs commissioned SECO to produce a report on growth (*Rapport sur la croissance*) to identify general guidelines for a growth-oriented policy. Besides the changes driven by the need to deepen economic integration with the EU and by a way of the multilateral trading system established in the WTO, the regulatory framework was finally discussed as one of the core elements of the debate:[7] its weaknesses were seen as a major reason for impeding the development of Swiss enterprises.[8] The transformation of the regulatory framework can contribute to improve the potential growth of the Swiss economy. Some steps have already been taken. The transformation of the regulatory framework in a pro-competitive way can essentially contribute to growth of the Swiss economy, was the argument of the report.

Based on the findings of the Report on Growth, an interdepartmental group was set up in 2002 (*Groupe interdépartemental sur la croissance*), which prepared a list of concrete measures to be taken in order to improve economic performance. The "growth package" agreed by the Federal Council at the beginning of 2004 has been an important driver for reform since it has been used as a reference for future action and discussion. The Legislature Plans, submitted to Parliament in the first year of each legislature period for approval, included these measures to reinforce competitiveness through deregulation and market openness.[9] In the 2003-2007 Legislature Plan, in the section entitled "Reducing governmental barriers, developing competition in the domestic market, and reinforcing trust in economy", the Federal Council reiterated its goal to improve competition policy in the domestic market and to continue with administrative simplification.

The Federal Council has suggested revising the Law on the Internal Market, in order to reduce barriers to free internal trade in goods and services imposed by different cantonal and local regulations. An amendment to the Public Procurement Law would increase transparency and would reduce red tape for tenders by harmonising the legal framework at the federal level. In the near future and as part of the growth package aimed at bringing more competition to the Swiss market, the government will propose measures aimed at reducing barriers to access the domestic market, such as concessions, permits and trading licences,[10] and at reducing administrative procedures, mainly for the set-up of enterprises, the administration of salaries, fiscal declarations, prosecution and bankruptcy.

More particular measures specific to regulatory quality have also been introduced in recent years. In 1999, the Federal Constitution was amended, including measures aimed at improving the regulatory framework. Article 164 states that "all important provisions establishing rules of law must be enacted in the form of Federal Statutes. A Federal Statute may delegate the power to legislate unless this is excluded by the Federal Constitution".[11] A new scheme for the dispatch sent with the law proposal to the Federal Assembly was introduced in the Parliament Act (Art. 141).[12] In parallel, the consultation procedure will be subject to a federal law.[13] All these measures provide clarity and reinforce transparency of legal and regulatory procedures.

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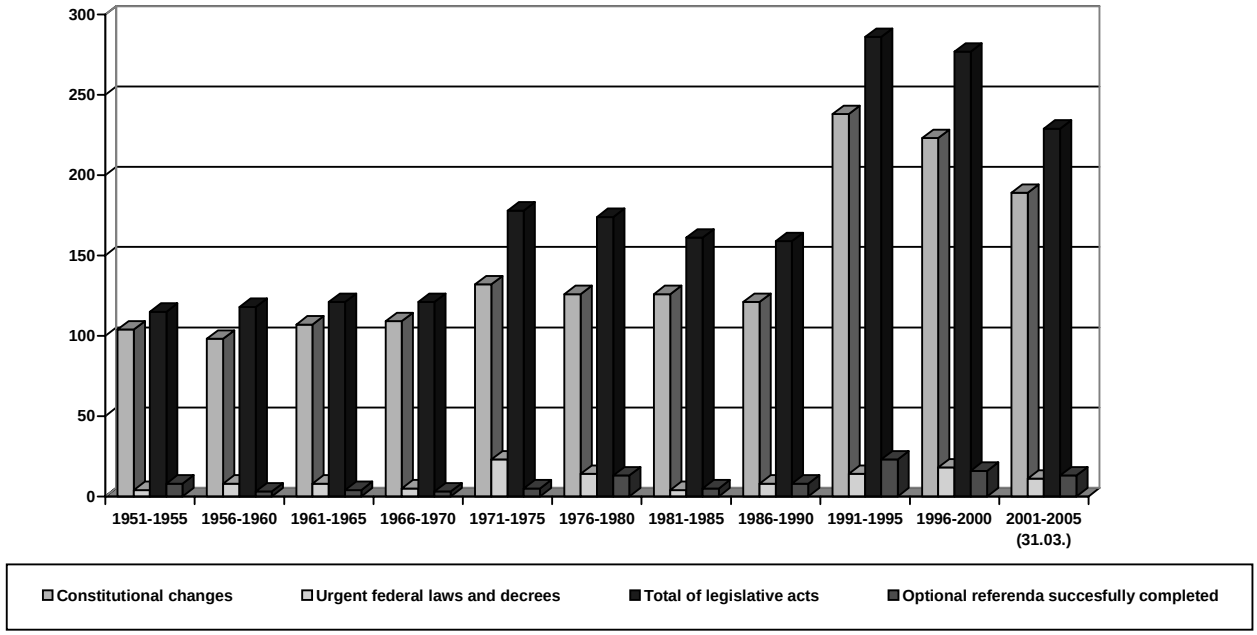
In the last few years and like in most OECD countries, legislative activity has increased due to new areas to regulate, the development and new dimension of the social state and the compatibility of the Swiss law to international rules, including the implementation of the EU *acquis* (see Figure 2.3). The *Recueil officiel*, the official compendium for the publication of new laws, can be used as a proxy for measuring the increase of legislation: in 1998 this compendium had 3 271 pages, in 2001 it went up to 4 000 pages, and in 2003 it reached 5 514 pages.[14]

Figure 2.3. Legislative activity in Switzerland related to the referendum 1951-2005



Source: Chancellerie fédérale. Section des droits politiques.

In the late 1990s, the Swiss Parliament required, by motions and postulates,[15] the preparation of a series of amendments and proposals to change the framework and conditions for SMEs, thereby helping to maintain Switzerland's appeal as a location for business. Based on the Forster Motion[16] of 1996, an economic assessment of the consequences of new or reformed legislation in the dispatch became compulsory, making Regulatory Impact Assessment (RIA) mandatory. In 1997, the Speck Postulate[17] invited the Federal Council to study new instruments, such as sunset clauses and a "budget" for the introduction and application of new laws, to limit the amount of regulations. The Federal Council decided to introduce in the years ahead different regulatory instruments to assess the impact of regulations: the Regulatory Impact Assessment and the SMEs Compatibility Test. The government also set up the SMEs Forum, a consultative body that identifies challenges for SMEs and discusses possible solutions (see Section 3.3.2).

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2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

2.1. Regulatory reform policies and core principles

The 2005 OECD Guiding Principles for Regulatory Quality and Performance recommend that countries adopt at the political level broad programmes of regulatory reform that establish principles of "good regulation" and clear objectives and frameworks for their implementation. Regulatory policy may be broadly defined as an explicit, dynamic, continuous and consistent "whole-of-government" policy to pursue high-quality regulation.[18] It is an integral part of the process that links a policy goal, a policy action and regulation to support the policy action.

Experience in OECD countries suggests that an effective regulatory policy has three basic components that are mutually reinforcing: it should be adopted at the highest political levels; contain explicit and measurable regulatory quality standards; and provide for continued regulatory management capacity.[19]

Box 2.1. Good practices for improving the capacities of national administration to assure regulatory quality and performance

The 2005 OECD Guiding Principles for Regulatory Quality and Performance capture the dynamic and on-going whole-of-government approach to implementation of regulatory quality. Based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation, on the Report on Regulatory Reform, welcomed by Ministers in May 1997, and on the OECD work of 20 country reviews and new monitoring exercises, the Guiding Principles form the basis of the analysis undertaken in this report:

A. BUILDING REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political level.
2. Dynamic dimension of regulatory policy.
3. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
4. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory co-ordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.
3. *Ex post* evaluation.

In the Swiss case, regulatory policy has been driven by a strategy to increase competitiveness at the federal level, which has involved efforts towards deregulation and market openness. The recent decision adopted by the Federal Council to adopt the "Cassis de Dijon" principle[20] reinforces the approach to reduce technical barriers to trade in the country.[21] The dynamics and flux of the EU *acquis* and international regulation on Swiss legislation, as well as the need to reduce administrative burdens to businesses have also influenced the content of regulatory policy. In addition, the legal character of the Swiss system provides a solid framework for making laws and for implementing and enforcing them.

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Different key elements and sub-elements of regulatory policy at the federal level exist in the following documents:

- The *Federal Constitution* is not only the legal foundation of the Swiss Confederation, but also contains the most important rules for its functioning and guarantees extensive political rights to citizens and participation of the public in law making.

- *Federal Acts* and their related *Ordinances* provide a framework for the organisation of the administration and the government, administrative procedures, consultation mechanisms, internal market, transparency, etc.

- The *Legislature Plan* is the main document presented by the Federal Council to Parliament for decision at the beginning of the legislature period. It contains the main issues, policy orientation objectives and specific goals for the new legislature over the next four-year period of government.

- The *Legislation Guide*, prepared by the Federal Office of Justice, and the *Manual on Legislative Techniques*, published by the Federal Chancellery, provides guidance on formal requirements of the legal system on law-making procedures, linguistic terms, structure and format to be used in new laws and regulations.

- The *Directives of the Federal Council on the Economic Consequences of Federal Legislation*, dated September 1999, contain the legal basis for RIA.

Efforts have been made to strengthen policy co-ordination. However, questions remain as to whether this is sufficient to foster coherence across major policy objectives, to clarify responsibilities for assuring regulatory quality and to ensure capacity to respond to a changing, fast-paced environment.

2.2. Mechanisms to promote regulatory reform within the public administration

Mechanisms for managing and tracking reform inside the administration are needed to keep reform on schedule and to avoid a recurrence of over-regulation. It is often difficult for ministries to reform themselves, given countervailing pressures, and maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based.

The Swiss governmental and administrative apparatus is highly complex, characterised by multi-layered interactions and decision-making processes. As in other countries, the political style of resolution of conflicts through negotiation, called "concordance" (*Konkordanz*) or "power sharing", is a clear feature of the Swiss political system. This requires pragmatic compromises, facilitates mutually beneficial exchanges, and furthers integration of all social groups into the political system. Concordance is also linked to the collegial character of executives: at all levels of government, the executive represents a broad coalition.

The *Federal Council* is the highest executive authority of the Confederation (Art. 174 of the Federal Constitution). It is the main body responsible for the political leadership of the country and is composed of seven members, who take collegial decisions. Each member is responsible for a Department (Ministry).[22] According to the Federal Law on the Organisation of the Government and the Administration (*Loi sur l'organistion du gouvernement et de l'administration* – LOGA), each Department is responsible for planning, taking into account the general planning proposed by the Federal Council.

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Different planning and co-ordination instruments help the Federal Council to exert its collegial authority. Article 180 of the Federal Constitution states that "the Federal Government shall determine the goals and the means of its government policy. It shall plan and co-ordinate the activities of the state". The Legislature Plan (*Legislaturplan, Programme de la Législature*)[23] is the main document and consists of a summary of government policy and the legislative financial plan, in which the main political policies and the most important objectives for the new legislature are presented. In addition, the Federal Parliament Act requests that the Federal Council gives notice of its annual objectives, co-ordinated with the legislative programme.[24]

Box 2.2. The Legislature Plan and the Annual Objectives

The Legislature Plan and the Annual Objectives constitute the political reference framework in Switzerland. They provide the Federal Assembly with the political agenda of the Federal Council for the next legislative period (four years). In terms of action, the federal government follows these directives, indicating also the means for implementation. In this way, all legislative proposals coming from the Federal Council should correspond to the implementation of the objectives.

The definition of priorities contained in the Legislature Plan and in the Annual Objectives contributes to orient and organise the work of the public administration, ensuring strong coherence between administrative and legislative activities. The Annual Objectives are of great political relevance: they define the orientation of the policies proposed by the Federal Council, without restricting the scope for government action, in case of urgency and the need to react.

The Legislature Plan is also a dialogue instrument between the Federal Council and the Federal Assembly[25]. Based on the concordance system that characterises Switzerland, government action is not imposed by a political party or a coalition of parties. Due to direct democracy and federalism principles, all political actors participate in the definition of public policies. Reaching consensus among these actors and parties is fundamental to keep balance and support for government's action.

An early basis of the Legislature Plan is prepared by representatives of thirty federal offices under the direction of the Federal Chancellery. The Forward Planning Staff of the Federal Administration is in charge of analysing the policy of the Federal Council in terms of challenges ahead. Every four years, this expert group produces a report containing the essential planning bases of the federal administration.[26] In future, the expert group will be assessing the challenges and policy orientations, based also on indicators, such as economic growth, unemployment rate, share of social contributions, etc., in order to assist the Federal Council and the Parliament in the decision-making process.[27]

The following ministries and units have roles in promoting regulatory quality inside the government.

State Secretariat for Economic Affairs. SECO is part of the Federal Department of Economic Affairs and the Confederation's competence centre for all core issues relating to acts as an interface between businesses, social partners and economic policy. It promotes competitive conditions for Switzerland as a location for business through the design and promotion of competition policies. SECO has had a leading role in promoting regulatory quality in Switzerland: it is in charge of RIA and analysis of the economic impact of legislation, administrative simplification policies and SME policies through the following sections:

- *Economic Policy Directorate*. This division is mainly in charge of promoting regulatory quality, RIA and the analysis of the economic impact of legislation according to the sections on Regulatory Analysis, and of Growth and Competition Policy.

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- *Promotion Activities Directorate*. This division deals mainly with SME policies: promotion of SME exports, Export Risk Guarantee, improvement of SMEs framework in the Swiss economy, through the SME Policy section.

- *SME Task Force.* Created in 1998, this unit is in charge of project management. Its objectives are to provide information about the federal policy on SMEs, to simplify the start-up of businesses through a one-stop shop project and to co-ordinate all policies regarding SMEs at federal level. The SME Task Force was integrated into the section SME Policy of the Promotion Activities Directorate.

Box 2.3. The legislative procedure in Switzerland

The law making process in Switzerland is based on the Federal Act on the Organisation of Government and Administration, the Federal Parliament Act and the new Law on the Consultation Procedure (March 2005). The enactment of a new law follows five different stages:

1. *The initiative stage*. Laws can emerge through a number of different routes: federal state actors (the Federal Assembly, Federal Council, or administration), cantons (through the cantonal initiative), citizens (through the constitutional popular initiative) and elements outside the system (conventions and international treaties). The administration is the main initiator of bills, ahead of Parliament in the number of legislative processes initiated.[28]

2. *The pre-parliamentary or drafting stage*. This phase encompasses different steps and it is crucial for the decision-making process because authorities try to ensure the integration and co-operation of different actors, in order to achieve a compromise and to maximize the chances of success:

- *First draft*. The preliminary legislative works are conducted by the administration itself, by an expert in the field, by an *ad-hoc* working group or by an expert commission. Some external experts, coming from the cantons, the economy, the civil society or academics are associated to this internal phase of legislative work, as authors of the law proposal or members of a working group or commission of experts. Their role is to contribute to the understanding of the effects of the law proposal, to clarify the content of the proposal and to assure the quality of the legislation at a very early stage. The main goal at this stage is to analyse the problem, collect necessary information and to prepare a first version of the text.

Departments and offices of the federal administration are responsible for law drafting; they have decentralised legal services that collaborate with non-law experts of the administration, assuring the quality of the product from different points of view. Generally the State Secretariat for Economic Affairs is involved, especially if a RIA is required,. In terms of law quality, all law proposals are systematically sent to the Federal Office of Justice, which has two divisions that verify the legality and constitutionality, the conformity and compatibility with national and international law in force, and the certitude in terms of content. This exercise emphasises also respect of the proportionality principle, especially in terms of choice of instruments for state action.

- *Consultation procedure*. Once the law proposal is presented by the office or Department in charge, accompanied by an explanatory note, a first consultation procedure starts inside the federal administration. Afterwards, the Federal Council opens a broader consultation procedure, in which external actors, such as political parties, cantons, associations, etc. can participate. This allows testing the acceptability of the proposal, that is, its feasibility, its support and its applicability. The analysis of the results of the consultation procedure, undertaken by the appropriate department, paves the way for the final draft of the legislative act. This draft, also accompanied by a "dispatch", which provides information on the legislative act, is then submitted to other services and departments of the administration concerned ("consultation d'offices" and "procédure de co-rapport"), which makes a final examination. (The consultation procedure will be further detailed in section 3.1.2). It is also possible that the consultation procedure will be open by a parliament commission if the draft has been created by themselves.

3. *The parliamentarian stage*. It starts with the transmission of the law project and its dispatch to the Federal Assembly. This procedure is typical of a bicameral system. Parliamentary debates take place inside commissions of both chambers and finally in the plenum. In this way, a law proposal is revised and discussed at least four times. The purpose of the "shuttle" is to allow a precise understanding of positions held in the two chambers. The Head of the relevant Department participates in the debates of the Council and - accompanied by his staff and other representatives from the administration - in the commission meetings. After establishing consensus in both chambers, the Parliament votes the proposal.

4. *The referendum stage*. The new law adopted by Parliament enters into force unless a referendum is sought within one hundred days. In the case of an act submitted to an optional referendum, the signature of 50 000 electors must be obtained in favour of a popular ballot. In the case of an act submitted to a compulsory referendum, the vote is automatic. If a referendum is not requested, the text is definitively adopted. If a referendum occurs, the text is definitely adopted only after a positive outcome through the referendum.

5. *Entry into force*. The law is then published in the Official Gazette. The date on which the law will come into effect is decided by the Federal Council or, depending on the case, in the law itself.

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Federal Office of Justice. As part of the Federal Department of Justice and Police, different divisions contribute to the quality of legislation, working closely with the Federal Chancellery (Legal Service and Language Services) on legislative and editorial aspects. Apart from overseeing legislation projects, these Divisions are also commissioned with drafting advisory opinions pertaining to constitutional and administrative law issues:

- The *Legislation Projects and Methodology Division* is responsible for preparing public law decrees of which the Federal Department of Justice and Police is in overall charge. Projects involve all norm levels (constitution, statutes, and ordinances). They extend to principal questions concerning the organisation and powers of state institutions, as well as the legislative issues which do not clearly fall within the purview of another agency. It is also involved in matters relating to legislation methodology and law evaluation.

- *Legislation Division I and II* are in charge of analysing and ensuring the constitutionality and legality of the legislative projects of other agencies and offices. They make proposals to assure consistency on the federal level.

Federal Chancellery. It is the general headquarters office of the Federal Council. Its role in co-ordinating action by various departments remains procedural. Its tasks include giving advice and assistance in planning and co-ordinating business at federal level; participating in the preparation and conduct of proceedings of the Federal Council; preparing reports of the Federal Council to the Federal Assembly on government policy directives and advising the Federal Council on all matters relating to the management of the federal administration. The Swiss Chancellor attends the meetings of the Federal Council. However, the Chancellor has only a consultative voice at the federal level, which reduces its political influence and co-ordination role.

- *Planning and Strategic Section*. This section is responsible for preparing documents related to the planning of and reporting on activities of the Federal Council. These documents include the report on legislative planning, the report on the annual targets of the Federal Council, and the annual business report to Parliament. In addition, this section co-ordinates the work of the Forward Planning Staff of the Federal Administration and examines whether proposals submitted to the Federal Council for approval are compatible with its current or planned overall policy.

- *Section on Political Rights*. This section is in charge of the political rights in the Confederation, such as referendum, popular initiatives, popular ballots, petitions, relationships with political parties, vote procedures and legal basis of political rights.

- *Legal Section*. This division of the Federal Chancellery is in charge of the revision of legislative proposals, but is also concerned with co-ordinating work for the Federal Council, the organisation of federal authorities, parliamentarian law, consultation procedures and data protection.

- *Central Language Services*. Despite the fact that each federal department has its own language service in charge of translations, according to the Ordinance on Translation inside the Federal Administration from 1995,[29] this section deals with the legal conformity of texts and plain language.

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Integration Office. Created in 1961, it is jointly managed by the Federal Department of Foreign Affairs (DFA) and the Federal Department of Economic Affairs (DFE). It monitors the European integration process and analyses its likely consequences for Switzerland. It co-ordinates all matters concerning integration law and policy and negotiation of treaties of the EU, in close collaboration and co-responsibility with the departments concerned.

In Switzerland, unlike many other OECD countries, there is no central unit responsible for managing and co-ordinating regulation and its reform [see Box 2.4.].

Box 2.4. Central regulatory quality units: OECD experience

Many OECD countries have explicitly adopted a "whole-of-government" approach for regulatory policy with permanent co-ordination mechanisms and bodies which address the need for policy coherence and strategic commitment in the long term. Experience across OECD countries suggests that central oversight units are most effective if they are:

- Independent from regulators (*i.e*. they are not closely tied to specific regulatory missions);
- Operate in accordance with a clear regulatory policy, endorsed at the political level;
- Operate horizontally (*i.e*. cut across government);
- Staffed by experts (*i.e*. they have the information and capacity to exercise independent judgment); and
- Linked to existing centres of administrative and budgetary authority (centres of government, finance ministries).

Central oversight units can carry out three different roles. First, bodies may be *advisory*, *i.e*. increasing regulatory capacities by publicising and disseminating guidance and by providing support for regulators. The second role, *advocacy*, refers to the promotion of long-term regulatory policy considerations, including policy change, development of new and improved tools and administrative change. Third, bodies promoting regulatory quality may have a *challenge* function *vis-à-vis* new regulatory proposals. Such a challenge may be in the form of an assessment putting pressure on the proponent regulatory body to improve performance in accordance with a set of given criteria. Or it may be in the form of a "veto", where the reviewing body acts as a gate-keeper in the regulatory process.

Experience suggests that most regulatory policies have relied primarily on advocacy and advice. Advisory and advocacy functions are helpful preconditions for creating a fruitful and non-confrontational environment for regulatory quality. However, leadership in the form of regulatory oversight bodies challenging as well as setting and enforcing targets for regulatory quality may be needed to go beyond the limits of reforms that are primarily driven by self-assessment.

In countries with relatively weak centre of government co-ordination and management functions, increasing attention has been paid to co-ordination between agencies with responsibilities for particular aspects of the regulatory reform programme. For example, in the **Netherlands**, the Ministries of Justice, Environment and Economic Affairs co-operate in providing "helpdesk" service that is at the heart of attempts to improve RIA standards across the administration.

