GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION IN BRAZIL

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1. Regulatory reform in a national context

1.1. The administrative and legal environment for regulatory reform

1. In the past 25 years, few reforms of the public sector have received more attention than the reforms made to regulation making and regulatory management. Today, all 30 OECD countries have regulatory management programmes. These programmes are focused on the regulatory management system and on ensuring the quality of new as well as existing regulation (see Box 1). Regulatory policy, as with other core government policies, such as a monetary or fiscal policy, is dynamically focused and founded on the view that ensuring the quality of the regulatory structure is a permanent role of government. This means that governments are taking a pro-active role in implementing regulatory quality assurance systems.

Box 1. What is regulation?

In OECD work, regulation refers to the diverse set of instruments by which governments set requirements on businesses and citizens. Regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. Regulations fall into three categories:

- *Economic regulations* intervene directly in market decisions such as pricing, competition, market entry or exit. Reform aims to increase economic efficiency by reducing barriers to competition and innovation, often through deregulation and use of efficiency-promoting regulation, and by improving regulatory frameworks for market functioning and prudential oversight.

- *Social regulations* protect public interests such as health, safety, the environment, and social cohesion. The economic effects of social regulations may be secondary concerns or even unexpected, but can be substantial. Reform aims to verify that regulation is needed, and to design regulatory and other instruments, such as market incentives and goal-based approaches, that are more flexible, simpler, and more effective at lower cost.

- *Administrative regulations* are paperwork and administrative formalities through which governments collect information and intervene in individual economic decisions. They can have substantial impacts on private sector performance. Reform aims at eliminating those no longer needed, streamlining and simplifying those that are needed, and improving the transparency of application.

Source: OECD (1997), *OECD Report on Regulatory Reform*, Paris.

2. Brazil is one of the largest countries and economies in the world. With more than 185 million inhabitants and 8.5 million km^2 of territory it is the largest country in South America in population and the fifth largest in the world considering its area. Brazil contributes around 3% to world GDP (more than 1 trillion US$ in PPP), which makes it one of the largest world economies.

3. The country has a diversified economy which today is increasingly open and market-oriented. Agriculture counts just over 8% of GDP (796.1 billion US$ in 2007),[1] while industry stands for 35% of GDP (mainly an extensive and diversified industrial base that ranges from heavy engineering to consumer goods) and the services sector counts for 56% of GDP.

4. The administrative and legal environment for regulatory reform is characterised by a decision-making process in which governmental and administrative decisions are taken by authorities and agencies affiliated to the Executive. The Federal Constitution promulgated in 1988, a milestone for the consolidation of the democratic process, laid down a classical tripartite division of powers, encompassing the Executive, the Legislative and the Judiciary under a check-and-balances system. In the Brazilian presidential system, however, the Executive has extensive powers, being the central figure for putting forward law proposals and passing regulations.

5. The Executive branch is exerted by the President of the Republic, supported by the Ministers of State. They execute their attributions by constitutional, legal and regulatory competences over the federal administration, which is composed by a "direct" and an "indirect administration" (see Box 2), following the Law Decree 200 from February 1967.

Box 2. The evolution of the public administration in Brazil

The foundations of the modern Brazilian administration go back to the 1930s, when the industrialisation process and the modernisation of the country required more complex administrative capacities for the State. In that period, the number of ministries, organisms in charge of formulating public policies and bodies expanding the entrepreneurial role of the State increased considerably.

The decentralisation and simplification efforts during the Kubitschek (1955-1960) and Goulart (1961-1964) years were substituted by increased centralism during the military regime (1964-1985). During this period, the centralisation implied the concentration of powers and resources at federal level, but a decentralisation at administrative level, which led to the consolidation of a highly qualified technocratic bureaucracy in some areas of government. The military regimes consolidated the intervention of the State in the economy through the expansion of the "indirect administration" through the Law Decree 200 from 1967, which is today still partly in force.

The return of democracy in 1985 stimulated changes in the administrative model. The 1988 Constitution established a unique legal regime for civil servants, the salary equivalence for all powers and equal costs of living adjustments between military and civil servants, the requirement for accountability for any single assignment of resources originated by the budget, the detailed inclusion of all agencies' budgets in the federal budget.