In the Swiss political system, the role of *Parliament* in law making is relevant since the Federal Assembly can also initiate laws and reform.[30] Because federal laws are subject to referenda, decisions of the Federal Assembly are not final. Nevertheless, the Federal Assembly has an important role at the parliamentarian stage, when it receives the draft with the dispatch, revising and discussing them, and finally voting or rejecting them. Parliamentarians have different instruments at their disposal to request modifications and clarifications. This procedure may sometimes involve significant delays, particularly when there is a disagreement between the two chambers. If the Federal Assembly takes the parliamentarian initiative, the parliament itself drafts the bill. A committee is set up to make a proposal, but the small number of staff sometimes means that the administration is in charge.

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The *legislative committees* are often active and successful in changing bills presented by the Federal Council. The committees submit their suggestions to the rest of the parliament, proposing either to accept or to reject the proposal, or to accept it with certain amendments. They can also suggest that the proposal be dismissed without debate, or be sent back to the government.

A parliamentary agency for administrative control (*Parlamentarische Verwaltungskontrollstelle*) was created in 1990 to monitor certain parts of the administration and evaluate their activities.

2.3. Co-ordination between levels of government

Regulatory systems are composed of complex layers of regulation stemming from sub-national, national and international levels of government. Complex and multi-layered regulatory systems have long been a subject of concern with respect to the efficiency of national economies and the effectiveness of government action. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform.

In Switzerland, sub-national and international levels are inextricable elements of the regulatory framework, and developments at one level affect developments at the other.

2.3.1. Federal – cantonal level

According to the Federal Constitution, the political structure of Switzerland consists of three different levels of government: the Confederation, the cantons and the municipalities. The basic principles of Swiss federalism are the far-reaching autonomy of and equality between the cantons, their rights to participate in the decision-making process of the Confederation, as well as their duty to co-operate.

The Swiss federal state is composed of 26 constituent territorial units called "cantons": 20 cantons and 6 half-cantons.[31] In terms of population, cantons differ considerably in size.[32] As for economic resources, economic disparities are generally increasing, especially in a period of economic stagnation and scarce public finances.[33] The country has an extremely large number of territorial units relative to population size, which produces a high degree of territorial fragmentation at the lowest administrative level. Territorial fragmentation lies at the heart of many problems such as low interregional labour mobility, intra-metropolitan imbalances or the increasing mismatch between functional and political regions.[34]

Municipalities in Switzerland (*commune* or *Gemeinde*) are genuine "political" entities enjoying their own legal personality. In 2001, there were over 2 880 municipalities in the country. The average population of a Swiss commune is 2 330 inhabitants, compared to 7 000 in Germany and 30 000 in Sweden.[35] In a formal-constitutional sense, municipalities remain autonomous in all matters not conclusively regulated by cantonal or federal law, which has led to diverse regulations in this regard, as the sovereignty of cantons over the internal organisation of their municipalities has been reinforced. In terms of implementing federal policies in some areas, cantons seem unable to integrate the increasingly complex implementation procedures at the communal level into a unified regulatory regime. As a result, the task of standardisation is often delegated to the municipalities and achieved through horizontal agreements between them. However, as a result of some municipalities' small size, cantons are not in a position to delegate implementation tasks to communal bodies.

In order to safeguard high-quality legislation and good compliance, cantons are closely associated in the legislative process at all levels of law. Dialogue between the different tiers of government is intensive and permanent. This is why Swiss federalism is increasingly termed "participative federalism".

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In most policy areas, competences and tasks are divided between the Confederation and the cantons in such a way that the Confederation sets the rules or regulates (Art. 3 and Art. 42 of the Federal Constitution), while the cantons specify and implement those rules and regulations (Art. 46 of the Federal Constitution). The Legislation Guide sheds light on different forms of jurisdiction between the Confederation and the cantons (see Box 2.5).

Box 2.5. Forms of allocation of jurisdiction between the Confederation and the cantons

The doctrine of the Swiss constitutional law differentiates between various forms of jurisdiction:

- *Exclusive federal jurisdiction*. The Confederation is the only jurisdiction and the cantonal jurisdiction disappears immediately and completely. For example: customs and coin money and issue bank notes.
- *Federal jurisdiction in competition*. Cantons can still legislate as long as the Confederation does not legislate. For example: civil protection, water protection, private law.
- *Federal jurisdiction limited to principles*. The Confederation regulates important issues, but it gives the cantons the possibility to have independent cantonal legislation. For example: land settlement, forest policy, fishing and hunting, fiscal harmonisation.
- *Parallel jurisdiction*. The Confederation and the cantons both have the powers to regulate. For example: universities, supporting culture, protection of nature and of monuments.

Source: Office fédérale de la justice (2002), *Guide de législation*, Bern.

Federal legislation can be justified in the following cases:[36]

- if the field to regulate requires a standard treatment on the entire Swiss territory since problems go beyond national boundaries (those related to international treaties where cantons have the possibility to act);
- if the principles of equal treatment and legal security are essential and the only possibility of achieving this goal is through a federal regulation;
- if it is needed to harmonise the cantonal right; and,
- if a federal legislation represents great advantages compared to the different cantonal legislations.

The cantons have regulatory powers in various fields (cantonal taxes: income, property, net gain and profit of legal entities etc., zoning and building regulations, regulations on the admittance to certain professions, regulations on the admittance to run restaurants, bars and hotels, regulations on the opening hours of shops). The cantons either have ample freedom of action (especially in organisational matters) or limited freedom of action when specifying federal law by their own regulations. The reasons to opt for cantonal legislation are:[37]

- if cantonal legislation confirms the principle of subsidiarity;
- if cantonal legislation is more democratic because the links to citizens are closer;
- if the proposed solutions are more flexible and can be better adapted to the situation because of better knowledge of the local and regional reality;

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- if new solutions already tested in a small entity ("legislative laboratory", "federal competition");
- if a vertical separation of power is desired; and,
- if the Confederation seeks to be divested of executive tasks.

Even where the Confederation has extensive powers to regulate (*e.g*. social security, traffic rules, etc.), according to Art. 46, para. 2 of the Constitution, implementation will be assumed by cantonal agencies. Implementation of federal law by federal agencies is the exception and restricted to a few domains (*e.g*. army, customs, value-added tax, alcohol administration).

In order to take advantage of the extensive knowledge of cantonal authorities and to take into account cantonal interests with regard to implementation, cantonal authorities are closely integrated into the legislative process at all levels of legislation (constitution, proper laws/statutes, and ordinances issued by the Federal Council or by federal Departments). This is done in various ways:

- The cantons have an equal number of seats in the second chamber of Parliament: the Council of States (senate). The representatives in the Council of States, however, may not receive instructions from the cantonal governments or from cantonal Parliaments.
- A number of representatives of cantonal (as well as municipal) governments are elected into the two chambers of the Parliament. They can put concerns of cantonal (and municipal) governments on the agenda.
- Preparation of law drafts is quite often delegated to groups of experts. Usually, experts from the cantons (public officials, members of the cantonal governments) are part of these expert groups; very occasionally if legislation affects competences of the cantons or allows for broad freedom of action of the cantons, expert groups are headed by a member of a cantonal government.
- Cantons are a very important partner in all consultation procedures. Their statements have a considerable weight in subsequent decisions, especially if measures are to be implemented by cantons.
- According to Art. 141 of the Federal Act on the Federal Assembly, the Federal Council, in its dispatches to the Parliament explaining draft laws has to present information about impacts of legislative proposals on implementing agencies (in most cases the cantons), about the planned review/evaluation of implementation and about the evaluation of alternative implementation possibilities discussed during the pre-parliamentary stage; it also has to give information on the impact of legislation on the budget and the personnel of cantons and municipalities.

There are a number of fora facilitating dialogue between federal and cantonal (as well as municipal) authorities and offering possibilities to debate proposals of cantonal authorities and to transmit them to federal authorities. The most relevant are the following:

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- *Conferences of Cantonal Directors*. The directors of the 26 cantons in 13 policy areas have created so called "conferences of cantonal directors"; the chancellors of the cantons have created a similar conference. These conferences serve two purposes: a) co-ordination between the cantons and b) co-ordination between cantonal and federal authorities. Although officially run by the cantonal governments, the relevant members of the Federal Council and high-ranking federal public officials are invited to these meetings. Federal authorities present plans and proposals for new laws/regulations, which are discussed with the cantonal ministers. The cantonal ministers on the other hand present proposals or requests or point to problems in federal-cantonal relations.

- *Conference of Cantonal Governments*. In 1993, the cantonal governments created the "Conference of cantonal governments". It serves as a co-ordinating organism among cantons and as a lobby group of cantonal interests in all matters that go beyond the range of the 13 policy-oriented "conferences of cantonal ministers" as well as of the conference of cantonal chancellors. The "Conference of cantonal governments" thus discusses institutional matters of overall importance, highly important matters (mostly of cross-sectional character) and those matters that go beyond a single policy domain (e.g. foreign policy with regard to European integration).

- *Federal Dialogue.* A delegation of the Federal Council and a delegation of the "Conference of cantonal governments" biannually discuss questions and projects of overall importance in a forum called "Federal dialogue". The package of measures aimed at favouring economic growth, for instance, was discussed at the meeting in March, 2004.

- *Tripartite Agglomeration Conference*. Lately, co-ordination between the three tiers of government has been improved by creating the so-called "Tripartite agglomeration conference" assembling representatives at the federal, cantonal and municipal level. It serves to streamline policies for the metropolitan areas and urban centres of Switzerland.

Inter-cantonal co-operation is facilitated by a dense network of inter-cantonal agreements and conferences.[38] Even if this "horizontal" co-operation has been less important than the "vertical" one between the Federation and the cantons, this trend is changing. Federalism can be seen as a political laboratory in which the cantons constantly experiment with new policies: "if a solution is successful, it is likely to be adopted by other cantons as well. In this context, it is possible to distinguish between pioneers, imitators, and laggards".[39]

Tasks and competencies between the Confederation and cantons are periodically updated. A current example refers to the financial relations between the Confederation and the cantons. Two reform packages with a redistribution of tasks were implemented in the 1980s. A very large reform under the title of "New fiscal equalisation policy"[40] is currently underway. The reform is steered by a joint federal/cantonal committee and executed by a project group composed of federal and cantonal public officials. It aims at reforms with four objectives: attributing tasks more clearly to the federal and to the cantonal level, improving collaboration in shared tasks, improving fiscal equalisation schemes, improving co-operation and cost-sharing within the metropolitan centres (see Box 2.6). The 27 constitutional amendments, which are part of this reform, were approved by the people and the cantons on 28 November 2004. The required changes in dozens of transfer laws will be discussed in Parliament in 2005 and 2006. In 2007, the equalisation parameters of the new system will be determined. In each of these phases, optional referenda may be held. In 2008, the new system is expected to be launched. Several other legislative projects have been prepared by joint federal/cantonal project groups working on parity.

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Box 2.6. New System of Financial Equalisation: new tasks for the Confederation and cantons

The cantons and municipalities in Switzerland have their own tax and non-tax revenues, amounting to around 105 billion Swiss francs. Cantons also receive a share in the profit of the central bank. In addition, they receive around 10 billion Swiss francs in federal transfers. There are some of 50 transfers of this kind. More than 30 of them have an equalisation aim alongside to the financing aim.

The present system is considered non-transparent because equalisation takes place in more than 30 transfer laws and because transfers sometimes come from different federal ministries or offices. Furthermore, the existing transfer laws often stem from a diffuse division of tasks between the federation and the cantons. The present system is considered as ineffective because the differences in financial capacity between the cantons are equalised to a lesser degree than desired by the government and the parliament. The present system is considered inefficient because it contains incentives for the financially weaker cantons to increase taxation and to concentrate expenditures on tasks that are relatively more subsidised.

The new system, called Reform of Financial equalisation and Redistribution of tasks between the Confederation and the cantons aims to solve or mitigate these problems through two levers: (1) a new division of tasks between federal and cantonal governments, and (2) a new equalisation system.

The new division of tasks aims at three goals: (1) disentanglement of tasks and financing arrangements, (2) more effective co-operation when tasks have to be shared, and (3) more effective horizontal co-operation between the cantons. For the first goal, seven tasks have been identified that will be concentrated at the Federal level and a large number of tasks in the areas of social services, education, traffic and environment have been identified that will be concentrated at the cantonal level. For the second goal, 17 tasks have been identified where exclusive attribution to a single level of government is not desirable and where co-operation between Federal and cantonal government remains necessary. In these areas, subsidies will be based on normative costs or budgets (not on costs of separate means of production) and multi-annual programmes. These programmes will specify targets for service levels that will be checked by the Federal government. For the third goal, Federal legislation will encourage co-operation. Presently, cantonal co-operation is voluntary. In the future, cantons will have to pay for services delivered by neighboring cantons in exchange for rights of participation. The specific arrangements have to be laid down in separate treaties between the cantons concerned or in a general inter-cantonal treaty. At the request of a qualified majority of cantons concerned, Parliament will be able to impose inter-cantonal treaties on all cantons and to oblige individual cantons to accede to inter-cantonal treaties adopted by other cantons.

Source: OECD (2005), *Budgeting in Switzerland*, Paris.

A major concern in terms of economic efficiency and improvement of economic conditions for competition is the consolidation of the Swiss internal market. The diversity of regulations across levels of government (Confederation and cantons) has a direct effect on the consolidation of the internal market with the implications for the whole Swiss territory for goods, services, people and capital. Switzerland's federal organisation and its linguistic diversity are contributing to the segmentation of the domestic market in a large number of sectors. While competition policy is a federal competence, cantons do have extensive powers to intervene in markets for safety and social concerns and by the use made of public property. They often exert strong influence on the supply and pricing of public utilities, such as water, electricity,[41] regional transport, etc. Cantons also have a marked influence on industries such as construction and professional services with very diverse regulations that *de facto* constitute entry barriers.[42]

The Internal Market Act seeks to eliminate the market restrictiveness generated by cantons and localities. It should help to ease professional mobility and trade in Switzerland, in order to foster competition in the national economy. As a framework law, its aim is not to harmonise regulations of a different nature at lower levels of government, but to establish the principal mutual recognition among federal jurisdictions and outline some needed basics for the effective functioning of the internal market.

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First and foremost, the Internal Market Act defines the principles governing free access to the market. Any person having an establishment and any enterprise having its registered office in Switzerland is entitled to offer goods and services on the Swiss territory. Access to the market is governed by the rules of the place of origin. At the same time, certificates of qualification issued or recognised at canton level, permitting the exercise of a lucrative activity, are valid anywhere in Switzerland. The law on freedom of access to the market also includes cantonal and communal public procurement.

The results of the Internal Market Act have been rather disappointing,[43] partly due to institutional and legal factors which thereby highlight the potential economic impact of regulatory quality. The main reasons for this are the following:[44] first, the case law of the Federal Court gives the principle of federalism precedence over the internal market, justifying its position restricting access to the market on the provisions of the Internal Market Act itself. The Act should therefore be amended appropriately to remedy this problem. Second, the Internal Market Act in its current state, especially article 3 setting out the conditions under which cantons can restrict access to the market, gives the cantons significant scope to do so. Third, the right of recourse has not driven enforcement of the Internal Market Act in the way it was supposed to. Few actions have been brought, since the length and cost of the procedure, combined with uncertainty as to the outcome, have a deterrent effect. The benefits of a successful suit are incommensurate with the resources invested, a finding that has been borne out with regard to small contracts in particular, such as taxi services and plumbing systems.

The Federal Council has proposed to revise the law as one measure among others to stimulate competition on the domestic market. The reform has the following main objectives:[45]

- Remove cantonal and communal barriers to market access. Consequently, the revision proposes a more restrictive formulation of the exceptions provided by article 3 and the extension of freedom of access to commercial establishments;

- Ensure that inter-cantonal recognition procedures for certificates of qualification for professions covered by the agreement with the EU on the free movement of persons comply with EU rules, thus also ensuring that Swiss citizens are not treated less favourably than EU citizens;

- Strengthen the Competition Commission's (Comco) supervisory role. As matters stand at present, Comco can merely address non-binding recommendations to cantonal and communal authorities. Under the new draft legislation, it will have a right of recourse enabling it to challenge administrative decisions that it considers unlawful.[46]

The reform should help to lower cantonal and communal barriers to the creation of a proper internal market. It should also help to encourage professional mobility,[47] which is in accordance with the bilateral agreements signed between Switzerland and the EU on the free movement of people.

2.3.2. National – European level

Switzerland is not a member of the European Union and thus is not formally subject to EU regulation. Nevertheless, formal links between Switzerland and the European Union are governed by a large number of agreements, reinforcing a long-lasting and intensive co-operation. In 1972, Switzerland and the former EC signed a free trade agreement for industrial products. Today, the EU is the most important partner for Switzerland, politically, culturally and economically.[48]

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A political debate on different economic regulatory reforms was generated in the context of the signature of the European Economic Area (EEA) Treaty, negotiated by the EU and the European Free Trade Association (EFTA) countries, including Switzerland, and a political debate on different economic regulatory reforms originated. The legal validation of the Treaty would have implied for Switzerland the adoption of 60% of EU regulations ("*acquis communautaire*").

In 1992, the Swiss people rejected by referendum the ratification of the EEA, which implied the abandonment of negotiations for EU membership. Nevertheless, Swiss economic collaboration with the EU has been strengthened through the signature and ratification of a network of bilateral agreements in different strategic areas:

- *Bilateral Agreements I*. The first set of bilateral agreements came into force in June 2002. They cover the free movement of persons, trade in agricultural products, public procurement, conformity assessments, air transport, land transport and the Swiss participation in Framework Programmes for Research.[49]

- *Bilateral Agreements II*. A second set of agreements has been initialed in June 2004. These cover: taxation of savings; the co-operation in the fight against customs fraud; co-operation in the fields of justice, police, asylum and migration (Schengen/Dublin)[50]; trade in processed agricultural products; Swiss participation in the European Environment Agency and the European Environment Information & Observation Network (EIONET); statistical co-operation; education, occupational training and youth; Swiss participation in the Media plus and Media training programmes and on the avoidance of double taxation for pensioners of Community institutions.

The Bilateral Agreements II have been approved by Parliament as a single package.[51] Seven of the agreements are subject to an optional referendum, but a referendum has been successfully requested only in the case of the Association Agreement on Schengen/Dublin.[52] With the positive vote early June 2005 the other agreements in Bilateral II, for which no referendum was successfully requested, can now come into effect, independently of each other.[53]

The bilateral agreements signed with the EU have two kinds of impact on the Swiss legislation:

- *Agreements based on the equivalence of legislation*. This is the case for the agreements initialed in 1999, referring to public procurement, conformity assessments, trade in agricultural products, transport by rail and road and free movement of people.

- *Agreements based on the transposition by Switzerland of the relevant Community acquis*. This is the case for the agreement on air transport. In order to apply Swiss and EU rules homogenously, Switzerland is informed about jurisprudence and practice of EU institutions.

The ratification of the agreements signed in Spring 2004 will imply the modification of several federal laws. Cantons will also need to adapt their laws, especially on issues concerning the adoption and implementation of the agreement on Schengen, such as data protection and police co-operation.

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On a parallel track, since 1988 Switzerland has been systematically revising the compatibility of all new legislation, including amendments to existing international rules and those issued by the EU. The dispatch, the "message" that accompanies federal acts submitted by the Federal Council to the Parliament, should contain a chapter outlining the equivalence to European legislation.[54] This is in the interest of Switzerland, especially in the field of technical rules, but it is done in an autonomous and independent way. Data on the quantitative impact of EU legislation on the Swiss legislative process does not exist at this stage. It has been difficult to collect, since legislative activities in Switzerland arise not only from adaptations to European legislation, but also from national needs.

The adjustment of EU and international legislation into Swiss law has been an important driver of regulatory reform. The effects have been twofold: First, in many cases, policy areas such as competition, telecommunications, air transport, rail or public procurement have become increasingly internationalised over the last twenty years through the adoption of inter- or supranational regulations, providing opportunities for change at the domestic level. For a non-EU member state like Switzerland, "the impact of economic pressure can be even more important than regulatory pressure stemming directly from EU policy".[55] The pace of reforms, however, has been slow and initiatives have often been taken in reaction to developments of neighbouring countries.[56] Second, political actors linked to interests at EU or international level have been able to push for domestic reforms inside the Swiss political decision-making process, using justifications supported by international evidence. One of the clearest priorities of Swiss entrepreneurs is the promotion of closer relationships with the EU.[57] In the medium term, bilateral negotiations on specific issues have proved to be a successful approach for implementing reforms.

3. ADMINISTRATIVE CAPACITIES FOR MAKING NEW REGULATIONS

This section reviews how current processes for making legislation and subordinate regulations support applications of core principles of good regulation. It describes and evaluates systematic capacities to generate high quality regulation, and to ensure that both processes and decisions are transparent to the public.

3.1. Administrative transparency and predictability

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps insure against undue influence by special interests. Transparency reinforces the legitimacy and fairness of regulatory processes. Transparency involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeals processes that are predictable and consistent.

3.1.1. Transparency of procedures for making new laws and regulations

Transparent and consistent processes for making and implementing legislation are fundamental to ensuring confidence in the legislative process and to safeguarding opportunities to participate in the formulation of laws. In the majority of OECD countries, such procedures are established in legislation supplemented by decrees, guidelines or policy statements issued by the government or individual ministries.

In Switzerland, elements of general administrative procedure requirements are set out in the Federal Constitution and other federal laws. The Federal Law of Administrative Procedures, dated 1968, provides the right to bring administrative decisions to court.

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The Federal Law on the Organisation of Government and Administration (LOGA), enacted in September 1997, establishes that the Federal Council leads the preliminary phase of the legislative procedure.

The Parliament Act rules the legislative process and provides for a dispatch, which the Federal Council has to submit to the Federal Assembly together with the bill. According to Art. 141 of the Act, the Federal Council shall provide in the dispatch justification for the bill and, if necessary, comment on the individual provisions. In addition, it shall explain other points, if there is substantial amount of information, such as:

a. the legal background, the consequences for constitutional rights, compatibility with superior law and the relationship with European law;

b. the delegation of powers provided for in a draft Act;

c. the points of view debated in the preliminary stages of the legislative process and their alternatives and the related position of the Federal Council;

d. the planned implementation of the enactment, the planned evaluation of its implementation and the assessment of the planned implementation that took place in the preliminary stages of the legislative process;

e. the co-ordination of tasks and funding;

f. the consequences for staffing and finances of the legislative enactment and its implementation on the federal government, cantons and communes, as well as the methods for meeting the costs, the influence on financial planning and the cost-benefit ratio;

g. the consequences for the economy, society and the environment;

h. the position of the bill in relation to the planning of legislation;

i. the consequences for gender equality.

More detailed standardised procedures to create new regulation are set out in the Legislation Guide (*Guide pour l'élaboration de la legislation fédérale*), published in 2002. This is a comprehensive management tool to help any person participating in the legislative procedure, specifically those taking part inside the Federal administration in law drafting. The Guide analyses the initial problem of the legislative act, the different layers of competence between the Confederation and the cantons, the principle of delegation of competence, the tools available for state action and implementation, as well as the formal aspects of law drafting.

Guidance on legislative techniques and requirements have also been developed in other documents, such as the Confederation Guide for Legislative Technique (*Directives de la Confédération sur la technique legislative*), Guidelines for the consultation procedure (*Manuel sur la procédure de consultation*), and an Aide-memoire relative to the dispatches of the Federal Council (*Aide-memoire relatif aux messages du Conseil fédéral*).

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3.1.2. Transparency as dialogue with affected groups: use of public consultation

Public consultation gives citizens and business the opportunity to make an active input in regulatory decisions. A well-designed and implemented consultation programme can contribute to higher quality regulations, identification of more effective alternatives, lower costs to business and administration, better compliance, and faster regulatory responses to changing conditions. Just as importantly, consultation can improve the credibility and legitimacy of government action, win the support of groups involved in the decision making process, and increase acceptance by those affected.

Consultation procedures during the legislative process

Consultation procedures are used throughout the legislative process in Switzerland. In the pre-parliamentarian stage, two different levels of consultation are found: internal and external consultation procedures. The internal consultation is used for every government decision including those on drafts of federal laws (which will be adopted by Parliament) and drafts of ordinances (which are issued by the government or a department and give effect to the federal laws). The external consultation procedure concerns exclusively the federal laws, unless the ordinances are of political relevance.

In the Swiss system, as in other OECD countries, co-ordination is an essential part of each law proposal. Because of the collegial functioning of the Federal Council every law proposal is submitted to consensus, to move forward to a broader consultation process and then send it to Parliament. In order to have the opinion of all administrative units inside the Federal administration concerned with a law proposal, and to integrate different perspectives and finally to get consensus, two internal consultation procedures have been developed:

- *Consultation of the federal offices* (*Consultation des offices, Aemterkonsultation*). The office (agency within the ministry) in charge of the proposal must consult with all other offices (in its own and in other departments) whose interests are at stake, before it is submitted to the Federal Council. The Federal Chancellery, the Federal Office of Justice and the Federal Finance Administration play an important role at this stage. The Federal Chancellery examines whether proposed bills are sufficiently clear, respect the technical guidelines for legislation and terminology requirements and if they are consistent with former decisions of the Federal Council. The Federal Office of Justice focuses on substantive legal matters, and the Federal Administration on the financial and human resources necessary to implement it. This phase is important because details can be clarified and compromises between conflicting interests reached.

- *Co-reporting procedure* (*Procédure de co-rapport, Mitberichtsverfahren*). This second part initiated after consultation with offices. The department in charge submits its proposal to the Federal Council and thus to the other departments and to the Federal Chancellery, allowing them sufficient time to react, before the government takes a decision. If a department wants to modify the proposal, it can do it in a written exchange in the form of a "co-rapport", containing the desired modification and its justification. The Federal Council can concentrate on remaining differences and come to conclusions on issues that are still disputed.

The external consultation procedure is the phase in the preparation of legislation in which the cantons, parties, associations and sometimes other interested groups throughout Switzerland verify and discuss drafts of legal acts proposed by the Federation with substantial political, economic, financial, legal or cultural implications.[58] The main goal is to ascertain the likelihood of their adoption and implementation.

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Consultation procedures are an important stage of the legislation process and a highly developed feature of the Swiss political system. The legal basis of the consultation procedure is found in the Federal Constitution, Art. 147, which states that "the Cantons, the political parties, and the interested circles shall be heard in the course of the preparation of important legislation and other projects of substantial impact, and on important international treaties". Besides the association of political actors into the legislative process, the consultation procedure allows the Federal Council to inform them on future actions and to ensure its acceptance and implementation.

Since 1991 an ordinance (*Ordonnance sur la procédure de consultation*) has regulated the whole consultation procedure: field of application, form and body responsible for the consultation, launching of the procedure, organisations consulted, deadlines, handling and publication of results. Consultation was opened in the case of important legislation, important international treaties, or other projects of substantial impact. The term "important" was open to interpretation, and projects were assessed on a case-by-case basis. Despite the discretionary decision, the Federal Chancellery, in charge of opening each consultation procedure, had to ensure a coherent practice.[59] According to the ordinance, the consultation procedure was ordered by the Federal Council and arranged by the department concerned, either in writing or by means of hearings. People not invited to take part in the consultation procedure could also state their views on a proposal. The answers of the cantons, parties and associations were evaluated. The Federal Council then presented the main points of its proposal before the Federal Assembly or indicated its opinion on a parliamentary initiative. The Federal Council debated the draft legal act in the light of the outcomes of this consultation.

In 2004, the Federal Council submitted a dispatch to the Federal Assembly to embody consultation in a federal act. The new Federal Law on the Consultation Procedure (*loi fédérale sur la procédure de consultation*) has entered into force on September 1, 2005. This law reduces the number of subjects that qualify for the consultation procedure: a consultation will only take place if the subject is likely to have a significant impact, *i.e.* if the project has far-reaching political, economic, environmental, social and cultural implications. At the federal level, the Federal Council or a parliamentary commission are the only entitled to initiate a consultation procedure, meaning that the consultation procedure is an executive or legislative, but not an administrative act. The Federal Chancellery and the ministries are competent to initiate "hearings" (*auditions*, *Anhörungen*) themselves about less important projects (Art. 10 of the Law on the Consultation Procedure). The Federal Chancellery ensures co-ordination and opens the procedure, indicating deadlines (normally three months) and availability of documents. The law explicitly recommends the use of external bodies of the federal administration to put consultation into practice. If the consultation is initiated by a parliamentary commission, this body can turn to the federal administration to ask for support for the procedure.

Besides the specific legislation on consultation, there are other informal consultation mechanisms. Federal authorities and interested parties can express their views in special meetings, popular discussions, public forums, etc.

The participation in *extra-parliamentary commissions* allows numerous political and economic organisations and actors to influence directly on the activities of the administration, as well as to defend their interests. This system contributes to improve the acceptance and efficacy of measures taken by the Federal Council. The implicit role of referendum is relevant, as it is a threat that increases the likelihood of pressures to be effective. If due attention is not paid to organised interests, proposals can be cancelled in a referendum. The role of "mixed committees", which are composed of civil servants and external experts, is important because they allow the administration to gain access to additional expertise and include various interest groups in the decision-making process.

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Consultation mechanisms and participation at cantonal level

Similar consultation procedures to those described above are also used at cantonal level even if not with the same degree of sophistication. Cantonal administrations are rather small, but the number of cantonal ministries as well as their internal organisation differs considerably from canton to canton. Cantons participate and influence the decision making of the Federation through consultation mechanisms (Art. 45 of the Federal Constitution). Since they are in charge of implementation of federal laws, the Confederation informs them in advance and in a detailed way about future projects and it is obliged to involve them into the consultation procedure. The association of cantons in the consultation is an important way to participate, but not the only one. Cantons can also raise their voice through representatives in mixed working groups or institutionalised meetings. The commissions of the Council of States consult with cantons on the applicability of laws. The Federal Law of Cantonal Participation on Foreign Policy (*loi fédérale sur la participation des cantons à la politique extérieure de la Confédération*) allows those cantons that can participate, in an early stage, to the foreign policy of the Confederation.

Direct democracy

Consultation procedures in Switzerland are linked to a great extent to the development of citizens' political participation. Swiss citizens have two specific popular rights: the right of initiative and the right of referendum. Both mechanisms, but specifically the referendum, have influenced consultation mechanisms since the 19th century; in this way and in the framework of a direct democracy the popular rights have played an important role *vis-à-vis* the procedure of authorities and the destiny of legislation they enact.

Box 2.7 Direct democracy in Switzerland: referendum and popular initiative

Referendum. The people are to pronounce on parliamentary decisions after the event. The referendum is similar to a potential right of veto and has the effect of delaying and safeguarding the political process by blocking amendments adopted by Parliament and by government or delaying their effect. Two different kinds of referendum are possible at the federal level:

- *Obligatory (or constitutional) referendum*. All constitutional amendments, as well as the ratification of treaties involving membership in organisations of collective security or supranational bodies are subject to review by the people and the cantons.

- *Optional (or legislative) referendum*. It is applied to federal laws, generally binding decisions of the Confederation and state treaties concluded for an indefinite duration, important legal clauses or on membership in an international organisation or multilateral legal harmonisation. In this case, a popular ballot is held if 50 000 citizens or a minimum of eight cantons request it. The signatures must be collected within one hundred days of publication of a decree.

Popular initiative. It is valid for a partial amendment or a total revision of the Constitution. For such an initiative, 100 000 signatures need to be collected within eighteen months. A popular initiative may be formulated as a general proposal or – much more often – be put forward as a precise new text whose wording can no longer be changed by Parliament and the government. The authorities sometimes respond to such an initiative with a counter-proposal (generally less far-reaching) in the hope that the people and the cantons will prefer it. Since 1987, the possibility of a double-yes vote exists in ballots on popular initiatives: voters may approve both the initiative and the counter-proposal. A deciding question determines which of the two texts will enter into force if both of them secure a popular majority and the majority of the cantons. Popular initiatives do not originate from the Parliament or the government, but from the citizens themselves.

Popular rights in Switzerland allow citizens to challenge the most important parliamentary decisions, at the level of the constitution or ordinary legislation, by referendum, and to bring their own propositions to a popular vote through initiatives.[60] This implies that people and the cantons have a final say on the most important matters (level of constitution), the parliament decides upon important matters (laws), under the

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condition that no optional referendum will reach the quorum of 50 000 valid signatures, and the government takes final decisions on matters of less importance (simple decisions, decrees).[61] This interaction of actors (people, parliament and government) is referred as "semi-direct democracy" and has had a determinant impact on the structure of the Swiss political system: major political forces in Switzerland are compelled to co-operate and to resolve conflicts through negotiation and compromise because in order to minimise the risk of a referendum defeat, the decision-making process is open by the government to all groups capable of launching a referendum.[62]

Forward planning. A number of OECD countries have established mechanisms for publishing details of the regulation they plan to prepare in the future. Forward planning has proven to be useful to improve the transparency, predictability and co-ordination of regulations. It fosters the participation of interested parties as early as possible in the regulatory process and it can reduce transaction costs through giving more extended notice of forthcoming regulations.

In Switzerland the publication of the Legislative Plan (at the beginning of a new legislature period) and the Objectives of the Federal Council (annually) serve as an important general indication of future legislative activities. The annual objectives define the political orientation of the Federal Council and the measures to achieve those goals. They include an explanation of the rationale of the proposals. They also open the debate in the Federal Assembly on means to finance them. The publication of the annual objectives includes a list of future parliamentarian issues, classified by date, priority and issues of relevance.[63] This information is useful not only for the federal government and the Federal Assembly, but also to parliamentarian commissions and the parliamentarian control, which can evaluate the results *ex-post*.

Assessment. The extensive use of consultation mechanisms is a major asset of the Swiss political and regulatory system. This has allowed not only to improve co-ordination mechanisms inside the federal administration, but also to establish consultation as a key element for getting information on issues such as the acceptability of different policies, which is essential in determining practicability and designing compliance and enforcement strategies. Public consultation in Switzerland is also used to collect empirical information for analytical purposes, which echoes a tendency in most OECD countries to move toward more analytically based models of decision-making. Openness and accessibility, particularly for smaller, less organised interests, is another marked feature, as this contributes to the recognition of the pluralistic nature of the Swiss society and the importance of participation made by more aware and educated citizens. This implies a likely risk of fragmentation, as very specific interest groups sometimes get a disproportionate role. An important element to consider, however, is the fact that extensive consultation mechanisms can result in claims of "consultation fatigue" by cantons and interest groups that feel overwhelmed by the volume of material on which views are requested. A small federal administration may also be confronted with this challenge.

The impact of referenda and popular vote in the political process deserves some attention. The referendum has had a decisive impact on the structure of the Swiss political system, making possible the involvement and participation of a wide range of forces into the political process. But since is not up to the authorities to determine which decisions will be submitted to the people, but rather the constitution that determines which parliamentary decisions are subject to the popular vote, people always have the final word on the most important political issues. The referendum implies a kind of veto that slows down the political process; it gives the people the possibility of blocking or postponing amendments proposed by the parliament or the government. This makes the use of referendum controversial.

The political design and use of referenda have various implications for the regulatory system. In the last few years, several reform proposals tabled by the Federal Council and the Federal Assembly could not be approved and implemented since they were rejected by referendum. For instance, the Electricity Market

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Law, a reform inspired by broad EU reforms in the electricity sector, was approved by Parliament in December 2000, but was rejected by a popular vote on September 2002.[64] In other cases, the risk of a referendum defeat have inhibited deeper reforms. For example, in the case of the postal reform, the referendum has led to significant changes in the proposed laws and regulations in order to secure popular approval.[65] Continued efforts are made to facilitate popular approval: groups capable of launching a referendum are invited to participate in the consultation mechanisms early on; consultation procedures are set up in a way to maximise the chances of success. Political authorities have also found different ways to react to pressures for reform: the involvement and role of government and parliament during the consultation procedure varies according to the kind of pressure, either external or internal, shaping more informal decision-making procedures.[66] The challenge is to find ways of innovating in the decision-making process that contribute to enhance Swiss competitiveness in a globalised world, while preserving popular rights as one of the most valued elements in Swiss political culture.

3.1.3. Transparency in the implementation of regulation: communication

Another dimension of transparency is the effectiveness of communication and the accessibility of the rules for regulated entities. Regulatory transparency requires that governments effectively communicate the existence and content of all regulations to the public.

In common with most OECD countries there is a basic requirement for all new federal legislation to be published in the official gazette (*Feuille fédérale*, *Bundesblatt*). The official gazette, published weekly in the three official languages by the Centre of Official Publications of the Federal Chancellery, contains the reports of the Federal Council to the Federal Assembly (laws, ordinances and dispatches that accompany them); laws that need to be ratified by referendum; the decisions of the Federal Chancellery on popular initiatives and referenda; the results of vote on federal popular ballots; the result of federal elections. Since 1999 the official gazette is published on the Internet, free of charge.

The Federal Constitution establishes in Art. 180, Para. 2 that the Federal Council "shall inform the public timely and fully of its activity, unless preponderant public or private interests prevent this". Because authorities are requested to contribute to respect fundamental rights (according to Art. 35 of the Constitution) and all persons have the right to receive information freely, to gather it from generally accessible sources, and to disseminate it (Art. 16 of the Constitution), discretion on when and what to inform is relatively little.

Existing legislation is made available from a number of sources. In terms of official publications, a new Federal Law on Publications (*loi sur les publications*) came into force in January 2005. This law contains all important principles for publication of normative disposals, their date of enforcement and their legal consequences. It also indicates in which cases legal documents can be published in other documents and where to find them. The law also provides a legal framework for e-publications on the Internet. The Federal Law on Publications also specifies the documents to be published in the official gazette, as well as the functions of the *Recueil officiel* and the *Recueil systématique.*

- *Recueil officiel*. The *Recueil officiel* (RO), which has been published since 1851, as a vehicle of the Confederation to make all laws public, and general and abstract legal texts of federal and international law. The Federal Law on Publications makes clear which legal documents have to be published in the *Recueil officiel* (*www.admin.ch/ch/f/as*). It also points out cases where the text can be published in the RO, because of its particularities, just as an insertion or as body text in another document. The number of pages of the RO can be used as a proxy for measuring the quantitative evolution of federal laws, *i.e.* the flow of new legislation (see Table 2.1.).

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Table 2.1. Evolution of the *Recueil officiel*

Date	No. of pages	Comments
1972	3326	Free-trade agreement with the CE
1987	2700	
1989	2560	
1992	2730	Rejection of the Economic European Area (EEA)
1993	3440	Swisslex
1999	3676	Total revision of the Federal Constitution
2001	3599	
2002	4364	
2003	5514	
2004	5483	

Source: Chancellerie fédérale, Section des droits politiques.

- *Recueil systématique*. Another systematic compendium of the whole regulation applied in Switzerland, the Recueil systématique (RS), is now available on the Internet.[67] This is a useful tool to have access to legislation. All laws, ordinances and international treaties are codified at the following address *www.admin.ch/ch/f/rs/index.html*. The on-line compendium was finalised in 2001 and its update is made electronically. It contains an updated (consolidated) version of all decrees in force, i.e. the stock. The information provided by the Federal Council is also complemented by information of regulations provided by other agencies through their web pages. Different booklets and publications explaining regulations and directives on a variety of issues are also available on-line. Cantonal law is also accessible in full text through the Internet.

Data protection. Data protection is regulated through the Federal Law on Data Protection (*loi fédérale sur la protection des données*), enacted in 1992 and currently revised. The main goal of the law is to protect the personality and fundamental rights of particulars subject to data processing. The law is applied to data processing by particulars and federal authorities. Some principles have to be observed: lawfulness, good faith, proportionality, decisiveness, accuracy, security, right to access. Cantons have also implemented local regulations on data protection, trying to harmonise legislation with the federal level. The law created an autonomous institution, the Data Protection Commissioner (*Préposé fédéral à la protection des données*), administratively linked to the Federal Chancellery, whose tasks are to give advice to particulars and bodies of the Confederation on data protection and to supervise the implementation of legal prescriptions in this field. The Data Protection Commissioner issues recommendations when it is approached by a member of the public or by its own initiative. For further decisions the Agent can ask the Federal Commission for Data Protection (*Commission fédérale à la protection des données*) which acts as an arbitration and appeal body and establishes binding resolutions.

Federal Law on Transparency. Transparency through communication will be strengthened with the new Federal Law on Transparency, already adopted by the Federal Assembly and expected to come into force in January 2006. Secrecy had been a common feature of the activities of the Swiss federal administration, with some exceptions established by concrete regulations. This law provides the right for all people to consult official documents and acquire from authorities information on their content.[68] The right to access documents is respected as soon as an official document is released in another official document or an Internet Web site of the Confederation (see Box 2.8).

Box 2.8. Federal Law on Transparency

The Federal Law on Transparency will come into force in 2006. It foresees a simplified procedure to have access to information: people send their requests to the office concerned and the authority has twenty days to reply. In case of rejection, postponement, limitation or lack of reply in the delays established by law, the applicant can look for mediation, addressing a written request to the Federal Agent for Data Protection and Transparency (*Préposé fédéral à la protection des données et à la transparence*), who has also twenty days to reply. If mediation does not work, the Federal Agent for Data Protection and Transparency sends out a recommendation to the parts. The applicant can then ask for a decision, which might be appealed to the Federal Commission for Data Protection and Transparency (*Commission fédérale de la protection des données et de la transparence*).

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Despite the progress this law represents, some issues remain. The Federal Law on Transparency contains numerous exceptions by which the right to access to official documents is limited or refused. These exceptions are justified in a number of cases dealing with public and private interests, whose definition might be decided by authorities concerned. The access to information is not free, as is the case in other OECD countries. This could have a negative impact on citizens regarding the incentive to launch a request. The law does not envisage the set up of a mechanism, such as an electronic system to centralise requests, to implement the search for information: the system is decentralised and it will be left to each authority whether it will set up a standards system to collect applications. The authorities will have to inform the public about documents at disposal and they will have to publish the most important ones. The law does not recommend any sanction to non-complying officials. However, applicants can defend their rights in a mediation procedure and can appeal to the Federal Commission for Data Protection and Transparency and then to the federal court.

Plain language. Governments need to ensure that regulatory goals, strategies, and requirements are clear to the public. This is essential to public confidence in the necessity and appropriateness of regulation. It is also a fundamental element in ensuring compliance. It requires, fundamentally, that legal texts be able to be read and comprehended by non-experts.

The legislative procedure in Switzerland gives special attention to plain language. The fact that regulations need to be translated into different official languages (French, German, Italian and Romansh) provides a good starting point to clarify legal terms and make them accessible and understandable to all citizens.

The control of laws and ordinances refers not only to their legal content, but is widened to influence on other laws and covers different formal aspects. In collaboration with the Federal Chancellery, the Federal Office of Justice revises the accuracy of these projects, from the point of view of the legislative technique and the drafting, pointing out to the legality. The Legal Section of the Federal Chancellery verifies the conformity with the legal technique, while the linguistic services of the Federal Chancellery improve the drafting. The Internal Commission for Drafting (*Commission Interne de Rédaction*), formed by linguistics and lawyers, is in charge of the linguistic control of law projects. The Commission drafts the important normative acts, both in German and French. It reviews not only the linguistic difficulties, but also to make laws comprehensible for a broader audience. In the legislative branch, a Parliamentarian Drafting Committee (*Commission parlementaire de rédaction*) works for both chambers and revises the legal accuracy of laws and other regulations until their adoption. Further mistakes can be revised, even after publication in the official register of federal laws (*Recueil officiel*).

There are different instruments that help officials to revise the accuracy of legal terms and the way regulations become clearer to a broader audience, such as a Linguistic Guide of Laws and Ordinances of the Confederation (*Guide linguistique des lois et des ordonnances de la Confédération* – GLLOC) and the Recommendations related to the treatment of Anglicisms inside the federal administration (*Recommendations relatives au traitement des anglicismes au sein de l'administration fédérale*).

Assessment. Switzerland is a successful example for making a three language democracy work in a small federal country. It is a positive case of coexistence and multiculturalism. Switzerland has also a positive record in terms of accessibility of the rules for regulated entities. Law-based administrative procedures for access to regulations contribute to transparency and reliability. In some cases, however, the excessive information existing, mainly produced by regulatory inflation, has been identified by some stakeholders, especially SMEs, as an element of confusion. A reduced understanding of existing regulations is complemented by complexity in the structure of regulatory regimes. In the Swiss case, this is sometimes aggravated by the decentralised nature of the internal structure of the public administration.

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3.1.4. Transparency in the implementation of regulation: compliance, enforcement and appeal

Design, adoption and communication of regulation are not sufficient. To achieve its intended objective, a regulation must be implemented, enforced and complied with. A mechanism to redress regulatory abuse should also be in place, not only as a democratic safeguard of a rule-based society, but also as a feedback mechanism to improve regulations.

Compliance and enforcement

A crucial performance instrument for any regulation is the degree of compliance it generates. An *exante* assessment of compliance is increasingly a part of the regulatory process in OECD countries, although the level of resources and attention focused on it varies significantly (see Box 2.9).