The Guiding Plan to Reform the State Apparatus (*Plano Diretor da Reforma do Aparelho do Estado*) presented in 1995 by the Ministry for Public Administration and State Reform (*Administração Federal e Reforma do Estado, MARE*) identified a series of bottlenecks, following a systematised analysis based on a New Public Management framework. Among them, the increasing costs of bureaucracy and of bureaucratic and legal controls over the public administration, the lost of autonomy of the agencies in charge of providing services and the decrease of Ministries' capacities to formulate policies and to control the central entities of the administration. The Plan proposed a reorganisation of the activities in charge of the State: separation between the policy formulation, regulation and control and service delivery. Administrative autonomy was fundamental for those activities in the hand of the public administration. The Plan envisaged setting up executive agencies and regulatory agencies. The latter would be in charge of the operation of services, while the former would be responsible for the control of the markets.

This reform proposal, however, was not fully implemented. The concrete changes introduced afterwards were limited in scope. The Constitutional amendment 19 from 1998 came into force in 1998 and ended the single legal regime for public servants, which opened up the possibility for different alternatives of reorganisation of civil servants of the federal, state and municipal administration.[1] The Fernando Henrique Cardoso administration tried to implement the "regime of public employment" in the regulatory agencies, but the Supreme Court decided that it was not applicable in their case (ADI No. 2.310 from December 19, 2000), since the Constitution requires special job tenure for the civil servants responsible for exclusive State duties. The dissemination of regulatory agencies was driven by the privatisation of infrastructure sectors.

1. A recent decision of the Brazilian Supreme Court (ADI No. 2.135) declared unconstitutional the introduction of different labor regimes in the direct administration, autarchies and public foundations, once the constitutional amendment did not follow the constitutional requirements for its validation.

6. The “direct administration” is composed by the administrative structure of the Presidency of the Republic and the ministries. The Executive branch is organised into ministries and ministerial-level secretariats that are located within the Office of the President. The internal structure of the ministries is established in presidential decrees and tends to follow a uniform pattern: they are divided into an “Executive Secretariat” (*Secretaria Executiva*) directly attached to the minister’s office, and a number of functional “secretariats” (*secretarias*). The Executive Secretariat, in some ministries, has a general oversight role of the functional secretariats. In others, the former focuses on policy formulation whereas the latter focuses on implementing those policies. The senior level of the Executive Secretariat is generally staffed with presidential appointees, the same as the head of each functional secretariat.

7. In addition, the structure of the federal government involves a number of other units or bodies, corresponding to the "indirect administration", with a heterogeneous legal status, being created by laws. These include public enterprises, *autarquías*, mixed economy societies and public foundations.[2] In general, these other units or bodies correspond to federal entities implementing policies on the instruction of their “parent” ministries. Some of these entities have a very long history, often pre-dating the creation of their parent ministry. In 1999, a presidential decree established that there should be a split between policy-making and the agency in the context of the law on the national health surveillance.[3] However, this separation is only confirmed in the laws creating some of the regulatory agencies while the need for clarification remains in some sectors. This administrative model was also to introduce a contractual approach to management, while ensuring accountability between the ministries and the agencies, a system that has not been put in practice in most of the cases.[4] Several reasons appear to explain the limited use of this model. The functional secretariats within ministries already enjoy distinct identities. This new administrative model did not relax any central input controls; quite the contrary, it introduced a new layer of controls, without necessarily reinforcing accountability.

8. A notable feature of the federal government administrative structure is the prevalence of “consultative councils”. There are often several of these councils attached to each ministry. They consist of representatives of government ministries, other levels of government and non-governmental organisations. These councils typically have no decision-making roles but are a forum for policy development and for identifying areas where government action is needed or in need of improvement.[5]

9. Brazilian law has its sources in Roman-Germanic traditions as opposed to the Common Law system. Although most of Brazilian law is codified, non-codified statutes are still a substantial part of the system. The Federal Constitution is the fundamental law for the whole system. Being a Federal Republic, states also adopt their own constitutions, but they cannot contradict the federal one. Municipalities and the Federal District adopt organic laws. There is no hierarchy between federal, state, municipal and district laws. Laws which invade a subject or competence reserved for laws from another legislative house or which are directly against provisions established by the Federal Constitution are unconstitutional.

10. The country followed a closed economic path since the 1930s, and in particular after World War II, when it embraced the ISI (Import Substitution Industrialisation) development model. The State, as an enterprise, became dominant in public utilities, heavy industry, the exploitation of natural resources and financial markets. The GDP grew on average by nearly 7.5% per year in real terms in the 1960s and 1970s, but the policies that generated high growth during the “miracle” years were unsustainable and GDP growth slowed down to about 2.5% per year on average during 1980-2005.