Box 2.9. Initiatives of ex-ante assessment of legislative proposals' enforceability in OECD countries

In the **Netherlands**, "The Table of Eleven" is used both to guide reviews of compliance and enforcement relating to existing legislation and as an analytical tool in the development of new regulation. The Table is in three parts: *spontaneous compliance dimensions*, *control dimensions* and *sanctions dimensions*. This "checklist" approach can help regulators consider compliance issues in detailed, systematic fashion, and also provide a useful review and quality control tool. In the **United Kingdom**, government policy and guidance on the preparation of regulations include explicit considerations on securing compliance. Policy makers are encouraged to consider a variety of compliance factors, including taking a balanced approach between high compliance and (over-) active enforcement. In **Canada**, implementation and compliance strategies are also required to be explicitly and publicly discussed as part of the preparation of a regulatory proposal.

Source: OECD (1999), *Regulatory Reform in the Netherlands*, Paris; OECD (2001), *Regulatory Reform in the United Kingdom*, Paris; OECD (2002), *Regulatory Reform in Canada*, Paris.

In Switzerland, compliance levels are comparatively high. This is due to different factors. The Swiss political system is characterised by power-sharing (*concordance*, *Konkordanz*): all politically relevant forces (parties, cantons, interested organisations) and linguistic communities have a voice in the political process. Their extensive participation in the political process facilitates acceptance of political outcomes, even if in specific instances political parties, certain cantons or certain organisations (such as trade unions, employers associations, etc.) are not getting what they aspired. Compliance is also facilitated by the low degree of corruption within the administration.[69]

Decisions within the Swiss political system have specifically high legitimacy due to extended political rights (initiative and referendum). All bills passed by the Parliament must be submitted to the people, if 50 000 valid signatures are collected. Although only about 5% of all bills are actually submitted for referendum, the mere possibility to do so gives parliamentary decisions a relatively high legitimacy. Defective compliance can, within this context, be denounced more easily.

Compliance and enforcement mechanisms are marked by Switzerland's federal system and the division of powers and functions between the Federation and the cantons. In principle, cantons are the main implementing "agencies". They are closely integrated into the political process. Federal offices co-operate with cantons and professional associations in order to inform the addressees of norms and other relevant stakeholders about new or modified legal norms. There exist different instruments of surveillance of federal offices and agencies regarding implementation of laws by the cantons. Those instruments are described in the Guide of Legislation published by the Federal Office of Justice:[70]

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- *General instructions through circulars or guidelines*. The Confederation can send to cantons circulars and guidelines, specifying the execution possibilities of federal law. This power derives directly from the surveillance power of the Confederation and it is the main way to act in a preventive way.

- *Particular instructions for specific cases*. Only in particular cases the Confederation can monitor the execution of legal norms. This surveillance can be made only if the authority concerned is able to go through documents and require information. The canton that disregards compliance is "invited" to remedy this violation.

- *Periodical reports.* Cantons may be asked to inform periodically on the execution of federal legal acts. This instrument can only be requested according to an ordinance.

- *Inspection*. Federal law can foresee the inspection of cantonal administrations. This inspection refers on the execution of certain legal acts and allows the Confederation to control the cantonal administrative activity.

- *Approval of cantonal legal acts.* This instrument has a preventive character and allows the Confederation to examine the conformity of legal acts with the federal law (according to Art. 186, para 2 of the Federal Constitution).

- *Appeal right of federal authorities*. The main goal of this right to appeal is to apply federal law in a consistent and uniform way.

- *Repeal of cantonal decisions*. This instrument can harm the cantonal autonomy and the ordinary appeal system. The use of this instrument does not require a special legal base, but it is not advisable to use it.

Compliance is facilitated by various mechanisms of supervision, *e.g*. by supervision through citizens within the smaller municipalities. Switzerland has a particularly dense network of media enterprises (press, radio and television) which report and denounce deviations from the law by public authorities, private persons or firms. A dense network of associations (economic associations, trade unions, consumer organisations, environmental associations, sport and leisure associations etc.) also reinforces compliance (either through political activities and/or through the media). The small size of the country and short travelling distances facilitate oversight and this contributes to good compliance as well.

Supervision in the Executive branch is conducted by the Swiss Federal Audit Office (*Contrôle fédéral des finances* – SFAO), which is the supreme financial supervisory organ of the Confederation. The SFAO audits central and decentralised federal administration, parliamentary services, subsidy recipients (*e.g.* road construction, agriculture), bodies assuming public duties (*e.g*. the Swiss Federal Institute of Intellectual Property), enterprises in which the Confederation has a majority shareholding and federal courts (only in administrative matters). The Swiss National Accident Insurance Organisation and the Swiss National Bank are the only two institutions excluded from audit by the Federal Auditing Law.

The SFAO's powers are limited to the federal level. Apart from the certification audit, where applicable, the SFAO decides independently, based on its own risk analysis, which bodies are to be examined in detail. The SFAO has powers to enforce or initiate enforcement action to secure access to needed records, but it has no powers to seal documents and other related items needed for its audit and inspection. There is a possibility to appeal to the government in case of disagreement over access to information. The SFAO does not have the powers to decide on claims of interested persons in connection with official actions, duties and behaviours of persons subject to audit and inspection. The surveillance

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body of the federal offices in such cases is the ministry. The SFAO has no powers to take punitive action and/or impose surcharges. It has a role in the appointment of other external auditors engaged by the auditees for meeting any statutory requirements, but it cannot supervise or regulate their work. It may only comment on it.

Parliamentary supervision is tight in Switzerland. There are various oversight commissions and oversight bodies:

- *The Finance Committee*. It supervises the financial management of the Confederation. It examines the budget and the state accounts of the Confederation and the Post and Telecommunications Corporation as well as the Confederation's financial plans. It is divided into sections, each one of which examines the finances of one of the various departments.

- *The Control Committees*. The Control Committees of the Federal Chambers exert the higher parliamentary control over the activities of the Federal Council and of the Federal Tribunals in accordance with Art. 189 of the Federal Constitution. The Committees fulfil their duties by conducting inquiries, i.e. in-depth assessments that the Committees perform themselves, with the support of their secretariat; appointing the Parliamentary Control of the Administration unit to undertake evaluations and studies; examining the Annual Report of the Federal Council, the activity reports of the Federal Tribunal and the Federal Insurance Court, as well as the annual reports of other bodies entrusted with federal tasks; conducting visits at various offices of the federal administration; dealing with complaints submitted by third parties; monitoring the implementation of recommendations and of the other parliamentary interventions which they address to the Federal Council.

- *The Parliamentary Control of the Administration*. It is the competence centre of the Federal Assembly responsible for evaluations. It supports parliamentary oversight through scientific assessments and evaluates concepts, implementation and impact of the measures taken by the federal authorities.

Parliamentary scrutiny is particularly high because even within the four party-government coalition that forms the Swiss government every political party can disagree in important matters. The Federal Council is elected for a four-year term, and there is no possibility of a motion of non-confidence as in so-called parliamentary democracies. Responsibility is individual for members of the Federal Council. Paradoxically, this governmental stability allows every political party to publicly denounce alleged mistakes (such as defective compliance) made by the public authorities.

Other procedures contribute to high levels of compliance in Switzerland. Mediation has gained a firm place in litigation procedures in the following fields: consumer protection, radio/TV programs (public broadcast companies) transparency of the public administration, law governing tenancy. Evaluation reports allow detecting defective compliance as well.[71]

Public redress and the judicial system

A public feature of regulatory justice is the existence of clear, fair and efficient procedures to appeal administrative decisions based on a regulation as well as the regulation itself.

The Federal Constitution (Art. 29, 30) gives all people clear rights: the right to equal and fair treatment by judicial and administrative authorities within due time; the right to be heard; the right to free legal assistance; the right that cases are heard by judicial authorities that are established have jurisdiction, and are independent and impartial courts; the right that court hearings are public and judgements publicly

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proclaimed. These norms also apply to cantonal judicial procedures. Federal offices have in various fields the right to appeal against cantonal court decisions that violate federal administrative law, according to Art. 103 of the Federal Law on the Judiciary Organisation.

The judicial system in Switzerland is strongly influenced by the federal structure of the state. Federal laws are not only implemented by federal agencies, but mainly by cantons, which "shall implement federal law in conformity with the Constitution and with statute law" (Art. 46, para. 1). Cantons are also entitled to organise their judiciary themselves, setting up courts to deal with civil, criminal and administrative procedures.

In Switzerland, constitutional norms related to the appeal system are specified by federal and cantonal laws[72]: for instance the requirement to duly motivate a decision and to indicate appeals procedures and delays, the right of the involved parties to assist to hearings and to ask supplementary questions, the right to examine written materials of authorities, the right to present evidences, etc.

The Federal Supreme Court, the "highest federal judicial authority", renders decisions on civil, criminal and administrative matters. In administrative and civil procedures access to the Federal Supreme Court is largely open. Average treatment delay of the Federal Supreme Court is presently 3 months. There are appeals procedures, which offer adequate judicial protection against inadequate regulatory decisions and yield results in reasonable time.

Nevertheless, public law procedures are complex in Switzerland due to the interaction of different jurisdictions. At the federal level, the legality and constitutionality of normative acts below federal law (ordinances from the government or the parliament) can be controlled by court, but the courts are required to apply federal laws by the Constitution (Art. 191). For public law cases, decisions of administrative authorities can generally be appealed to a cantonal administrative authority, as cantons implement not only their own administrative law, but also large parts of federal law. The next stage is the Cantonal Administrative Court. A final appeal to the Federal Supreme Court is possible and its decision is final. As far as federal laws are implemented by federal authorities, the decisions can usually be appealed to one of the many federal appeals commissions (*Rekurskommission*) which are a kind of special administrative tribunal with jurisdiction limited to certain areas of federal administrative law.

The appeals system is currently under revision and the traditional system will be replaced by a system of appeals that will go to a newly created Federal Administrative Court (*Bundesverwaltungsgericht*), established according to Art. 191a, para. 2 of the Federal Constitution.[73] This Court, which will be set up in 2007, will replace the many federal appeals commissions and will centralise appeals against decisions taken by the federal administrative authorities. Its judgements can be appealed to the Federal Court with the exceptions of cases to be determined by a federal statute.

The total revision of the judiciary system, accepted by the cantons and the people in 2000, will also contribute to improve the regulatory framework in Switzerland. This revision includes the re-organisation of the Federal Supreme Court, the unification of criminal and civil procedure laws thereby introducing new methods of legal procedures, the creation of lower instances and new possibilities to appeal decisions, which is key to increase transparency in the implementation of regulations. The main goals of the proposal are to ensure the right functioning of the Federal Supreme Court by reducing efficiently and in the long-term the excessive workload, as well as to improve the legal protection in certain fields, simplifying the procedures and ways to appeal.

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3.2. Choice of policy instruments: regulations and alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. The range of policy tools and their use is expanding as experimentation occurs, learning is diffused and understanding of the potential role of markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically disincentives for public servants to be innovative. A clear leading role – supportive of innovation and policy learning - must be taken by reform authorities if alternatives to traditional regulation are to make serious headway into the policy system.

Systematic considerations and the use of alternatives in Switzerland are supported by clear formal obligations on the federal administration to consider alternatives. The Federal Act on the Federal Assembly includes in Art. 141 that the Federal Council shall submit its bills to the Federal Assembly together with a dispatch, which provides substantial information on "the points of view debated in the preliminary stages of the legislative process and their alternatives and the related position of the Federal Council".

This obligation is given effect in the Instructions for the Schemes of Dispatches (*Botschaftsleitfaden*),[74] which has to cover the discussion of alternatives while justifying the proposed solution. The dispatches should include an explanation on alternatives to the law proposal, as well as the justification of their rejection. The consultation procedures provide the framework to discuss alternatives and justify the adoption of solutions.

Special consideration to economic consequences should be given in the dispatch. This part is usually a summary of the results from the RIA, based on the *Instructions concerning Regulatory Impact Analysis*. These instructions also include a discussion on alternatives and their economic consequences, as integrated in the RIA Checklist, summarised in point 4 of the Checklist (see Box 2.10).

Box. 2.10. Alternatives and RIA – Checklist

The Checklist, based on the Guidelines for RIA, contains a section (point 4) on alternatives to regulations:

- Which alternatives to regulation have been taken into consideration?
- Is there a need to impose – in the framework of public law – an interdiction or a state monopoly?
- Is it possible to change obligatory authorisation requirements to obligatory information provision?
- Is it possible to appeal to private organisations to undertake test and/or certification?
- Can the regulation be reduced to subsequent controls, *e.g*. linked to the levy system?
- Can state intervention be limited to a communication campaign or eventually to the use of incentive instruments for a limited time?
- Can you rely on instruments of private law, such as product liability, right of action (neighbor, interest communities, etc.)?
- Is the use of economic instruments (public sales, introduction of a tax on the use of public goods) possible?
- Can voluntary agreements among interested parties be envisaged?
- Are possible discriminatory instruments (exemption for SMEs, exemption of certain categories of cases where regulation is applied; limitations to certain parts of the economy, branches or regions; bagatelle clause; introduction of package price) examined?

Source: SECO (1999), *Checkliste "Regulierungsfolgenabschätzung",* Berne

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For federal laws, the consideration of alternatives is compulsory and a comparison among solutions, even those used in foreign countries and presented as supplementary alternatives, is almost always undertaken. Nevertheless, the discussion on alternatives is less deep than the proposed solution, which is presented in a detailed way, article by article. For the ordinances, which are also subject to a RIA, dispatches are less comprehensive and the discussion of alternatives is not guaranteed.

Since the report on authorisation procedures published in 1999,[75] the federal administration has been aware of difficulties and costs linked to state authorisations, particularly interdictions and prior control in the form of state authorisations. In recent years, some alternatives to these regulations enjoy strong support and are used actively by different parts of the public administration. The potential of alternatives is real, but they are relatively complex because of exemptions and possible negative impacts on SMEs. Examples of such alternatives are:

- *Economic instruments to protect the environment*, such as eco-taxes or user charges. Examples: incentive tax on volatile organic compounds, incentive tax on extra-light heating fuel, taxes on battery recycling, anticipated taxes on electronic devices, or user charges on waste disposal bags, etc.

- *Information provision instead of obligatory authorisation requirements*. Whenever possible, information provision might be sufficient, *e.g.* the case with respect to production methods in agriculture.

- *A transfer of responsibility to enterprises*, combined with repressive enforcement, which is a result of the influence of European law into the Swiss legal system.

A new evaluation of authorisations will be published by the end of 2005, listing those authorisations that can be suppressed or replaced by other instruments.

Voluntary agreements. Voluntary agreements are arranged when companies take voluntary action to redress a policy concern that may stave off more onerous government regulation. A government with a credible threat of possible future regulation can encourage an industry to deal with the issue itself rather than actually taking the step of implementing regulation. Firms may enhance their reputation and hence increase sales via participation in voluntary associations.

In the environmental field and since the beginning of the 1990s, federal authorities have adopted several voluntary agreements with the private sector. Under the Environmental Protection Act a voluntary agreement can be extended to the whole sector concerned through the regulatory process. Industry is in favour of such agreements and prefers them to regulation; it is also prepared to agree to the inclusion of penalties in contracts signed with the authorities.

There are many examples of such agreements.[76] In the waste field (see Box 2.11), for example, disposal of scrapped is financed by a charge per vehicle levied by the importers. Others concern the financing of recycling of different categories of waste, such as tinned cans, aluminium and PET bottles, car tyres, etc. Energy efficiency policy is based largely on voluntary agreements. The CO_2 legislation provides for federal-level agreements with industry. Other agreements have been reached on batteries, packaging, textiles, chemical products and eco-labelling.

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Box 2.11. Public-private regulatory agreement in the field of waste

In the field of electric and electronic waste the Swiss federal authorities have developed a collection system in cooperation with the private sector. The standards and the responsibilities regarding the management of electric and electronic waste are defined by the authorities in the Ordinance on the Return, Take-Back and Disposal of Electrical and Electronic Equipment (*Ordonnance sur la restitution, la reprise et l'élimination des appareils électriques et électroniques* – ORDEA), adopted in July 1998. The financing of the waste management is left free to the private sector to organise.

ORDEA requires from retailers, manufacturers and importers to take back appliances that they fabricate. Consumers, for their part, are required to return them. The Ordinance requires a permit from the private sector for the management of such equipment. It defines the criteria for the environmental sound management of the electrical and electronic appliances, which the private sector should comply with. The collectors of appliances do not need a permit if they act on behalf of a disposal firm, a dealer, manufacturer or importer, or on behalf of the public authorities. Regarding the financing of the collection and waste management, the private sector has agreed on establishing an advanced recycling fee that varies between 0.5 and 2.5 CHF/kg of electric/electronic waste.

After six years of implementation the market of electric and electronic waste seems to be cartelised and hardly transparent. The collection of waste is mainly controlled by one firm. In 2002 a complaint against the two main associations – that represent most of the Swiss producers and importers of electric and electronic devices – was registered to the Swiss Competition Authority, considering that both associations applied illicit restrictions to competition. The Competition Commission concluded, however, in March 2005 that the provisions of the two associations did not break the Swiss law on cartels.

Environmental management systems. Industry is relying increasingly on environmental management systems. In 1998 more than 100 firms had obtained certification under ISO 14001. The chemical industry is implementing the Responsible Care System to protect environment and co-operates on setting up an information system on pollutant emissions and waste transfers.

Self-regulation. In the past, the lack of a clear competition policy allowed different associations to organise the market without clear delegation to do it. Even if a corporatist tradition in Switzerland is still visible, it is mainly manifest during the pre-parliamentary phase of legislation and during the internal consultation process. It is rather uncommon that the execution of regulations is delegated to non-governmental bodies or other self-regulatory bodies. Today Swiss organisations are active in bodies at the European level taking into account European technical norms. In the framework of the service sector, cantonal regulations are linked to associations' codes of conduct. It is not the association itself that stipulates membership codes, but commissions where members are represented.

An example of self-regulation is found in the financial sector supervision. Swiss financial market law attaches great importance to the principle of self-regulation in the financial services industry. Interfaces between authorities and self-regulatory organisations are clearly established and delineate responsibilities. The scope of self-regulation and the relationship between the Swiss Federal Banking Commission (SFBC) and self-regulatory organisations can be described as follows:

- The most important self-regulatory organisations for the Swiss Federal Banking Commission (SFBC) are the Swiss Bankers Association, the Swiss Funds Association (SFA), the SWX Swiss Exchange and the Swiss Institute of Certified Accountants and Tax Consultants.

- In individual cases, the SFBC provides the impetus for self-regulatory initiatives, and is in some cases also involved in their preparation. It provides particular support for self-regulation by defining, as part of its banking and investment fund supervisory activities, certain regulations (sometimes called "codes of conduct") as minimum standards for all supervised institutions. The SFBC monitors compliance in its function as regulator of the industry.

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- The Swiss Exchange as a self-regulatory organisation in stock market regulation. The intent of the Swiss regulator is to establish exchanges as strong as self-regulatory organisations. To this end, it provided for a clear separation of the roles and competencies of the exchanges and the SFBC.[77]

- Another important field of self-regulation concerns the Swiss Money Laundering Control Authority and the self-regulatory organisation under its supervision. A financial intermediary who is not already under the supervision of an authority established by way of special law such as the Banking Law or the Insurance Law[78] may either choose to become affiliated to a self-regulatory organisation or to be directly subordinated to the Swiss Money Laundering Control Authority.

Box 2.12. The Money Laundering Act (MLA) and self-regulatory organisations

The MLA defines in broad terms the obligations of due diligence incumbent upon financial intermediaries regarding business relationships. It is the task of the self-regulatory organisation to provide detailed specifications of these obligations in their regulations, in general terms or with sector-specific reference to the requirements and economic particularities of their affiliated financial intermediaries. Moreover, the regulations must include the conditions under which a financial intermediary may be affiliated or excluded, and the way in which compliance is supervised concerning the obligations of affiliated financial intermediaries.

Apart from these substantive regulations, the self-regulatory organisations must use suitable methods of supervision and corresponding sanctions to ensure that their affiliated financial intermediaries comply with the obligations laid down by the respective self-regulatory organisation's regulations. For example, compliance with obligations may be supervised by annual audits carried out by external MLA auditors appointed by the self-regulatory organisation, or through annual reports, which affiliated members must submit to the self-regulatory organisation in question.

The self-regulatory organisations are free to decide upon the kind of sanctions (e.g. fines, reprimand or exclusion) they apply if their regulations are breached. In any case, such sanctions are instruments of civil law. The MLCA may not intervene in the internal auditing procedure of a self-regulatory organisation, nor may it be asked to intervene in conflicts between a self-regulatory organisation and its members. The most serious sanction against a member is exclusion from the self-regulatory organisation. The self-regulatory organisation has to report exclusions to the MLCA. If considered necessary, the latter will take appropriate measures against the financial intermediary. The MLCA will monitor the case until the financial intermediary has obtained either a new affiliation with a self-regulatory organisation or a licence of the MLCA or has ceased its activities covered by the scope of the MLA, either voluntarily or upon order of the MLCA. In addition, the self-regulatory organisation is obliged to keep a list of its members, of any applicants who have been refused affiliation, and of any financial intermediaries who have been excluded. The list must be updated quarterly, and automatically submitted to the MLCA, thereby increasing transparency.

3.3. Understanding regulatory effects: the use of Regulatory Impact Analysis.

3.3.1. Regulatory Impact Analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasized the role of RIA by systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development, review, and reform of regulations." A list of RIA best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries*.[79] The 2005 *Guiding Principles for Regulatory Quality and Performance* recommends that RIA is conducted in a timely, clear and transparent manner.[80] This section describes the current RIA system in place in Switzerland and assesses it against OECD best practices.

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Switzerland introduced the formal use of RIA in 1999, when the Federal Council decided to institutionalize it through the adoption of the Guidelines of the Federal Council on RIA from 1999.[81] The adoption of RIA as a tool to improve the quality of regulations was a consequence of different parliamentarian interventions on administrative charges and the consequences of regulations on SMEs. It was adopted after a controversial discussion regarding the respective roles of public consultation and technocratic evaluation, performed according to RIA guidelines. A deep and long evaluation of public policies prepared the introduction of the instrument. An extensive analysis of federal regulations done in 1997 showed that two thirds of federal legislative acts in effect dated from less than twenty years, meaning that the legislative activity had an active development during the 1980s and the 1990s.[82] As in other OECD countries, the reasons for this trend were the importance of regulating new fields of the economic activity, mainly environment and energy, as well as the development of state activity in social areas and adjustments needed vis-à-vis international conventions, especially the adjustment to the European framework. This dynamic had a negative impact on costs imposed on businesses and, in the long term, on the competitiveness of the Swiss economy.

RIA in Switzerland is supported by the following legal instruments:

- *Federal Law on the Relationships between Councils.*[83] By Art. 43 of this law the Federal Council has to indicate in his dispatch rejected alternative solutions, the consequences for the economy and the relationship between the utility of regulations and the proposed measures, as well as the economic cost caused by their application. This law preceded the *Federal Act on the Federal Assembly* which today provides in its article 141 the legal basis for the use of RIA.

- *Motions and postulates.* A number of interventions have been made by the Federal Assembly to include an assessment of economic costs of regulations.

- *Decisions and Guidelines* adopted by the Federal Council in 1999, which set up the whole framework for RIA in Switzerland.

- *OECD Recommendation of the Council on Improving the Quality of Government Regulation*, adopted in 1995. The questions to consider: is government action justified, do the benefits of regulation justify the costs and is the distribution of effects across society transparent.

The implementation and quality of RIA is overseen by the State Secretariat for Economic Affairs (SECO). Its mission is twofold: it provides analytical support to offices within the federal administration and it revises the chapters on economic consequences, facilitating uniformity and clear consistency in argumentation. The control oversight from SECO occurs regularly during the internal consultation process (consultation among offices and co-reporting procedure, see section 3.1.2), but it goes beyond this process: the RIA or a summary of it is included in the dispatch that accompanies the law proposal to the Federal Assembly. The quality criteria to develop this task are: the analysis is based on the 5 main points (see Box 2.13) listed in the Guidelines approved by the Federal Council; all type of actors should be considered, paying particular attention to consumers; the effects should be plausible, indicating in a transparent way who will have to conform and who will only benefit, as well as the positive and negative effects of the measure; the economic effects should be supported by figures, notably the number of people and enterprises which will be directly involved in the execution of the law.

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Box 2.13. RIA in Switzerland: five key criteria

The Swiss government consider RIA as a tool to provide federal authorities (Federal Council and Federal Assembly) with transparent and comparable information to help them in decision-making. The main goal of RIA is to complete political, regional, sectorial, etc. information with a systemic evaluation of draft regulations according to a global view of the economy. Regulations are revised according to the following criteria:

1. *The need and possibility of state intervention*. The first step is to explain from an economic point of view the reasons that justify the proposed regulation.

2. *Consequences for different categories of actor*. A second step includes a description of the winners and losers of the proposed regulation, as well as a quantification of the costs and benefices for both parts, if possible. This should lead to a more comprehensive cost-benefit analysis, pointing out the possible distributional effects among societal groups and different costs to execute and implement the regulation.

3. *Implications for the economy as a whole*. The third step is to explain the general effects of proposed regulation, taking into consideration the adaptation process of actors, whether the new regulation positively contributes to market efficiency, side-effects on employment, investment, innovation, research, consumption, environment, etc.

4. *Alternatives to regulation*. This step was reviewed in Section 3.2 in Box 2.10.

5. *Practical aspects of implementation*. The final step should consider administrative implications of implementation, consequences on co-ordination mechanisms, term of effectiveness, plain language, delegation of competences, appeal system, relationship and division of tasks between federal and cantonal governments, communication to parties affected, etc.

The State Secretariat for Economic Affairs (SECO) has developed some instruments to help officials within the federal administration and regulators to conduct RIA. Some of them are the following:

- *Documentation*. A set of documents for officials clarifying the use of RIA is available on SECO's Internet site: a Handbook on RIA, a Checklist on RIA and examples of previous RIAs.

- *An annual reminder*. SECO sends at the beginning of the year, when the objectives of the Federal Council and of the Departments are published, a reminder indicating SECO's expectations, in order to motivate participation, as early as possible, from the project leaders in each division.

- *Working group to exchange experiences*. SECO organises an annual meeting with a working group, composed by representatives from different offices, SECO and external consultants, which exchanges experiences on implementing RIA and its improvement. This group has provided advice on more pragmatic solutions than the ones contained in the Guidelines.

- *Bilateral communications SECO – offices*. Brainstorming sessions are organised with those divisions involved in implementing RIA. SECO gives input and controls the draft on economic consequences before the office consultation procedure. This is especially important for those divisions lacking economists.

In a number of instances, RIA – albeit prospective in nature – can benefit from the findings of the evaluation of the legislation in place (see section 4.1)

RIA is applied to all federal laws, as it is a component of the dispatch sent to the Federal Assembly with the law proposal. The ordinances, by contrast, are not subject to the same legislative procedure. In general, there is no systematic consultation mechanism for ordinances.

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The RIA requested by SECO should include the five key points used for federal laws and the economic justification for state intervention. But often the RIA of ordinances refers to the dispatch of federal laws. The ordinances proposals of the Federal Council are shorter and less detailed than the dispatches. Other legal instruments used by the government to issue regulations, such as guidelines, instructions, etc. are not subject to RIA, leaving an important vacuum as they can be fundamental for the economy and society. RIA is not generally applied at sub-federal level either, *i.e*. cantons.

After some years of implementation, SECO has been able to identify challenges and review areas for improvement. In order to highlight the importance of RIA, SECO intends to publish a first annual report on regulation at the end of 2005, which will increase the visibility for regulatory reform in general and RIA in particular. In a document entitled *The fifty most important regulations: choice from an economic point of view*,[84] SECO has also tried to confine the area where to improve RIA in first instance.

The Parliamentarian Control of the Administration, following a mandate from the Control Commission of the National Council, has just released a report on the regulatory instruments to assess impact of regulations implemented by the Confederation.[85] In terms of RIA, a number of features, weaknesses, as well as potential future areas of improvement are highlighted.[86] The report has led to a series of recommendations, in order to fully take advantage of this regulatory tool and improve its quality.[87] Future discussions[88] can serve to redefine the institutional framework for RIA and to find better ways of increasing its visibility and potential, especially to make it really valuable for the evaluation and assessments of impacts, in an earlier stage of the decision-making process.

The debate about overregulation and increasing regulatory costs also emerged strongly in the financial sector.[89] A recent study[90] based on a survey of a limited number of banks estimated the overall regulatory costs in private banking to be about 4.5% of total expenses. Not only the level, but the trend is a matter of concern, since the number of full time people working in the field of compliance in this sector has increased by 60% between 1998 and 2002. As a proportion, the regulatory burden of smaller bank is about twice that of larger banks.

In September 2005 the Swiss Federal Department of Finance published new "Guidelines for Financial Market Regulation" (see Box 2.14). These Guidelines specify the existing general provisions in the Constitution and in legislation, as well as the 1999 Federal Council Guidelines on Regulatory Impact Assessment (at the levels of law and Federal Council ordinance) for the area of financial market regulation. In addition, the Federal Council envisages that a standard will be incorporated into the legislation governing the proposed integrated Financial Market Supervisory Authority (FINMA), after which the impact of new regulation must be reviewed.

Box 2.14. Guidelines for Financial Market Regulation

The Guidelines provide the Federal Finance Administration and the supervisory authorities with a unified assessment matrix for regulation. Accordingly, the level of regulation, the complexity of content, the economic significance and its urgency, as well as the political sensitivity of a regulatory proposal, will be taken into account. The Guidelines should find application at all levels of financial market regulation (law, ordinance, circular, etc.), albeit in a differentiated way. They ensure a systematic evaluation of regulatory provisions, which equally bears in mind the purpose of government regulation and supervision, the form of market failure in the area of finance, the economic importance of the financial markets, as well as the given conditions of the Swiss financial sector.

Specifically, the Guidelines pursue the following objectives:

- The ensuring of a systematic review of new and existing financial market regulation at all levels of regulation.
- The raising of effectiveness of financial market regulation through weighing up the costs and benefits for market participants and for the economy.
- The improvement of transparency, comprehensibility and practicability of the regulatory activities.

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Assessment against best practice

Maximise political commitment to RIA. The use of RIA to support reform should be endorsed at the highest levels of government. Although the 1999 Guidelines adopted by the Swiss Federal Council launched the preparation of RIA manuals and imposed the integration of RIA into the dispatch, there is still work to do to consolidate the political commitment to RIA in the day-to-day regulatory process. Setting priorities can make a difference. This is especially relevant at the sub-national level, where very few cantons have envisaged the possibility of assessing the impact of regulations and introducing some kind of RIA. Today only two cantons out of twenty-six, Berne and Soleure, apply a similar RIA such as the one implemented by the Confederation. RIA could contribute to decision-making at all levels of government if requirements were also implemented by cantons.

Allocate responsibilities for RIA programme elements carefully. To ensure "ownership" by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA should be shared between ministries and a central quality control unit. Experience in OECD countries shows that RIA will fail if left entirely to regulators, but will also fail if it is too centralised.

In Switzerland, as in virtually all OECD countries, the responsibility for preparing RIAs is clearly with the proponent ministry which must involve and consult with relevant stakeholders and counterparts inside the federal administration. The involvement and co-ordination between ministries is guided by the different stages of the legislative process and is part of extensive consultation procedures. Nevertheless, RIA is only a small part of the whole consultation process and many departments do not have the human resources to prepare a deep analysis of economic consequences. The main responsibility for the substantive quality of the required impact assessments has been allocated to the State Secretariat for Economic Affairs (SECO), but its human and technical resources are scarce, which reduces the capacity to evaluate the quality of the product and to follow up carefully each law proposal.

Train the regulators. Regulators must have the skills to prepare high quality economic assessments, including an understanding of the role of RIA in assuring regulatory quality and an understanding of methodological requirements and data collection strategies. All complex decision-making tools, such as producing adequate RIA, demand a learning process.

Training is part of the activities developed by SECO to further expand knowledge on RIA. As part of these activities, SECO organises seminars and an annual meeting with policy-makers inside the federal administration, dealing directly with RIA, in order to make them aware of the relevant issues concerning RIA. Between ten and thirty people attend these meetings. Articles in different academic journals contribute to disseminate information on RIA. The Swiss, however, lack the human resources to really integrate a training policy inside the federal administration. Only one official working full time on RIA is not sufficient to deal with all needs and commitments that this tool imposes.

Use a consistent but flexible analytical method. The OECD recommends as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." A cost-benefit analysis is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being "socially optimal" (*i.e.* maximising welfare).[91]

The Guidelines on RIA make reference to the importance to justify regulatory decisions in terms of costs. A list of questions helps regulators to clarify which costs and benefits are involved in the decision. SECO has also prepared a document, that supports the Guidelines, entitled *The estimation of the benefits of regulations*,[92] whose goal is to facilitate the preparation of a RIA, presenting in a practical way the techniques and methods used to point out the benefits of law proposals.

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Even if this detailed guidance on how to embark upon a cost-benefit analysis exists, the evidence has shown that this part of the analysis is sometimes complicated to deal with as ministries do not have the resources to do an in-depth cost-benefit analysis. In fact, the method applied can be adapted to specific situations, considering the limited resources, but there is always a risk of conflict between laxity and quality.

Target RIA efforts. RIA is a difficult process that is often opposed vehemently by ministries not used to external review or because of time and resource constraints. The preparation of an adequate RIA is a resource intensive task for drafters of regulations. Experience shows that central oversight units can be swamped by large numbers of RIAs concerning trivial or low impact regulations.

In terms of coverage, RIA is only used for federal laws and some ordinances, but other regulatory instruments, which have direct impact on the economic activity and citizens, are not subject to the same quality control and scrutiny. Greater discretion power is given to federal offices, even if they are subject to the consultation mechanism in general. The size of the Swiss administration has an impact on the quality and conduction of RIAs: a limited number of officials deal directly with the analysis and the control, which may constitute a constraint to high quality of the product. As RIA requires time and significant analytical capacity, especially for federal laws and ordinances, the present number of staff in charge seems to be insufficient for this task.

In the current Guidelines used in the Swiss case, there is no advice on the scope of RIA. In its present version, RIA is a tool used for "a systematic evaluation of regulatory proposals according to a perspective encompassing the whole of the economy".[93] The list of questions presented to analyse the costs is extremely broad, which may risk to trivialise the exercise. Important elements, such as the impact of regulations on market openness or competition policies are not taken into account sufficiently.

Develop and implement data collection strategies. The usefulness of a RIA depends on the quality of the data used to evaluate the impact. An impact assessment confined to qualitative analysis provides less accountability of regulators for their proposals. Since data issues are among the most consistently problematic aspects in conducting quantitative assessments, the development of strategies and guidance for ministries is essential if a successful programme of quantitative RIA is to be developed. In Switzerland, data collection is left to the discretion of federal offices. It depends on the resources they can spend for an in-depth analysis with appropriate data.

Integrate RIA with the policy making process, beginning as early as possible. Integrating RIA with the policy making process will, over time, ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives and choosing policy in accordance with its ability to meet objectives become a routine part of policy development. If RIA is not integrated into policy making, impact assessment becomes simply an *ex post* justification of decisions already taken, and contributes little to improving regulatory quality. Integration is a long-term process, which often implies significant cultural changes within regulatory ministries. Early integration in the policy process of RIAs would require stronger incentives to do so and possible sanctions for non-compliance. More important, it would require that policy makers be convinced of and request the added-value of RIA.

RIA in Switzerland is an integral part of the internal and external consultation mechanism of the legislative process (see Box 2.15.). It is also part of the final dispatch sent to the Federal Assembly, especially in terms of economic impacts. However, RIA is still far from being a real source of information: parties involved in the consultation mechanism (federal offices and external actors) do not always get the information RIA provides, as it is not part of the documents supplied.[94]

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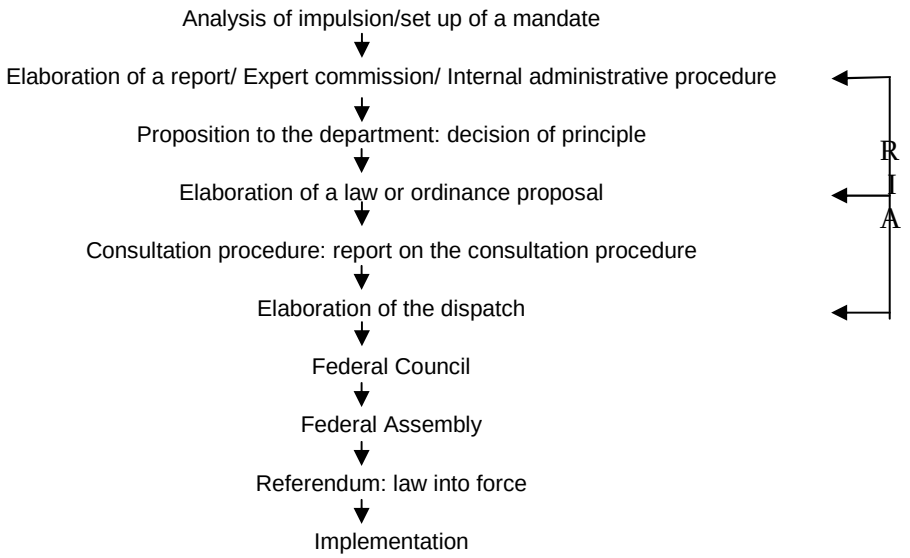
Box 2.15. RIA in the legislative procedure: the Swiss case



Source: Gisiger, M./Wallart, N. (2005), *La Vie économique,* No. 3, p. 27

The effectiveness of such institutional design is still to be proven, since RIA generally comes late into the decision-making process, serving more as a justification for political action, instead of contributing to the assessment of impacts and economic consequences at an early stage.[95] According to the report of the Parliamentarian Control of the Administration, RIA is mainly used in the pre-parliamentarian phase, but it is considered as "an additional task that federal offices carry out at the last minute. The RIA is done only as part of the final editing of the section on economic impact that has to be included in any message to parliament".[96] As in the French case, where the impact assessments (*études d'impact*) are usually carried out too late, *ex post* and as a summary supporting the legislation in question.[97] This reduces the main purpose of RIA drastically: it is not longer a key tool to help decision-making, presenting options and weighing up costs and benefits.

Involve the public extensively. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can constitute cost-effective sources of the data needed to complete high quality RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered and on the degree of acceptance of the proposed regulation by the affected parties.

In the Swiss context, RIA is a tool mainly used inside the federal administration which is not really open to a specific consultation procedure *per se*. It is done mainly by the office concerned and then it is incorporated to the extensive and broad consultation mechanism among different actors, inside and outside the administration, who interact in search of consensus and based on political dialogue. As it is handled, RIA is disconnected from the internal and external consultation procedure. During the co-reporting procedure, RIA is almost never used to put pressure on other federal offices. When RIA, conceived mainly to provide the assessment on economic impacts, is finally attached to the dispatch sent to the Federal Assembly, it happens often that decisions have been made and RIA has not really provided a basis for discussion.

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3.3.2.. SME Compatibility Test and SME Forum

Besides the use of RIA, Switzerland has set up and integrated, at the same time and with similar objectives, two other instruments to revise the impact of regulations, but specifically on SMEs: the SME Compatibility Test and the SME Forum. In many other OECD countries, this kind of instrument is just one aspect of RIA (see Box 2.16.).

Box 2.16. Small business tests: OECD experience

In **Denmark**, the Business Test Panels were introduced in 1996 with the objective to identify possible administrative burden reduction and to measure the consequences of regulation through a cost/benefits analysis. Business Test Panels provide valuable information and data for RIA, contributing to the decision-making process. In 1999 the release of the results of business impact assessments conducted as part of the RIA process on an Internet site was introduced. Business Test Panels provide for input on specific issues from a large number of individual business entities.

In the **United Kingdom** the Small Firms Impact Test (SFIT) is a mandatory requirement in the RIA. The government made a manifesto commitment in 2001 that it would ensure the whole of government pursued the "think small first" principle as part of UK policy development. The Test is intended to provide sufficient guidance for policy makers to confidently establish the impact on small businesses. The SFIT process seeks to help assess the impact of proposals, including those under negotiation with the EU, on small business.

The SME Compatibility Test was adopted by the Federal Council in November 1999.[98] It is an analysis of consequences of a project based on a visit to ten different SMEs. It consists of a survey among SMEs and it provides information on the problems that implementation of a legislative act would have on SMEs. The aim of this exercise is not to reflect the political position of different groups of entrepreneurs, but to understand the kind of burden imposed by the draft proposal on SMEs (see Box 2.17.).

Box 2.17. SMEs Compatibility Test: key elements for evaluation

The goal of the SMEs Compatibility Test is to evaluate law and ordinance proposals taking into account the rationale of enterprises. The test consists of an evaluation of the project, based on the following elements:

- The different costs imposed by the project, such as complementary investments to comply with the law or complications for the start-up of businesses.
- The restriction to enterprise freedom and limitations imposed to the private actors, as well as lost opportunities (or won because of deregulation).
- Additional administrative burdens caused by the project.
- The interaction of the law or ordinance to other legal acts.
- The evolution of the market due to the introduction of the project and possible reactions by market participants geared at escaping its application.
- Practical aspects of implementation and possible alternatives.

Source : SECO (2005), *Test de compatibilité PME. Méthode utilisée et analyse comparative*, Berne

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Unlike RIA, which is mainly done by the office concerned, the SME Test is conducted by SECO. The idea is to question SMEs on how future law proposals would affect them. The methodology used is based on qualitative data. In average, five or six tests are applied every year on revisions which might have an important impact on SMEs. The SME Compatibility Test is applied in parallel to the consultation procedure, in order not to slow down the law-making process; the reports made by SECO are sent to the concerned office during the consultation process. The main results of the SME tests are published by SECO in a series of articles in the monthly magazine "La vie économique". The results are also presented to the members of the SME Forum, who can compare them with their own experience. In some cases, the results are integrated by the office concerned into the section on "economic consequences" of the dispatch sent to the Federal Assembly.

SME Forum. The SME Forum, created by a decision of the Federal Council in 1998, is an extra-parliamentary expert commission composed by entrepreneurs and policy-makers (fifteen members). This commission meets three or four times a year to examine law or ordinances proposals that would have an impact on SMEs. Its activities are developed in parallel to the consultation procedures. The SME Forum is in a position to formulate recommendations addressed to the responsible office and sometimes to the parliamentarian commission dealing with particular issues. The argument of the Forum has to build on consequences, such as administrative burdens, operating and investment costs imposed to SMEs or limitations to freedom of entrepreneurship. The aim of the SME Forum is to give voice to the claims made by entrepreneurs and to formulate solutions to the problems confronted by SMEs as a result of new regulations and the inflation of red tape.

Despite efforts to increase the visibility of these instruments, the SME Compatibility Test and the SME Forum do not play a significant role in the decision-making process. The Parliamentary Control of the Administration points out that "the credibility of the SME Forum has not yet gained a firm foothold among political players and that the results of the compatibility tests are rarely used and complementary between the other tools (RIA mainly)".[99]

Assessment. After more than four years of implementation, some general conclusions can be drawn about the implementation of regulatory tools to assess *ex ante* regulatory impacts and alternatives. Formal obligations to conduct RIA and SME Compatibility Tests have been strengthened, therefore both instruments are applied regularly, even if their application and influence remain uneven among different offices. One of the main challenges today is to better focus on the scope of RIA and increase the effectiveness of the SME Compatibility Tests.

In terms of RIA, a good kit of explanatory guidance is available to regulators and offices, but its visibility and influence still could be strengthened. The scope of RIA is wide, even if quality controls made by SECO have been implemented to help regulators to focus the analysis and deal with different approaches (cost-benefit analysis, evaluation of risk, use of alternatives to regulation, etc.).

Even if SECO has been able to gain political support for RIA, particularly inside the administration and in the legislative branch, the resources designated to deal with RIA are insufficient. There is no specific unit working exclusively on RIA and only one professional staff follows up the development of this regulatory tool. Due to the fact that consensus has to be reached among different departments of the Federal Council to make a decision, SECO's position is not easy: since SECO is not an independent body and conflict of interests and disagreements on different positions arise, SECO's capacity to apply pressure is reduced.

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The SME Compatibility Test and the SME Forum are related, but represent two different things. While the SME Test has the function to analyse in concrete cases the impact of the implementation of federal regulations on SMEs, the SME Forum is an institution which plays an advisory role. Even if the work of the forum is sometimes carried out based on the results of the tests, the Forum cannot be considered as a regulatory tool *per se*. This distinction is important because a different institutional arrangement and role of the Forum could contribute to raise its effectiveness and influence.

The SME Compatibility Test and the SME Forum have more focused objectives, but their influence into the decision-making process seems to be more reduced. All these instruments, including the best well-known RIA by far, have been just mentioned 12 times from 2000 to 2003, which means only in the 0.2% of the total of parliamentarian interventions and responses by the Federal Council (see Table 2.2.).