11. In the 1980s, the combination of the debt crisis, the fiscal crises and hyperinflation forced Brazil to adopt a set of market-oriented policies, of which a main feature was privatisation. Regulatory reform efforts started in 1990s, when the country embraced a vast privatisation programme that was accelerated after 1994 with the Plan Real (*Plano Real*). Most of the infrastructure sectors were in hands of state enterprises until the 1990s, as Brazil was one of the leading countries in Latin America in terms of an

import substitution-led economic strategy. The privatisation process was characterised by the granting of concessions rather than a permanent transfer of assets.[6] The administration of the concession contract was given to special regulatory institutions (or line ministries in a few cases), modifying the institutional setting and the culture of public sector management in the country.

Box 3. State reform and privatisation in Brazil: milestones of the process

The State reform in Brazil consisted of two different issues: reforms in public administration and economic reforms involving structural transformations. These measures complemented each other and had to be preceded by constitutional amendments, passing infra-constitutional legislation and the execution of administrative acts by the Executive. The most remarkable transformations were:

- The first substantial transformation of the previous economic order was the elimination of certain restrictions to foreign capital (constitutional amendments 6 and 7 from 1995).
- The second one, which modified key aspects of the Brazilian economic order, was the so-called flexibility of State monopolies (constitutional amendments 5, 8 and 9 from 1995).
- The third transformation was the introduction of the framework for privatisation through Ordinary Law 8 031 from 1990, later replaced by Law 9 491 from 1997, establishing the National Programme for Privatisation.

12. The government set up in 1990 the National Programme for Privatisation (*Programa Nacional de Desestatização*).[7] The initial part of the Programme included 68 State-Owned Enterprises (SOEs), of which 18 were privatised, providing more than 4 billion USD to the Brazilian government in sectors such as steel industry, fertilisers and petrochemicals. This Programme was afterwards expanded with the creation of the National Council for Privatisation (*Conselho Nacional de Desestatização, CND*).[8]

13. Over time, the whole privatisation process required the issue of different regulations, in particular on economic matters: Law 8 884 from June 1994 (Competition Law) granted the Administrative Council of Economic Defence (*Conselho Administrativo de Defesa Econômica, CADE*) the status of independent government agency and legislated about the prevention and repression to infractions against the new economic order. Another OECD report has analysed the Competition Law Framework in Brazil, which is currently being reformed in the light of its recommendations.[9] Law 8 987 from February 1995 (Law of Grants) established a legal framework regulating the conditions for entrance, exit and operation of private initiative in infrastructure sectors. This Law implied the decision of ending monopolies of the public sector in the area of infrastructure, contributing to boost the Programme.

14. In this framework, the discussions about privatisation and regulation were towards specific sectors. This led to the creation of regulatory authorities that accompanied the privatisation process and redefined the action of the Brazilian State in economic sectors (see Annex I). This section presents a short overview while some of these sectors will be analysed in further depth in the rest of this report. In July 1996, Law 9 295 allowed the federal government to grant telecom services, what led two years later to the sale of Telebras and a revenue of 22 R$ billion for the Brazilian government. In December 1996, the National Agency for Electricity (*Agência Nacional de Energia Elétrica, ANEEL*) was set up, replacing the former National Department of Waters and Electricity (*Departamento Nacional de Águas e Energia Elétrica, DNAEE*). Law 9 472 from July 1997 laid down the organisation of the telecommunication services, as well as the creation and operation of a regulatory body for the sector, the National Agency of Telecommunications (*Agência Nacional de Telecomunicações, ANATEL)*. Law 9 478 from August 1997 legislates the national energy policy, the activities related to the petroleum monopoly and the creation of the National Council of Energy Policy (*Conselho Nacional de Política Energética, CNPE*) and the National Petroleum Agency (*Agência Nacional do Petróleo, ANP*).[10] Law 9 782 from January 1999 defined the National System of Sanitation, creating the National Health Surveillance Agency (*Agência Nacional de Vigilância Sanitaria, ANVISA*).

15. Further reforms addressed the private health insurance sector with the Law No. 9 961, from January 2000, which created the National Agency for Supplementary Health Services (*Agência Nacional de Saúde Suplementar, ANS*). Transformations also included the water and transport sectors. Law No. 9 984, from July 2000, created the National Waters Agency (*Agência Nacional de Aguas, ANA*), national institution in charge of the implementation of the national policy of water resources and of the co-ordination of the National System of Water Resources Administration (*Sistema Nacional de Gerenciamento de Recursos Hídricos*). Law No. 10 233, from June 2001, laid down disposals over the restructuring of water and land transportation, creating the National Council for the Integration of the Transportation Policies (*Conselho Nacional de Integração de Políticas de Transporte, CONIT*), the National Land Transports Agency (*Agência Nacional de Transportes Terrestres, ANTT*), the National Water Transportation Agency (*Agência Nacional de Transportes Aquaviários, ANTAQ*), and the National Department of Transportation Infrastructure (*Departamento Nacional de Infra-Estrutura de Transportes, DNIT*).[11]