Table 2.2. References to RIA, SME Compatibility Test and SME Forum in parliamentarian interventions

	2000	2001	2002	2003
Parliamentarian interventions and responses of the Federal Council	1 263	1 326	1 317	1 222
Reference to RIA, SME Compatibility Test and SME Forum	1	2	3	6

Source: Contrôle parlementaire de l'administration (2005), p. 25.

The co-ordination mechanisms of the three elements represent a challenge. Until now, they have followed more independent ways than interconnected ones. All of them are clearly linked to the pile of information that is produced during the consultation mechanisms, but their place in the institutional landscape does not seem to be the best one.

3.4. Building regulatory agencies

In most OECD countries, economic structural reforms –promoted in part by international commitments- have prompted the establishment of independent regulatory agencies and the remodelling of existing regulations. These institutions are intended to provide neutral regulatory oversight in liberalised or privatised sectors and prudential oversight of competitive markets. The design and management of such regulatory agencies constitute an important component of regulatory quality. A specific chapter will provide a detailed institutional analysis of specific regulatory authorities in Switzerland, including provisions for independence and accountability and implications for economic growth and efficiency. At this stage, a short general overview of the independent regulatory institutions will be given with focus on the financial sector regulation and supervision, as this will not be addressed in Chapter 5.

As complete market liberalisation has only been achieved in certain sectors of Switzerland, no standard regulatory philosophy as yet exists. In Switzerland, the objectives, design and mandates of the specific regulatory authorities are laid down in parliamentary enactments (acts and ordinances). These were primarily determined on the basis of the sectoral and technological development of the respective areas at the time the legislation was passed. This accounts for the existing diversity and the differences between various sectors. EU compatibility is reviewed on each occasion, with the intention of guaranteeing that Switzerland, as a non-EU member, can remain in alignment with the common European single market. One of the tasks of the Integration Office is to make sure, as part of the consultation procedure among the federal offices, that the regulations remain keep in time with the integration agreements (and therefore with EU legislation).

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Financial Sector Regulation and Supervision

The financial sector generates in Switzerland approximately 14% of value added, far above the OECD average, and employs 184 000 people. The financial system is composed of two large international banks and private banking that co-exist with 24 publicly-owned cantonal banks and with credit co-operatives (*Raiffeisenbanken*), as well as almost 100 regional banks, dealing with retail banking and domestic customers. The insurance system is also highly developed: Switzerland has the highest spending on insurance per capita in the world.[100]

Swiss financial sector supervision is to a certain degree decentralised. Several authorities are involved in supervising the sector:

- The *Swiss Federal Banking Commission* (SFBC) is responsible for banking, stock market, mutual funds and financial infrastructure providers supervision.
- The *Swiss National Bank* is mainly in charge of systemic stability oversight.[101]
- The *Federal Office of Private Insurance* is responsible for supervising the private insurance sector.
- The *Swiss Money Laundering Control Authority* undertakes supervision in its functional area of non-banking and non-insurance financial intermediaries.

The Swiss Federal Banking Commission (SFBC) is largely, but not fully independent from government, which has the power to appoint the Chairman and the Deputy Chairman. The Banking Commission cannot in general deal directly with the Federal Council and Parliament; in fact, the intermediation of the Federal Department of Finance, *i.e.* the Finance Minister, is necessary. These requirements are merely formal, and de facto the SFBC is independent. Government does not interfere with policy matters or individual decisions.

The Banking Act states that a member of the Banking Commission may not serve as chairman, vice-chairman, delegated member of a Board with executive responsibilities or member of the executive committee of the Board nor member of Management of a bank, a fund manager, a stock exchange, a securities dealer nor of a recognized auditing firm. In addition, all members must observe strict conflict of interest rules. As such, members are prohibited from being present and vote during deliberations on issues where they have conflicts of interest.

A new law modernising the legal framework of the National Bank has been adopted by Parliament in 2003 and entered into force on 1 May 2004. A feature of the new law has been to strengthen independence and accountability. The SNB's independence has been given a concrete form on the statutory level. The SNB is explicitly obliged to report on a regular basis. The organisational structure has been streamlined: Three of the seven bodies have been eliminated (Bank Council, Local Committees and branch offices) and the number of Bank Council members has been reduced from 40 members to 11 in order to strengthen its authority. Formal authority to oversee payment and securities settlement systems has been embodied in the new National Bank Law. This oversight is designed to protect the stability of the financial system.

The organisation of financial market supervision is being revised. Based on a draft act of an expert group on financial market supervision ("Zimmerli Expert Commission") and in accordance with some of the IMF's FSAP recommendations, the establishment of a fully integrated financial market supervisory body the "Federal Financial Market Supervisory Authority (FINMA)" is envisaged. Based on the results of a public consultation procedure on the draft act the Federal Council decided in November 2004 on further

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action to be taken along these lines. The Federal Finance Department has been commissioned to draft a message on federal legislation on financial market supervision (Financial Market Supervision Act) by the end of 2005. At the same time the Federal Council has decided likewise that the Swiss Money Laundering Control Authority is also to be integrated within FINMA. With the integration of the SFBC and the Federal Office of Private Insurance (FOPI) as well as the Control Authority, the financial market supervisory authorities of the Federal Department of Finance will be brought together under a single body, thereby creating synergies. As a next step, the draft law will be submitted to parliament in the form of a dispatch. Parliament will decide on the exact implementation of these proposals. The main content of the current draft is as follows:

- The act contains a provision concerning the objectives of the new body, the so-called Federal Financial Market Supervisory Authority (FINMA) and defines its organisation as well as the tasks to be performed.

- FINMA is expected to be established as an institution under public law with its own legal personality. Cost-covering fees and special supervisory charges will as is the case with the current authorities - finance FINMA. Staff shall be subject to special regulations issued by the Federal Council and be employed under public law. It is planned to endow FINMA with a strategic and an operative body: The supervisory board will mainly deal with the strategy of integrated financial market supervision and advise the management board on fundamental questions. Its members shall be elected by the Federal Council and will have to meet high standards in terms of knowledge, independence and integrity. The management board will be in charge of the operational task of supervision.

- As regards the supervisory system, a two-tiered model has been chosen, as this has proved to be efficient in the past, above all in banking supervision. In general, required audits will be undertaken by an audit company mandated by the supervised institution (and approved by FINMA), except in fields (*e.g.* insurance), where indirect supervision is not considered feasible. Still, FINMA is, at any time, empowered to require more detailed or independent second audits. In complex cases, it will conduct its own parallel audits.

4. DYNAMIC CHANGE: KEEPING REGULATION UP-TO-DATE

4.1. Revisions of existing regulations

Over the years, most OECD countries have accumulated a large stock of regulation and administrative formalities. Regulations that are efficient today may become inefficient tomorrow, due to social, economic, or technological change. If not checked or reviewed these can lead to a highly burdensome regulatory system. The 1997 *OECD Report on Regulatory Reform* recommends that governments review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively. The 2005 *OECD Guiding Principles for Regulatory Quality and Performance* recommends that the assessment of impacts and the review of regulations include ex-post evaluation.

Switzerland has made substantial efforts to review its existing legislation. There are several procedures by which regulations are examined and evaluated:

- *Evaluation clauses.* Evaluation clauses ask for a review of the measures concerned. There are about 55 evaluation clauses existing on the federal level, which are published on the Internet site of the Federal Office of Justice.[102] A parliamentary investigation showed that these evaluation clauses are well observed by the federal offices (agencies).[103]

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- *Sunset legislation*. Sunset legislation exists in two varieties:

  - *Legislation limited in time*. Parts of the law are limited in time. Such a limitation can be introduced, for instance, if a problem is thought to be only temporary, if other appropriate measures can be found in due time, if impacts or outcomes are uncertain, if the law has to be examined after a certain time based on systematic efficiency controls and if the cost of the regulation can be better financed in terms of its validity.[104] Federal law that is put into vigour by urgent procedures is always limited in time.

  - *Legislation limited in time and with an evaluation clause*. A small number of laws and ordinances is limited in time and contains an evaluation clause as well. This allows experimentation with an innovative regulation and – depending on the results of the evaluation – either abolish it or transform it into a statute not limited in time. Well known are the experiments with medical heroine treatment of drug addicts that have been conducted 1990-1996; since then a permanent legal base has been created for medical heroine treatment.

Federal offices (agencies) often conduct evaluation even if not required by the law. Former inquiries showed that on the federal level alone (which accounts for one third of public expenditures) approximately 100 evaluations are conducted annually. The Federal Audit Office examines all financially relevant activities of the administration and of the courts. It has a unit for efficiency studies and evaluations. Those studies, evaluations and audits contribute to examine and update regulations.

Article 170 of the Federal Constitution requires the Federal Assembly to ensure that the effectiveness of measures taken by the Confederation is evaluated. The Parliament has created legislative foundation to implement this task. According to Art. 44, Para. 1, of the Federal Act on the Federal Assembly evaluation is a task not only of the oversight committees but of all committees of Parliament including those preparing new legislation. Article 27 of the same law, among others, authorises parliamentary commissions a) to demand the executive to carry out evaluations, b) to examine evaluations commissioned by the executive and c) to commission evaluations. The Federal Assembly has commissioned multiple evaluations (*e.g.* of the law on equality between the sexes and on the divorce law). The Parliamentary Control of the Administration has helped to conduct dozens of evaluations of federal laws and regulations in the last few years.

Box 2.18. The National Audit Office in the United Kingdom

In the United Kingdom, major development in recent years has been the establishment of new central managements on regulatory issues. The National Audit Office plays a major role with its investigations and its *ex post* evaluations of regulatory policies. It also helps to raise legal quality, as it investigates a wide range of issues and has used its discretion to produce a number of regulatory reviews. For instance, it published an independent study of the Regulatory Impact Assessment (RIA) process in November 2001. Based on positive appraisal of the current RIA system, the report included a set of recommendations focusing particularly on ways to improve the Regulatory Impact Unit's RIA guidance to regulators.

Source: OECD (2002), *OECD Review on Regulatory Reform – United Kingdom. Challenges at the Cutting Edge*, Paris

The federal executive has not waited for Parliament to act on article 170 of the Federal Constitution. It has created a working group which was asked to submit proposals for implementing article 170 within the executive branch. The proposals of the working group have to a large extent been approved and adopted in November 2004 by the Federal Council.[105] The following measures, among others, have been adopted. Their implementation will take place between 2005 and 2007:

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- *Federal Offices* establish a strategy and plans for an evaluation of laws/regulations for which they are responsible for. They record evaluations in a data bank and make them accessible to the public. They integrate efficiency concerns into ongoing evaluations. They assure the quality of evaluations.

- The *Departments (ministries)* review the measures taken by the offices, they support and coordinate their activities and mutually coordinate their own activities and they use results of evaluations in their reports to the Federal Council and to the Parliament.

- The *Federal Council* determines main areas of evaluations and is a central stakeholder in evaluation activities. The Federal Council reports to the Parliament on evaluation activities.

- Evaluations are coordinated between the main stakeholders in evaluation (Parliament, executive, Federal Control of Finance).

- Several cross-sectional offices support evaluation with regard to coordination, planning, training and technical support.

Political rights given to Swiss citizens also allow for a scrutiny and a public debate of regulations. By way of popular initiatives free movement of employees with regard to pension funds has been introduced into Swiss law; an initiative generalizing sunset-legislation on the federal level has been proposed, but failed to win enough signatures, and currently an initiative proposing to accelerate authorisation procedures by reducing appeal possibilities of general-interest associations is being examined by one of the main political parties.

In the current administration reform prepared by the Federal Council, one project will systematically examine which laws can be rescinded because they are no longer in use, outdated, or contain unnecessary regulations. In particular, the review concerns laws which are more than 50 years old or which have not been amended for more than 20 years. It will also examine areas which have repeatedly been criticised as being overregulated. The methodology of the project will be rather a formalistic one – the main aim will not be to face political issues. But the project may lead to deregulation in some fields.

Assessment. A great number of possibilities for review and updating of regulations by the executive, the Parliament and by input from civil society exist on the federal level, and on the cantonal and municipal level (accounting for two-thirds of public expenses), where similar mechanisms exist. It may however be the case that smaller regulations remain in place although they are not any more adequate to the needs of the time. Although there is no systematic review procedure of regulations, all of these inputs and mechanisms have had and will have the consequence that main parts of the legal body (Federal constitution, laws and ordinances) are periodically updated to meet society's and economy's new needs. It must be noted that the pattern of these changes is more influenced by the (semi-direct) democratic process than by technocratic reasoning or requirements.

4.2. Reducing administrative burdens

Government formalities are important tools to support public policies in many areas. Administrative regulations can also create benefits for enterprises by setting level playing fields where commercial transactions can take place in a pro-competitive and low cost environment. There is a risk, however, that administrative regulations can impede innovation or create unnecessary barriers to trade, investment and economic efficiency. Cutting red tape is firmly on the political agenda in most OECD countries.

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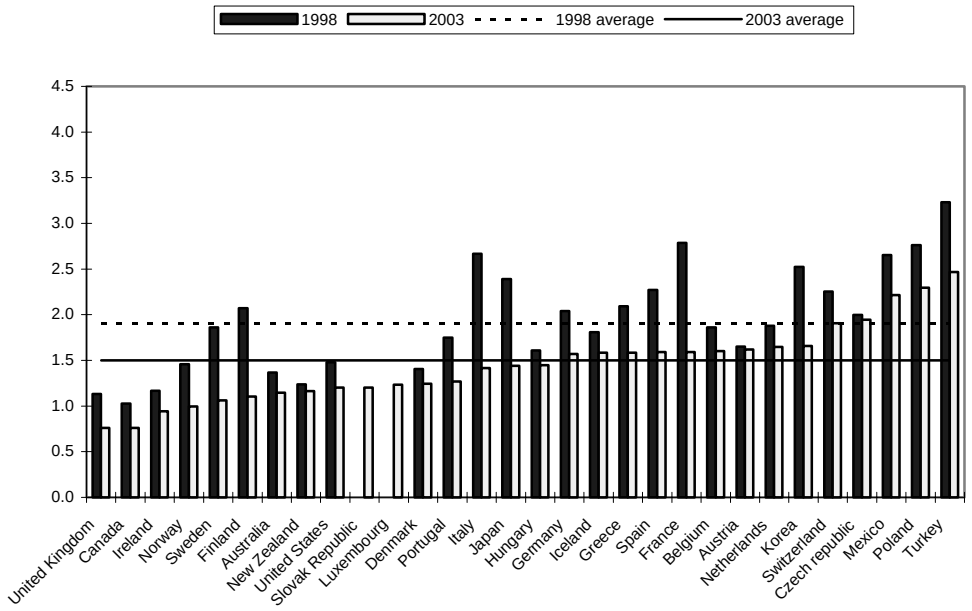
Since the 1990s the reduction of administrative burdens has been a core element of the economic strategy to revitalise the Swiss economy, complementing deregulation measures. This has been important for SMEs, which count for 99.7% of all enterprises in Switzerland and provide employment to two-thirds of the working population.[106] Measures tending to reduce red tape and administrative burdens have been part of a broader strategy tending to accelerate administrative procedures and to improve co-ordination mechanisms inside the different offices in charge. The goal is to enact more transparent laws that contribute to an open economy, to restrict State intervention and to develop a client-oriented culture inside federal offices dealing with entrepreneurs and citizens.[107] However, the OECD Product Market Regulation Indicators show that Switzerland still has to make substantial progress to have less restrictive barriers to entrepreneurship (see Figure 2.4.).

Figure 2.4. Barriers to Entrepreneurship, 1998 and 2003[1]



1. Sorted by 2003 values. The scale of indicators is 0-6 from least to most restrictive of competition.

Source: Conway, Paul *et al.*, *Product Market Regulation in OECD Countries: 1998 to 2003*, Economics Department Working Papers, No. 419, OECD, Paris.

SMEs play a key role in the Swiss economy and a strong motivation seems to exist at the domestic level. In Europe, only Iceland, Ireland and Norway rank better in motivation to start up a business.[108] However, Switzerland only ranks in the middle of international comparisons concerning the entrepreneurial activity in recently created businesses,[109] which could reflect the impact of administrative requirements. Compared with other OECD countries, Switzerland has relatively heavy administrative requirements for business start-ups (see Figure 2.5). The main categories of administrative charges that impose burdens to entrepreneurship in Switzerland are social insurances, authorisations and taxes.[110] These are currently the target of the efforts to improve administrative simplification.

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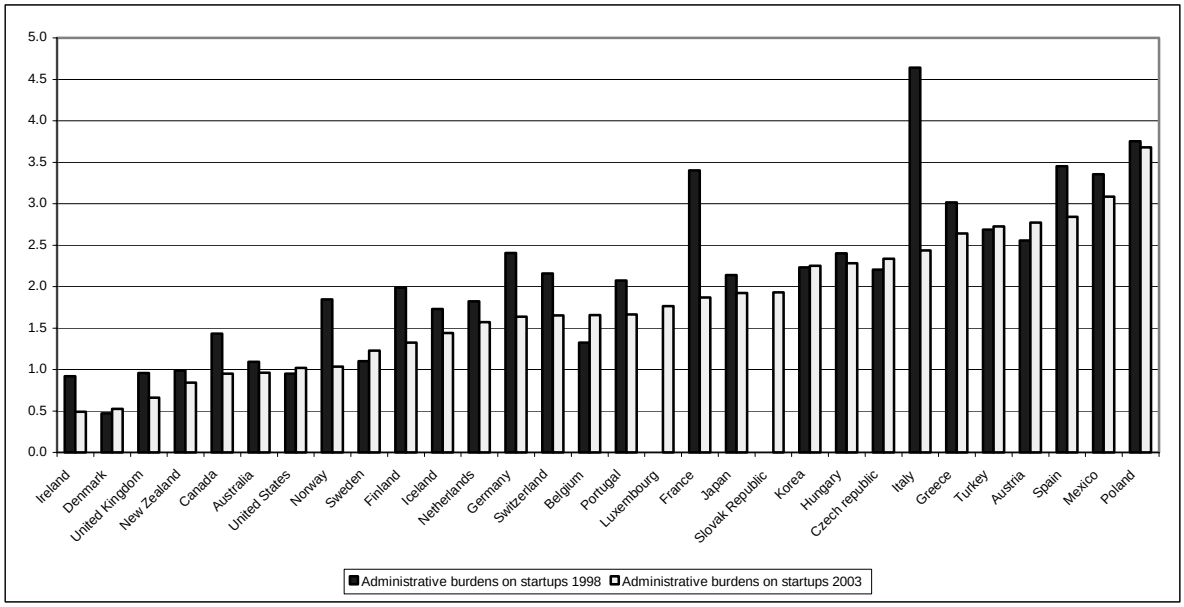
Figure 2.5. Administrative requirements for business start-ups[1]



1. Administrative requirements for business start-up refer to those requirements that entrepreneurs must satisfy in order to start a new business, such as mandatory procedures in a pre-registration stage (*i.e.* formal approval of proposed name, registration of domicile of business, formal validation of signatures, etc.), mandatory procedures in the registration stage (*i.e.* legal announcement in newspapers, register with trade association, application for tax identification number, etc.), working days and cost to complete all mandatory procedures, minimum paid-up capital needed to register the individual enterprise, etc.

Source: *Product Market Regulation Indicators*, 1998-2003, OECD.

The strategies for reducing administrative burdens included in the Report of the Federal Council from January 1997 were the following: the suppression of certain formalities, administrative simplification, improvement and acceleration of procedures, reduction of the number of people to contact for any procedure inside the federal administration, recognition of controls and certifications by private agents, simplification of forms, and the reduction of information costs concerning formalities to fill in and public services. These measures were applied in different areas linked to enterprise activities. The following efforts and legal documents supporting a policy to reduce administrative burdens are listed in Box 2.18.

The significance of administrative burdens, which are proportionately heavier for SMEs than for large enterprises, cannot be underestimated. According to the authorities, their cost could amount to some 2% of GDP.[111] These costs fall into three principal categories: withholdings for basic old age insurance, tax declarations (in particular VAT) and the enforcement of commercial law provisions.[112]

The simplifications proposed in the Report on administrative simplification measures of the Confederation for Enterprises[113] are the following:

- Better coordination among the various administrative entities and in particular those responsible for taxes and fees. It is proposed that VAT returns be calculated and paid via an annual rather than a quarterly declaration, so that this can be processed in combination with the social insurance forms.

- Creation of a consultation system accessible by Internet for purposes of defining the salary level at which AVS contributions kick in, while procedures for reimbursement of VAT on services related to cross-border trade will be simplified.

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- Broad use of ICT and introduction of electronic administrative forms and the development of "one-stop shops".

- Ex-post controls instead of compulsory prior authorisations.

- Better integration of administrative procedures at federal level with those of the cantons.

Box 2.19. Recent federal initiatives to reduce administrative burdens

In 1998, the Inventory and Evaluation of Procedures related to Federal Economic Law (*Inventaire et évaluation des procédures de droit fédéral de l'économie)* allowed the revision of authorisation procedures which could be simply abandoned, replaced by other instruments such as a subsequent control or tax shelter, integrated to other procedures, or those accelerated by concrete measures. The Report of the Federal Council on February 1999 showed which measures were possible in five different fields: acceleration of procedures, co-ordination of procedures, material deregulation, reduction of intervention mechanisms of application, and adaptation of the federal administration to the needs of citizens and businesses.[114]

The Report of the Federal Council in November 1999 on deregulation measures and administrative simplification included the three instruments used to assess the impact of regulations (RIA, SME Tests, SME Forum). These activities have improved the revision of laws and ordinances.

In February 2001, the Federal Council submitted to the Federal Assembly the dispatch concerning the total revision of the federal judiciary organisation. This justice reform empowers citizens and cantons, improving the appeal system. The creation of a Federal Administrative Tribunal in 2007 should accelerate appeal procedures.

In 2002 the Federal Council submitted to the Economic and Tax Committee of the Council of States a complementary report on the procedures of federal authorisations, executed by the cantons.

In June 2003 the Federal Council approved a Report on administrative simplification measures of the Confederation for the Enterprises (*Mesures d'allégement administratif de la Confédération pour les enterprises*), which analyses the measures taken in the past and provides guidance for future action.

The Federal Department for the Economy (DFE) has implemented a strategy to introduce administrative simplification measures benefiting SMEs and identified the challenges in the future. The document *DFE Policy towards SMEs* (*La politique du DFE en faveur des PME*) includes a number of measures tending to improve the regulatory framework for SMEs, including aspects such as start-up of business, revisions of laws, integration of ICT tools, etc.

Authorisation procedures. One quarter of administrative burdens in Switzerland is attributed to authorisation procedures. There are more than 300 procedures at federal level requiring an authorisation, but only twenty of them imply more than thousand authorisation procedures per year.[115] Since 2001, the database on federal authorisation procedures (available at autorisations.pmeinfo.ch/) provides information on the legal basis, the procedure to follow, the contact address, the annual number of procedures conducted by the federal services and the delays of procedures. This information is compulsory according to an ordinance on delays[116], but the respect on delays is not done systematically. The database also contains the form to be completed, which can be done on-line.

In February 2005 the government adopted a report on regulation regarding authorisation procedures *(Rapport sur la réglementation consacré aux procédures d'autorisation)*. It indicates the state of the game concerning the proposals adopted and other measures related to authorisation procedures.[117] It completes the inventory and evaluation of procedures related to federal law executed by the Confederation, highlighting those executed by the cantons. This covers an important part of the implementation section of the Federal Law on the Internal Market.

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Reducing administrative burdens at cantonal level. Different cantonal laws and regulations make the consolidation of the Swiss internal market difficult. The differences between regulations enacted by cantons constitute important administrative burdens to entrepreneurship. Administrative burdens at this level of government are especially heavy in the construction sector, as well as in social security and fiscal administration.

There is no systematic programme to address the reduction of administrative burdens in cantons neither at federal nor at cantonal level. Nevertheless, the revision of the Internal Market Law and the adoption of the "cassis de Dijon" principle for goods may influence the harmonisation of regulations among cantons and the introduction of measures tending to cut red tape.

Integrating ICT into the regulatory process. The integration of ICT mechanisms into the regulatory process is a key trend in most OECD countries. This refers not only to some kind of computerised dissemination of regulation, such as official publications, legal text, administrative information, but also to the use of ICT for administrative simplification programmes. OECD experience shows that the exploitation of ICT in relation to transactions within and between government bodies and between government bodies and business and citizens is probably the most important enabler of administrative simplification.[118] In Switzerland, new entrepreneurs are favorable to the use of e-systems of information to overcome administrative burdens, but 80% of them recognise that procedures are not as transparent and clear as they should be.[119]

The one-stop shop project "*Guichet virtuel*" (*www.ch.ch*) is an orientation system which provides information on formalities to comply with at the federal, cantonal and municipal levels. It also allows for an on-line chat with different authorities. The project aims at putting into place a platform which is able to guarantee a secured and legally binding transmission of data. The enactment of the Federal Law on Certification Services in the field of the Electronic Signature (*loi fédérale sur les services de certification dans le domaine de la signature électronique*) in 2005 and the total revision of the judiciary system in 2007 will allow the legal recognition of transactions between enterprises and authorities.

Created to satisfy the needs of SMEs, another one-stop shop system was put into place: the electronic one-stop shop for SMEs (*guichet électronique pour les PME*), available at the following address: *www.pmeinfo.ch*. It provides information on formalities and start-up for enterprises and the policy of the Confederation concerning SMEs. This system was complemented by another one, created in 2004, *www.pmeadmin.ch*, which is more complete and allows the setting-up of enterprises on-line.

At the cantonal level, electronic systems have also been developed. In Zurich, for instance, the electronic site providing working permits (e-work permits, *www.workpermits.zh.ch*), was awarded with the "Swiss Web Awards". A trend to integrate ICT to provide services on line is growing among different cantons, especially in urban areas. The canton of Neuchâtel has developed a comprehensive concept of e-government, which has been developed in different phases: the first one, mostly internal, tending to the creation of sites to provide information on governmental activities at the cantonal level and ensuring the e-management of files in different areas; the second one corresponds to the one-stop shop (*guichet virtuel*), with an external vision, providing services and information to citizens; a final one that will include secured one-stop shops (*guichet sécurisé unique*), which will allow citizens to comply with a wide range of formalities, even to vote or pay taxes through the web. The set-up of this initiative required the enactment of a Cantonal Law on the Protection of the Personality (*loi cantonale sur la protection de la personnalité*), the first one in Switzerland.

Even if progress has been made in the area of e-government at different levels, Switzerland still lies behind a number of European countries for on-line sophistication and full availability of services as reflected by available international indicators (see Figure 2.6. and 2.7.).[120] Countries such as Austria,

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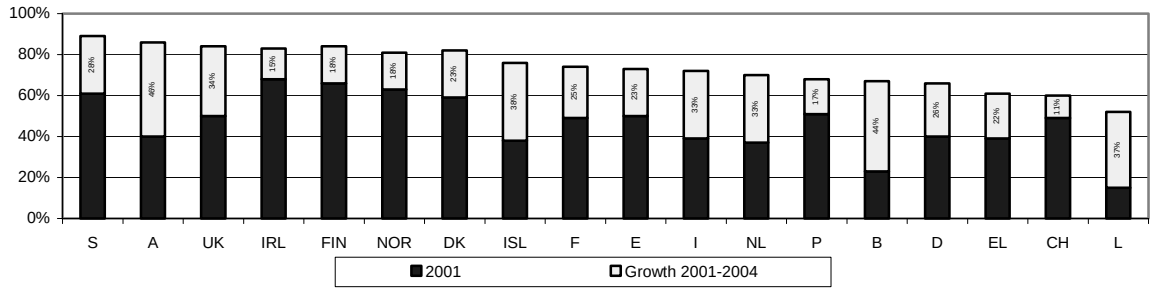
Sweden, Belgium, Italy and the UK experience the fastest growth for these services in Europe. A gap exists in Switzerland between the sophistication of certain services and their limited full-availability on-line. This is related to the fragmentation of the organisation given the federal structures and the lack of better co-ordination mechanisms inside the administration.[121] 1 822 municipalities (out of a total of 2 853, *i.e*. 63%) have an Internet site providing information, but only 493 municipalities out of the total (17%) propose transactional e-services. This reveals not only the lack of adequate structures to facilitate digital interaction and is also compounded by the complexity of having 26 different regulatory frameworks operating at the cantonal level. In addition, Swiss citizens are confronted to 32 different administrative formalities in relation to their private life, where scope for simplification exists.[122]

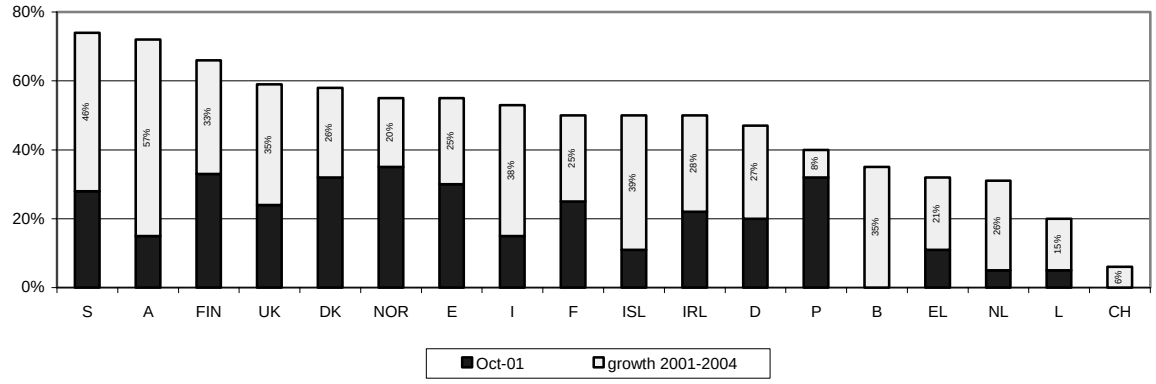
Figure 2.6. Growth on-line sophistication 2001 - 2004[1]



1. This refers to the on-line availability of public services, determined by the extent to which it is possible to provide the service electronically.

Source: Capgemini (2005), p. 36.

Figure 2.7. Growth fully available on-line 2001 - 2004



Source: Capgemini (2005), p. 36.

Assessment. In 1996 and 1997 some parliamentary interventions asked for better conditions for SMEs' development and activity. The old Federal Office for Short-Term Issues (*Office fédéral des questions conjoncturelles*) started some research to analyse and evaluate the time devoted by enterprises to administrative work, as well as burdens for their economic activity. Further analysis has been conducted for authorisations, as previously mentioned.

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Despite these efforts, in the Swiss case there is no systematic evidence available on the actual size of the present burdens imposed, nor any methodology in place to do so. For this reason, long-lasting and politically high-profile efforts to reduce red tape are still missing. The measurement of the size of existing burdens could be an important information-based approach to developing a policy on burden reduction and the basis for evaluation of policy initiatives taken. The size of existing burdens can raise awareness among politicians and help to develop and sustain initiatives and policies on burden reduction. Federation-wide simplification initiatives with comprehensive and committed participation of cantons would be an important factor for success and dynamic effects of such initiatives.

Box 2.20. Monitoring and measuring administrative burdens

The **United States** operates a highly developed, comprehensive and centrally enforced programme for analysing and clearing individual government information collection requirements. The Paper Work Reduction Act (PRA) is intended to minimise the amount of paperwork the public is required to complete for federal agencies. The Act requires federal agencies to request approval from the Office of Management and Budget (OMB) before collecting information from the public. The OMB has the responsibility to evaluate the agency's information collection request by weighing the practical utility of the information to the agency against the burden it imposes on the public. Agencies must publish their proposed information collection request in the Federal Register for a 60-day public comment period, and then submit the request to OMB for review. In seeking OMB's approval, the agency needs to demonstrate that the agency will make practical use of the information collected. The agency must also certify that the proposed information collection "reduces to the extent practicable and appropriate the burden" on respondents, including for example, small business, local government, and other small entities. Since 1980 OMB has set varying quantitative targets for the reduction of information collection burdens.

Another example of an advanced system for measuring administrative burdens is the MISTRAL methodology developed and employed in **the Netherlands**. MISTRAL works in three stages: first, all "data transfers" between a business and the authority are clearly identified (*e.g.* a document, a telephone call, an inspection, etc.); second, the time involved in each "data transfer" and the level of expertise of the person performing the task is determined; third, the data are computed to produce estimates for the administrative burdens incurred by the information requirement under review. Burdens are quantified in time as well as in monetary terms. MISTRAL has been used to quantify administrative compliance costs of very different laws and regulations, including legislation concerning working conditions, the environmental, annual accounts, corporation tax, and social premiums. The Dutch government has set up successive policy goals for the reduction of these administrative burdens: minus 10% by 1998, and minus 25% by 2003, compared to the 1994 baseline.

Source: OECD (1999a), *OECD Regulatory Reform in the Netherlands*, Paris; OECD (1999b),*OECD Regulatory Review of the United States*, Paris

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. General assessment of current strengths and weaknesses

Swiss regulatory management and reform rests on a sound basis of consensus-driven, well-developed procedures and requirements for legal regulations and high respect of the rule of law. The Constitution provides a legal framework that ensures thorough involvement of the cantons and municipalities in the implementation of federal regulations. Extensive consultation mechanisms and direct political participation of citizens contribute to making the system accountable, transparent and reliable. The institutional setting of Switzerland has some unique characteristics, given the frequent opportunities enjoyed by the Swiss for consultation and participation in all levels of government. However, all countries face some of the core issues debated in Switzerland, which concern how much change can be absorbed and at what speed.

Regulatory management and reform at the federal level has been primarily driven by efforts to deregulate some key economic sectors and reduce administrative burdens imposed on business, especially addressing SME concerns. The gradual introduction and implementation of reforms, as well as their speed,

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reflect the complexity of the decision-making process and the interaction of different political forces, some of them representing vested interests, but all vetting reforms closely whether opposing or endorsing some of them. The characteristics of the regulatory system however still allow for further improvements of the mechanisms for co-ordination and policy coherence.

Elements contributing to high quality regulation have been gradually introduced in the last few years. At political and administrative levels there is an increasing appreciation of the need to broaden the scope of regulatory policies and of the potential benefits it may offer in terms of better, most cost-effective regulation. The introduction of RIA and the SME Compatibility Test reflects this situation. Nevertheless, they bear witness to the challenges faced when implementing regulatory reform. Political support at the highest level will assure a comprehensive and consistent implementation of these tools, which could contribute to the decision-making process at an earlier stage if they were not used as simple justification at the end of the consultation process. The small size of staff to administer these instruments and to monitor their quality, especially RIA, limits their effectiveness and visibility. The current technical and institutional design of both instruments shows that room for progress still exists in terms of enhancing co-ordination mechanisms of these tools, supplementing other methods of consultation which guarantees the participation rights of economic actors.

If Switzerland still has strong assets to maintain a sound regulatory framework, it is experiencing a constant erosion of its relative economic performance at an international level, and in relation to neighbouring countries, for example Austria. If existing economic achievements still allow for high living standards and a prosperous economy, the lack of deeper regulatory reform may hamper the conditions for sustained economic growth in a context of increased globalisation. Switzerland needs only to adjust its system for regulation, in contrast to some other countries where deep changes have been necessary. An approach guided by principles for regulatory quality and performance could help to improve competitiveness and the long-term path for economic growth. Given the institutional context in Switzerland, the ability to implement reforms more swiftly is crucial to cope with a fast moving international environment. If the consensus allows for a sound, stable and efficient regulatory framework, the costs linked with the time for implementing reforms are becoming increasingly apparent. Improving the speed of reforms will therefore represent one of the key challenges for the Swiss economy in the coming years.

The most significant challenge is to establish a comprehensive, government-wide regulatory policy and the necessary institutional framework to monitor and guide its implementation. The consolidation and improvement of tools already available to assess regulatory effects should be also taken into consideration.

5.2. Policy options for consideration

This section identifies measures based on international consensus about good regulatory policies and on concrete experience in OECD countries that are likely to improve regulation in Switzerland. They are based on the recommendations and policy framework of the 1997 OECD *Report to Ministers on Regulatory Reform* and on the 2005 OECD *Guiding Principles for Regulatory Quality and Performance*.

1. Adopt regulatory reform at the political level.

Regulatory reform should be adopted at the political level, in order to integrate key elements of regulatory policy – policies, institutions and tools – as a whole, articulating reform goals, strategies and benefits to the public. A key goal is to maximise "ownership" of regulatory reform at the political level.

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The State Secretariat for Economic Affairs (SECO) has made important efforts to introduce core elements of regulatory policy and to expand the use of regulatory tools. Regulatory policy elements appear as parts of broader policy sector reforms, primarily focusing on deregulation measures, requirements within law making to assess economic consequences as well as easing administrative burdens for business, especially SMEs. Nevertheless, these efforts could be enhanced if the regulatory policy elements are brought together in a single instrument promoting government-wide regulatory policy. Regulatory initiatives are diffused across federal departments and offices, as well as among cantons. As a result, regulations may not always be enforced consistently across all levels and sectors of government.

2. Strengthen co-ordination mechanisms for regulatory reform.

OECD experience shows that a well-organised and monitored process, with clear accountability for results, is important for the success of the regulatory policy. This can be coupled with effective and credible co-ordination mechanisms to foster coherence across major policy objectives, clarify responsibilities for assuring regulatory quality and ensure capacity to respond to a changing environment. The specific institutional form it takes will reflect the historic and cultural values and context of each country. What matters is the objective. Maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based and credible.

In the current Swiss system, a wide range of bodies across the federal administration participate in regulatory issues. Efforts have been made in setting up interdepartmental groups to launch programmes linked to regulatory reform, but these efforts have been made on an *ad hoc* basis. However, promoting reform in the long run requires the setting up of effective and permanent co-ordination mechanisms with clear responsibilities and powers to monitor, oversee and promote progress across the public administration. In the Swiss case, these co-ordination mechanisms should reflect the collegial nature of policy-making. This could contribute to strengthen regulatory and management capacities, as a visible sign of the integration of regulatory reform into the decision-making process in all policy areas.

This would bring several benefits to the implementation of regulatory reform in Switzerland. First, it would increase regulatory capacities throughout the administration as a means of systematically ensuring that higher quality regulation is generated. More resources and staff are needed to achieve this goal. Second, it would offer a systematic framework to review new regulatory proposals during the policy development process and to improve their quality. Third, it should improve communications about the benefits of quality regulation, reducing the risks of deadlock. Finally, it could promote long-term regulatory policy considerations, including policy change and development of new and improved tools and institutional change, where timely and appropriate.

3. Strengthen the RIA system with the correspondent capacities, integrating the SME Compatibility Test into it.

OECD experience shows that RIA is a tool that provides decision makers with valuable empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have. To fully use the potential of this tool, RIA should be integrated into the decision-making process as early as possible.

In the Swiss case and in its current institutional design, RIA is performed late in the process, which dilutes its effectiveness and importance. RIA could be integrated into the impulsion stage of the consultation procedures, when the administration starts the development of a law proposal.

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In order to systematically assess the impacts of regulations in Switzerland, RIA should become mandatory for all kinds of regulatory instruments and not only federal laws and some ordinances. If the use of RIA remains partial, with large parts of the regulatory structure not subject to its disciplines at all, results will not be as effective as they could be. A major challenge is to integrate RIA at cantonal level and this should be encouraged, for example, through improved co-ordination. In terms of the current capacities, however, the scope of RIA should be focused: either the number of "eligible laws" that actually get RIA treatment could be a small proportion of the total or RIA could be implemented with a threshold test.

Some other elements of the current design of RIA should be revised. First, a better structure of the scope of RIA should be proposed. The present understanding in terms of costs is extremely broad and the understanding does not include important elements, such as competition criteria and market openness. A more focused list of questions could help to target RIA in a more effective way. Targeting at regulation with the largest potential impacts and the best prospects for changing outcomes could be an option. Second, data collection has been revealed as a weak point during the preparation of RIA. Improving data collection strategies should be a permanent task of bodies in the administration and regulators. Third, an inter-departmental co-ordination group should be maintained to improve the effectiveness of RIA. Fourth, increased awareness of RIA inside the administration is needed, not only through training programmes and more visible guidance, but also through the promotion of a cultural change. RIA should be seen as a tool that helps and has an impact in the decision-making process. Finally, human capacities allocated to the RIA system should be reinforced.

The link between RIA and the SME Compatibility Test should be improved. While RIA is intended to provide information on the pertinence of state intervention and which consequences this intervention might have on the economy and the society as a whole, the SME Compatibility Test provides information on how the state has to intervene. The SME Test should be integrated into the RIA, in order to make it more effective. This is used in other OECD countries where business tests are part of RIA, providing invaluable information for the assessment of impacts.

Special attention should be given to the SME Forum as an advisory body. As in other OECD countries, the use of external advisory bodies to government is growing. This institution could become an important actor if it would fully develop its advisory role. An increased visibility could help to increase awareness of the impact of regulations on SMEs. The body should be linked to the regulatory reform process.

4. Strengthen communication mechanisms to inform about reforms.

Given the characteristics of the political system, consensus could be used to deepen the promotion of regulatory policy and to improve the use of tools for regulatory quality. Some substantial elements of regulatory policy, such as RIA requirements and consultation procedures, have been adopted in legislation, which indicates a formal commitment to regulatory policy and the importance attached by the government in a tangible way.

Forward-planning, consultation mechanisms and accessibility to regulations are highly developed in Switzerland. Nevertheless, what regulatory policy is and what it can do are not always clear to stakeholders and citizens. As in many OECD countries, Switzerland is engaged in a real debate on the role of the "regulatory State" and how to manage State-owned enterprises operating in a competitive environment. A communication strategy should explain regulatory quality and its importance.

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Communication is crucial to consolidate reform. Consumers are potential winners, but governments need to be honest about expected reform timescales and results, so as not to undermine future support for reform efforts. Governments should also be able to deal with winners and losers because reforms may take time.

5. Improve co-ordination between federal and cantonal authorities to increase effectiveness of regulatory policy.

As in other OECD countries, the sub-national levels of government have important responsibilities for implementation of regulations. The potential for a regulatory policy to achieve its objectives is greatly enhanced if other actors, such as sub-national governments, also take on appropriate roles in implementing the agenda. In Switzerland, cantons are often the main "agencies" for implementation and have their own regulatory capacities. Co-ordination is important not only between the Confederation and the cantons, but also among the cantons, especially in areas where they have responsibilities that are not shared with the federal level.

The OECD experience shows that in some countries, especially federal states, the lack of harmonisation can create unnecessary barriers to the movement of goods and services or generate sterile competition between regions. If co-ordination is lacking, business and people alike can get lost in a maze of contradictory or incompatible standards. The quality of the regulatory framework is a decisive factor of competitiveness today, and will remain so. More co-ordination is thus needed in Switzerland to consolidate an internal market and for preserving the attractiveness of regions.

A major challenge in the Swiss case is to promote regulatory quality at all levels of government, guaranteeing the effectiveness of public policy in a multi-level environment. A useful tool to promote best practice among cantons could be benchmarking. Since cantons are a kind of laboratory where different experiences are put into practice, this could contribute to expand elements of regulatory reform to sub-national levels of government. Benchmarking and regulatory competition among cantons can only be achieved in a more transparent framework, especially in the fiscal ambit and increasing efforts to administrative simplification.

6. Further simplify regulations, procedures and formalities by introducing ICT elements at federal and cantonal level, targeting SMEs.

The Swiss government has followed Parliamentary requests and has undertaken major steps towards administrative simplification and the reduction of red tape. Nevertheless, more intensive programmes to simplify regulations, procedures and formalities are needed, as this strategy can create political constituency, especially among SMEs, to subsequently assist reformers in arguing for the adoption of further-reaching reform initiatives.

The Swiss government should monitor that formalities do not impede innovation and entry, creating unnecessary barriers to trade and economic efficiency. The experience of many OECD countries shows that administrative simplification is key to improving the cost-effectiveness of regulations. Measures tending to simplify regulations and procedures should take into account that if they are poorly designed to achieve policy goals, they can impose substantial unnecessary costs. This is particularly relevant in the Swiss case, as regulations and formalities from multiple institutions and layers of government are of particular importance.

The introduction of different techniques in the context of administrative simplification has not been systematic. They need to consider the whole of existing regulations in order to reduce the cumulated cost of the total stock. One-stop shops targeting certain groups of clients could be extended to other fields at

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federal and cantonal level. The ICT developed by one canton could be potentially used by other cantons. Evaluation clauses and automatic sun-setting clauses could also be used to force the administration to systematically review texts.

A central challenge for most OECD countries is to enhance the *ex-post* evaluation of their regulatory policies, tools and institutions. This is particularly relevant for Switzerland, where the application of regulatory tools at different levels of government should be efficient and effective, in order to support policy makers in improving regulatory outcomes and reduce the risk of regulatory failures. The evaluation of regulatory policy tools can help policy makers of government activities justify their importance and functions on the basis of objective data, to devote resources and efforts to the regulatory reform agenda and to expand the scope and depth of these instruments. The evaluation of regulatory tools and policies should also be seen as an important issue within the broader governance agenda.