16. However, while these reforms have initiated the debate on regulatory matters, the broader agenda for regulatory reform in Brazil goes beyond the institutional design of regulatory agencies, even if these have been the focus of much of the recent debate. The improvement of the legal system of the country as a whole and its different instruments (see Box 4) is a key area to ensure sustained economic growth and to provide a clear framework to citizens and private sector stakeholders. While Brazil has a relatively structured framework for preparing core laws, with informal consultations and some quality control procedures, it lacks, however, a comprehensive broader regulatory quality assurance system to assess the content of its policies, as well as that of related laws, regulations, practices and procedures. This also has important implications for the related decrees and sub-regulations which are less stringently controlled than laws. The federal structure reinforces this complexity.

Box 4. The legal instruments in Brazil

According to the Brazilian Constitution (Article 59), the legislative process comprises the preparation of different legal instruments that are below the Constitution:

I. Amendments to the Constitution;

II. Supplementary laws;

III. Ordinary laws;

IV. Delegated laws;

V. Provisional measures;

VI. Legislative decrees;

These legal instruments also reflect the hierarchy of normative acts of the Brazilian system. They are above other instruments such as resolutions, *portarias*, contracts and sentences.

17. With an important number of legal instruments produced yearly, Brazil today has more than 3.5 millions norms at federal, state and municipal level, which have been issued after the promulgation of the Federal Constitution in 1988.[12] More than 68% of the stock of federal regulations was abrogated with the Constitution, but the remaining legal instruments are still a reason for legal confusion because there are texts that are obsolete, partially outdated or superposed to other legal norms. This has led to legal uncertainty and conflict, creating unnecessary costs for businesses and citizens. Since 1998, the Supplementary Law nº 95 is in force, establishing that the Presidential Secretaries and Ministries and indirect administration entities would adopt necessary measures to make the selection and consolidation of decrees and other legal instruments in their areas of responsibility. However, a few proposals for legal consolidation have been made since then.

Table 1. Legal regulations in Brazil adopted after the 1988 Constitution

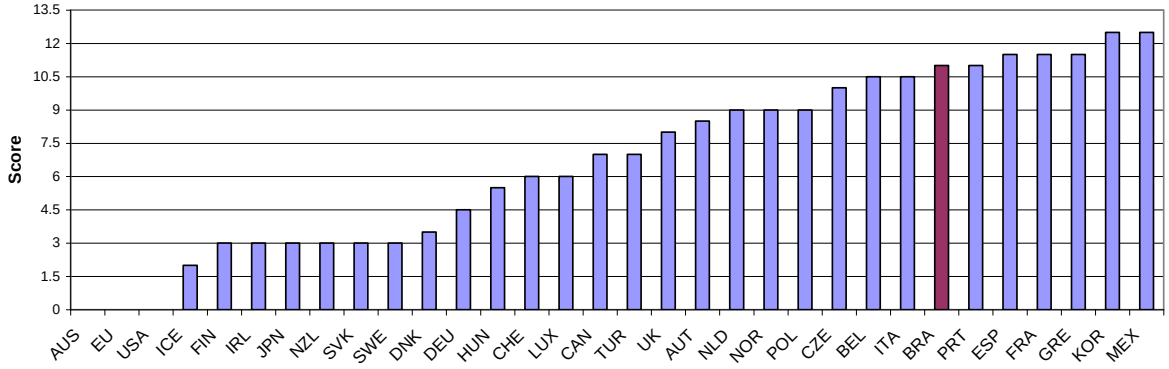
Federal Norms	No. of general federal norms	
Federal Constitution	1	
Constitutional amendments of revisions	6	
Constitutional amendments	52	
Delegated laws	2	
Supplementary laws	63	
Ordinary laws	3 701	
Original provisional measures	940	
Reedited provisional measures	5 491	
Federal decrees	8 947	
Supplementary norms	122 568	
Total	141 771	
State Norms	**No. of general State norms**	**Average per State**
Supplementary ordinary laws	206 202	
Decrees	296 124	
Supplementary norms	388 786	
Total	891 112	33 004
Municipal norms	**No. of general municipal norms**	**Average per municipality**
Supplementary ordinary laws	418 088	
Decrees	467 464	
Supplementary norms	1 592 368	
Total	2 477 920	446

Source: Jornal do Senado, Brasília, 9-15 April 2007, p. 8 and Amaral, Gilberto *et. al.* (2007), *Quantidade de normas editadas no Brasil: 18 anos da Constituição Federal de 1988*, Instituto Brasileiro de Planejamento Tributário, Curitiba.