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NOTES

1. The price of a large basket of goods is about 33 per cent higher than in the European Union and 15 per cent above the US level, despite a lower standard of living. OECD (2002c), *OECD Economic Surveys. Switzerland*, Paris, p. 89. The serious shortcomings in the functioning of the product markets are reflected, *inter alia*, in the very high level of prices compared with other countries. OECD (2004b), *OECD Economic Surveys. Switzerland*, Paris, p. 9.

2. See Box 2.1. for a detailed information on the analytical framework used by the OECD in more than 20 different country reviews.

3. Vatter, Adrian (2004), "Federalism" in U. Klöti, *et. al.*, *Handbook of Swiss Politics*, Neue Zürcher Zeitung Publishing, p. 77.

4. The so-called "revitalisation programme" included reform initiatives in agriculture, energy markets, telecommunications, transport and competition policy, and the negotiation of bilateral agreements with the European Union to co-operate more closely in vital areas.

5. The Swisslex programme was designed to adapt the federal law to the EU legislation, after the rejection of Switzerland's insertion in the EEA. It included 27 legislative proposals (21 legal amendments and 6 new laws), in order to make compatible both legislations. *Rapport du Conseil fédéral sur sa gestion en 1993. 3. Adaptation du droit fédéral au droit de la CE (Swisslex)*, available at *www.admin.ch/ch/f/cf/rg/1993/2_aii_3_.html.*

6. See more in the following Section 1.2.

7. The question of whether or not Switzerland's international competitiveness is declining, and if that is the case determining the causes, is to some extent controversial. The Federal Government recognizes that Switzerland will only be able to maintain its advantageous welfare position into the future by making government and economic reforms. The improvement of the regulatory framework is one of them. Federal Chancellery (2003), *Challenges 2003-2007. Trends and Possible Future Issues in Federal Policy. Report of the Forward Planning Staff of the Federal Administration*, Bern.

8. Département fédéral de l'économie (2002), *Le rapport sur la croissance. Déterminants de la croissance économique de la Suisse et jalons pour une politique économique axée sur la croissance*, Bern.

9. *Rapport sur le Programme de la législature 1995-1999* du 18 mars 1996, FF 1996 II 289, and *Rapport sur le Programme de la législature 1999-2003* du 1er mars 2000, FF 2000 2168.

10. More detailed information can be found in Chapter 4 of this report.

11. *Federal Constitution of the Swiss Confederation* (*Constitution Fédérale de la Confédération Suisse*) from April 18, 1999, RS 101.

12. *Loi fédéral du 13 décembre 2002 sur l'Assemblée fédérale* (*Loi sur le Parlement*, LParl), RS 171.10

13. Message relatif à la loi sur la procédure de consultation (Loi sur la consultation, LPCo), FF *2004* 485

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14. For more detailed information on the *Recueil officiel* and main data see section 3.1.3. in this Chapter.

15. A "motion" obliges the Federal Council to submit a legislative proposal to Parliament in the required sense; a "postulate" mandates the Federal Council to study measures having the required orientation.

16. Motion Forster (96.3618). *Effets des lois et ordonnances sur les petites et moyennes entreprises (PME)*, 11 December 1996.

17. Postulat Speck (96.3583). *Neue Instrumente zur Eindämmung der Regulierungsflut/Nouveaux instruments de limitation de la régulation*, 21 March 1997.

18. Regulatory quality is defined by a framework in which regulations and regulatory regimes are efficient in terms of cost, effective in terms of having a clear regulatory and policy purpose, transparent and accountable. OECD (2004a), *Building Capacity for Regulatory Quality: Stocktaking Paper*, GOV/PGC(2004)11, Paris, April.

19. OECD (2002a), *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, Paris.

20. The "Cassis de Dijon" principle states that a product legally manufactured and marketed in one EU member state may circulate freely in the other states. Free trade can be impeded only if it can be demonstrated that the product represents a danger to public health. The principle does not yet apply between Switzerland and the EU, but the proposal will be sent to Parliament.

21. Secrétariat d'État à l'économie, *Nouvelle réduction des entraves techniques au commerce prévue*, Communiqué de presse, 4 mai 2005, available at *www.seco.admin.ch/news/00578/index.html?lang=fr*.

22. The seven Departments are: Federal Department of Foreign Affaires (DFA), Federal Department of Home Affairs (DHA), Federal Department of Justice and Police (DJP), Federal Department of Defence, Civil Protection and Sports (DDPS), Swiss Federal Department of Finance (FDF), Federal Department of Economy Affaires (DFE) and Federal Department of Environment, Transports, Energy and Communications (DETEC).

23. The first Legislature Plan was introduced in 1968. The current Plan covers the period from 2003 to 2007 (*Rapport du 25 février 2004 sur le Programme de la législature 2003–2007*. FF *2004* 1035).

24. The Annual Objectives of the Federal Council were first introduced in 1996. The Federal Council submits this instrument to the Federal Assembly by the start of the final ordinary session of the year. The President of the Confederation is responsible for presenting the report of the Federal Council on the conduct of its business to the Assembly by the winter session. Since no debate is expected, the Federal Assembly approves it by means of a simple Federal Decree. The current Annual Objectives (Les Objectifs 2005 du Conseil fédéral) are available at *www.admin.ch/ch/f/cf/rg/2005/ziele.pdf*.

25. Since December 2003 the Federal Assembly can amend the Legislature Plan and impose them to the new government. The experience provided by this decision shows that it has to be revised, in order to improve the co-operation between the Executive and the Legislative. Database of the Federal Assembly "Curia Vista", Object No. 04.012. *Bericht über die Legislaturplanung 2003-2007*, 24 February 2004, available at *www.admin.ch/ch/d/ff/2004/1149.pdf*.

26. Until now, two reports have been produced. The latest one, *Défis 2003–2007: Évolution des tendances et thèmes futurs de la politique fédérale – Rapport de l'Etat-major de prospective de l'administration fédérale*, is available at *www.admin.ch/ch/e/cf/herausforderungen/documents/0gesamtbericht.pdf*. The English version (Challenges 2003-2007: Trends and Possible Issues in Federal Policy. Report of the Forward Planning Staff of the Federal Administration) is available at *www.admin.ch/ch/e/cf/herausforderungen/documents/0gesamtbericht.pdf.*

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27. Chancellerie Fédérale/Office Fédérale de la Statistique (2004), *Les indicateurs: instruments stratégiques de conduite pour la politique – Rapport du Conseil fédéral du 25 février 2004*, Neuchâtel.

28. From 1971 to 1976 the Federal Assembly was responsible for 46% of the initiatives, while the administration initiated 26% of all legislative proposals. This trend has been modified from 1995 to 1999, when the administration is responsible for 41% of all initiatives and the Parliament decreased its participation as initiator to 26% of legislative proposals. Sciarini, Pascal (2004), "The Decision-Making Process" in Klöti, U. *et.al.*, *op. cit.*, p. 511.

29. *Ordonnance sur la traduction au sein de l'administration générale de la Confédération du 19 juin 1995*, RS 172.081.

30. A distinction should be made between the parliamentarian motions, which call upon the Federal Council to take action in a given area, and the parliamentarian initiative in the narrow sense of the term, in which case the parliament itself drafts a bill. Lüthi, Ruth (2004), "The Parliament" in Klöti, U. *et. al.*, *op. cit.*, p. 127.

31. Half cantons emerged during history when one of the States making up the Confederation before 1798 split in two parts. At the constitutional level, the only distinction between cantons and half-cantons is that the latter have one instead of two seats in the upper house.

32. Whereas the five largest cantons (Zurich, Berne, Vaud, Argovia, St. Gall), with more than 420 000 inhabitants each, are home to 52% of the Swiss population, the inhabitants of the five smallest cantons (Glarus, Uri, Nidwalden, Obwalden, Appenzell Inner Rhodes) with less than 40 000 inhabitants account for only 2%.

33. Economic disparities not only refer to different growth rates, which have been both positive and negative in the last few years, but also to average per capita income.

34. For a detailed analysis of spatial and territorial issues in Switzerland see OECD (2002e), *OECD Territorial Reviews – Swizterland*, Paris.

35. Geser, Hans (2004), "The Communes in Switzerland", in Klöti, U. *et.al.*, *op.cit.*, p. 353.

36. Office fédérale de la justice (2002), *Guide de législation. Guide pour l'élaboration de la législation fédérale*, Berne, p. 207.

37. *Ibid*., pp. 207-208.

38. The primary instrument of co-ordination between the cantons are inter-cantonal treaties (*Konkordate*), a kind of contract in which cantons reach agreement on issues of mutual interest. There are more than 300 inter-cantonal treaties. Another instrument for co-ordination among cantons are the Cantonal Directors and Specialist Director's Conferences, in which members of cantonal government meet to co-ordinate their tasks and to agree on a common position towards the federal government.

39. Germann, Raimund E. (2004): "The Swiss Cantons: Equality and Difference" in Klöti, U. *et. al.*, *op. cit.*, p. 338.

40. Available at *www.admin.ch/ch/f/pore/va/20041128/explic/index.html*.

41. For more detailed information on electricity see Chapter 6 on electricity and Chapter 5 on regional transport in this Review.

42. For more information on product market competition in Switzerland see Chapter III of OECD (2004b).

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43. Contrôle parlementaire de la fédération (2000), *Évaluation: Quel est le degré d'ouverture du marché intérieur suisse?*, Bern.

44. Dispatch concerning the revision of the Federal Law on the Internal Market, 24 November 2004.

45. Zürcher, Boris and T. Zwald (2004), « Les grande lignes de la révision de la loi fédérale sur le marché intérieur » in *La Vie Économique – Revue de politique économique*, No. 12, Bern.

46. For more details regarding the role of the Comco see Chapter 3 on Competition Policy in Switzerland in this Review.

47. De Chambrier, Anne and M. Cuenat (2004), « Les professions réglementées et la révision de la LMI » in *La Vie économique – Revue de politique économique*, No. 12, Bern.

48. In 2003, exports to the EU represented 60 per cent of total Swiss exports, while imports from the EU attained 80 percent. 60 per cent of Swiss direct investments have gone to the EU. Swiss enterprises employ more than 800000 people in the EU.

49. See Chapter 5 on regulatory authorities in this Report for further detail on the transport and air transport bilateral agreements.

50. On June 5, 2005, the Swiss population approved the Schengen/Dublin association agreement by 54.6%.

51. This text, which has the legal value of a law, takes the form of a federal approbation decree (*arrêté fédéral d'approbation*).

52. The referendum petition contained 86 732 valid signatures.

53. On September 25, 2005 a vote will be held on the extension of the agreements on the freedom of movement of persons and the revision of the accompanying measures. With the expansion of the EU to ten new members on May 1, 2004 the existing bilateral agreements between Switzerland and the EU were automatically extended to the new member states. The exception was the Agreement on the Free Movement of Persons from 1999, where amendments needed to be negotiated with the EU and member states. An additional protocol laid down separate transitional regulations in relation to the new Eastern European countries. This transitional system provides for a gradual and controlled opening of the Swiss labour market to workers of these new member states. Labour market restrictions (priorities for workers established in Switzerland, quotas, controls on salary and working conditions) may continue to apply until 30 April, 2011. The agreement has been adopted by a majority of 56%.

54. Art. 141, 2, a of the *Federal Act on the Federal Assembly* (Parliament Act, ParlA).

55. Mach, André, *et. al*. (2003), "Economic regulatory reforms in Switzerland: adjustment without European integration, or how rigidities become flexible" in *Journal of European Public Policy*, No. 10, April, p. 307

56. OECD (2004b), *op. cit.*, p. 90.

57. Kündig, Gregor (2004), "Bilatérales II: une nouvelle consolidation de nos étroites relations avec l'UE" in *La Vie économique. Revue de politique économique*, No. 9, Bern, p. 30.

58. Since 1999/2000, SMEs are pro-actively consulted on legislation (laws and ordinances) that have a direct economic impact on them. The two different instruments used to reach this goal are the SMEs Compatibility Test (*test de compatibilité PME*) and the consultation with the advisory body, SMEs Forum (*Forum PME*).

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59. Sägesser, Thomas (2004), "The Consultation Procedure in Switzerland" in *Leges*, No. 3, p. 115.

60. At the federal level, the Swiss electorate takes decision on about six constitutional amendments per year. Half of them stem from parliamentary proposals, the rest from popular initiatives. In addition between two to four legislative referenda are launched every year.

61. Linder, Wolf (2004), "Direct Democracy" in Klöti, U. *et.al., op. cit.*, p. 109.

62. *Ibid*. p. 113.

63. Chancellerie Fédérale (2005), *Les objectifs 2005 du Conseil Fédéral*, Bern.

64. For more detailed information on the electricity sector, see Chapter 6 of this Review.

65. For more detailed information on the postal reform, see Chapter 5 of this Review.

66. Häusermann, Silja et. al. (2002), *Reconfiguration of national decision-making structures under external and financial pressure: the Swiss case*, Paper presented at the ECPR Joint sessions of Workshops 2002, Torino, Workshop 19. Europeanisation and National Political Institutions.

67. The first initiative to create such a tool dated from the 1960s, but it was only in 1971 when the first files were published. Since then the *Recueil systématique* grew to have more than 54,000 pages in each official language, classified in 57 different files.

68. At cantonal level, only the cantons of Berne, Soleure, Vaud and Geneva have given general access to citizens to consult official documents by laws.

69. Switzerland is seventh in the Transparency International Corruption Perceptions Index, starting with the least corrupt nations. Information available at *www.transparency.org/pressreleases_archive/2004/2004.10.20.cpi.en.html.*

70. Office fédérale de la justice (2002), *op. cit.*, pp. 156-158.

71. See Section 4.1. of this Chapter for detailed information on evaluation.

72. Federal Law on the Administrative Procedure (*Loi fédérale du 20 décembre 1968 sur la procédure administrative*) and Federal Law on the Judiciary Organisation (*Loi fédérale d'organisation judiciaire du 16 décembre 1943* (Organisation judiciaire, OJ).

73. *Message concernant la révision totale de l'organisation judiciaire fédérale*, 28 février 2001.

74. Bundeskanzlei (2004), *Botschaftsleitfaden. Leitfaden zum Verfassen von Botschaften des Bundesrates*, Bern.

75. SECO (1999), *Inventaire et évaluation des procédures de droit fédéral de l'économie*, Bern.

76. OECD (1998), *Environmental Performance Review. Switzerland*, Paris.

77. Market surveillance is an example of rather close and active supervision exercised by the SFBC: the Commission can exercise direct supervisory functions whenever deemed necessary to enforce the Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act). The listing rules of SWX Swiss Exchange are subject to approval by the SFCB. The listing rules require at least "Swiss FER" accounting standards, which are equivalent to international standards. For the main market in blue chips IFSR

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(International Financial Reporting Standards) or US-GAAP are required. The IOSCO Principles require no direct responsibility of the regulator with respect to accounting and auditing standards.

78. The most important SRO for the Federal Office of Private Insurance is the Swiss Insurance Association. The Self-Regulation Organisation of the Swiss Insurance Association (SRO-SIA) was established on 1 January 1999, and is being headquartered at the SIA's head office in Zurich. The purpose of the organisation is to act as a self-regulating body for insurance companies trading in Switzerland pursuant to the Swiss Money Laundering Act. The Self-Regulation Organisation of the Swiss Insurance Association is under direct supervision of the Federal Office for Private Insurance.

79. OECD (1997b), *Regulatory Impact Analysis: Best Practices for Regulatory Quality and Performance*, Paris.

80. OECD (2005), *Guiding Principles for Regulatory Quality and Performance*, Paris.

81. *Directives du Conseil fédéral du 15 septembre 1999 sur l'exposé des conséquences économiques des projets d'actes législatifs fédéraux 1999*, FF *2000* 986.

82. SECO (2000), *Manuel « Analyse d'impact de la réglementation »*, Bern, p. 1.

83. *Loi sur les rapports entre les conseils. Amélioration de la capacité d'exécution des mesures de la Confédération*. Modification du 22 décembre 1999.

84. Mathis, Klaus (2004), *Die fünfzig wichtigsten Regulierungen: eine Auswahl aus ökonomischer Sicht*, Bern. The goal of this study is to identify the fifty most important regulations in terms of their economic impact. These regulations have mostly an impact on enterprises, but also to other actors, such as consumers or the state, as well as the environment. The criteria for analysis are microeconomic criteria, including the institutional framework, goods and factor market and market failure. The final objective is to identify those regulations having an impact on economic growth. The list includes, among others, the Federal Act on Cartels, the Federal Act on the Internal Market, the Federal Act on Price Supervision, the Bilaterals I and II, etc.

85. Contrôle parlementaire de l'administration (2005), *Les trois « Tests PME » de la Confédération : connus ? utilisés ? efficaces ?*, Bern, February.

86. The Parliamentarian Control of the Administration used interviews as well as analysis of texts and of case studies to assess the impacts of these regulatory tools on the decision-making process, namely their awareness, their use and their influence.

87. Commission de gestion du Conseil national (2005), *Les Tests-PME de la Confédération et leur influence sur les lois et ordonnances. Rapport de la Commission de gestion du Conseil national sur la base d'une analyse effectuée par le Contrôle parlementaire de l'administration*, Berne, may.

88. As part of the public debate the Parliamentarian Control of the Administration makes use of the media to draw attention to their reports. See Duperrut, Jérôme (2005), « L'impact économique des lois est dramatiquement négligé » in *Le Temps*, Genève, Friday 24 june.

89. For more detailed information on this sector see Section 3.4.

90. Hubli, H. (2004), *Regulatory Burden: die Kosten der Regulierung von Vermögensverwaltungsbanken in der Schweiz*, Paper prepared under the direction of Prof. H. Geiger, Working Paper No. 37, Universität Zürich, Institut für schweizerisches Bankwesen, April.

91. OECD (1997a), *OECD Report on Regulatory Reform*, Vol. I, p. 221.

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92. SECO (2002), *L'estimation des bénéfices des réglementations*, Bern.

93. SECO (2000), *Manuel « Analyse d'impact de la réglementation ». Instructions pour l'application des directives du Conseil fédéral du 15.9.1999 sur l'exposé des conséquences économiques des projets d'actes législatifs fédéraux*, Bern.

94. Contrôle parlementaire de l'administration (2005), *op. cit.*, p. 3.

95. SECO's web site, Evaluation de l'AIR, available at *www.seco-admin.ch/themen/zahlen/strukturanalysen/regulierung/unterseite00236/index.html?lang=fr*.

96. Contrôle parlementaire de l'administration (2005), *op.cit.*, p. 3.

97. OECD (2003), *OECD Review of Regulatory Reform - France. Charting a Clearer Way Forward*, Paris, p. 99

98. In accordance to the Motion Durrer (*KMU-Verträglichkeitsprüfung für geplante staatliche Regulierungen und Verfahren*).

99. Contrôle parlementaire de l'administration (2005), *op.cit.*, p. 3.

100. OECD (2002d), *op. cit.*, p. 112.

101. Supervision of systemic stability is also a responsibility of the SFBC.

102. *www.ofj.admin.ch/themen/eval/evklausel-f.htm*

103. Janett, Daniel (2004): "Die Evaluationsfunktion des Bundesparlaments – eine Zwischenbilanz" in: *Leges*, No. 2, Berne, pp. 137-150.

104. Office fédéral de la justice (2002), *op. cit.*, Berne.

105. Office fédéral de la justice (2004), *Efficacité de mesures prises par la Confédération. Proposition de mise en œuvre de l'Art. 170 de la Constitution fédérale dans le contexte des activités du Conseil fédéral et de l'administration fédérale. Rapport du Groupe de contact interdépartemental « Évaluation de l'efficacité » à la Conférence des secrétaires généraux de la Confédération suisse*, Bern, June.

106. In 2003, 307 000 enterprises existed in Switzerland. Just one thousand employed more than 249 people, which is under the parameters of SMEs in Europe. Around 207 000 enterprises employ fewer than 10 people; they are considered as micro-enterprises. Département fédéral de l'économie (2003), *La politique du DFE en faveur des PME*, Berne, p. 4.

107. Brunetti, Aymo (2000), "Allégement administratif et déréglementation" in: *La Vie économique*, No. 2, Bern, p. 6.

108. Global Entrepreneurship Monitor (2003), *Rapport 2003 sur l'Entrepreunariat en Suisse*, Universität St. Gallen/IMD, p. 10.

109. According to the GEM study, Switzerland is still part of the leading European countries in terms of entrepreneurial activity, but countries such as New Zealand, United States, Chile and China rank better. *Ibidem*, p. 10.

110. Brunetti, Aymo (2000), *op.cit.*, p. 6.

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111. Müller, Christoph A. (1998), *La charge administrative des PME en comparaison intercantonale et internationale. Rapport structurel*, OFDE, Berne.

112. Balaster, Peter (2003), « Décharger les PME au plan administratif » in *La vie économique*, No. 6, Berne, p. 21.

113. *Mesures d'allégement administratif de la Confédération pour les entreprises*, Rapport du Conseil fédéral du 16 juin 2003.

114. *Rapport du Conseil fédéral sur l'inventaire et l'évaluation des procédures de droit fédéral de l'économie du 17 février 1999* (Réponse au Postulat David 96.3607 "Charges administratives"), published in FF 1999 7603ss, Berne.

115. *Ibidem*, p. 22.

116. *Ordonnance sur les délais d'ordre impartis pour le traitement des demandes de première instance dans les procédures de droit fédéral de l'économie*.

117. Available at *www.seco.admin.ch/news/00520/index.html?lang=fr*.

118. OECD (2003c), *From Red Tape to Smart Tape: Administrative Simplification in OECD Countries*, Paris.

119. Sieber, Pascal and M. Trombitas (2003), « Les fondateurs d'entreprises souhaitent une cyberadministration » in *La Vie Économique*, No. 6, Bern.

120. The survey was conducted by the consulting firm Capgemini on behalf of the European Commission, as part of the benchmarking programme that assess the progress of eEurope. The study measures the e-government policy indicator of the eEurope Action Plan. The survey covers 28 European countries and a list of 20 basic public services, targeting citizens and businesses. For more details see Capgemini (2005), *On-Line Availability of Public Services: How is Europe Progressing?*, European Commission Directorate General for Information Society and Media.

121. *Ibidem*, p. 27.

122. Neirynck, Jacques (2005), "Les cyber-administrations suisses en panne fédéraliste" in *Le Temps*, Geneva, 4 July, p. 19.

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