18. Even within this administrative framework, considerable progress has been made in recent years in achieving macroeconomic stability and restructuring the economy. The macroeconomic stabilisation of the mid-1990s and the implementation of a series of structural reforms have facilitated the increase of productivity. But Brazil's GDP growth performance (about 2.5% per year on average since 1995) needs to improve to close a widening income gap relative to the OECD area. The full benefits of stabilisation in terms of faster growth will be only reaped after consolidating macroeconomic adjustment, boosting innovation in the business sector and stepping up formal labour utilisation.[13]

19. To this end, the current government has put in place in January 2007 the Growth Acceleration Programme (*Programa de Aceleração do Crescimento, PAC*) with the aim to boost investment. One of the challenges to reach this objective is to implement the different structural reforms that would be needed to promote greater competitiveness. Brazil's requirements of private sector investment are more likely to be met if the country removes barriers to competition and entrepreneurship, and if it reduces regulatory uncertainty by clearly defining the role of government in planning and service delivery.[14] Even if significant efforts have already been made towards facilitating licenses, permits and administrative requirements (see Figure 1), legal barriers to competition remain and government's special voting rights in firms within the business sector are constraints on private investment. In addition, administrative burdens and permits are significant at the local level. Environmental permits are also a significant hurdle in relation to the effort of investment in the energy sector.

Figure 1. Facilitating licenses, permits & administrative requirements



	Weights:
Is a "silence is consent" rule used at all (i.e. that licences are issued automatically if the competent licensing office has not reacted by the end of the statutory response period)?	if yes, weight=2
Are administrations obliged to provide the name of the person responsible for handling the application in any formal correspondence?	if yes, weight=0.5
Are there single contact points ("one-stop shops") for getting information on licences and notifications?	if yes, weight=3
Are there single contact points for accepting notifications and issuing licences (one-stop shops)?	if yes, weight=3
Is there a programme underway to co-ordinate the review and reform of permits and licences at sub-national levels of government?	if yes, weight=1
Has there been a clear decline in the aggregate number of licences and permits?	if yes, weight=2
Is there a complete count of the number of permits and licenses required by the national government (all ministries and agencies)?	if yes, weight=1
Is there a program underway to review and reduce the number of licenses and permits required by the national government?	if yes, weight=1

Note: The relevant chart is intended to illustrate, with a two year lag, the general position of regulatory quality management systems in Brazil relative to OECD member countries. It is based on comparing the responses that were received from Brazil in 2007 to a questionnaire on indicators on regulatory quality management systems with the responses provided by OECD member countries in 2005. In the current chart, a higher scores means that a number of tools have been used towards facilitating the granting of licences of permits. However, it may not reflect the actual practicality in obtaining a licence. The current position of OECD countries may have changed in the intervening period.

Source: Jacobzone, S., G. Bounds, Ch.-W Choi, C. Miguet (2007), *Regulatory management systems across OECD countries: indicators of recent achievements and challenges*, OECD Working Papers on Public Governance, No. 4.

1.2. Recent and current regulatory reform initiatives

20. Regulatory reform in Brazil has mainly been driven by the need to establish an institutional framework for regulating economic sectors, which has been taken shape in the form of establishing regulatory agencies (*agências reguladoras*). This trend has also been largely influenced by the international policy agenda, with the need to increase investor's confidence to support major infrastructure projects.

21. Establishing regulators in Brazil has generated a significant domestic debate as the need to delegate powers within the Executive but at arms' length from direct ministerial oversight is at odds with the country's tradition for policy making. An important reason for their set up was to reduce regulatory risk by giving the markets a clear signal that the government was not going to act opportunistically once investors had undertaken their investments. The issue of credibility was fundamental in their institutional design.[15] This concern was made even more acute by the fluctuations of the Real in the context of the economic crisis, when some aspects of utility regulation, including prices, were affected by the external exchange rate, such as telecommunication price adjustments.

22. The creation of regulatory agencies in Brazil has been the subject of intense controversy since their conception. In 1995, the government, and in particular the Ministry of Public Administration and State Reform (*Ministério da Administração Federal e Reforma do Estado, MARE*), which was dissolved in 1998 and whose functions were included under the Ministry of Planning, Budget and Management (*Ministério do Planejamento, Orçamento e Gestão*), presented a broad programme of reforms, mainly related to the decentralisation of public services and the strengthening of a strategic core of public policies and new regulatory roles. The Civil House of the Presidency of the Republic exerted a leading role in proposing the creation of regulatory agencies, and the Congress also participated in the debate. The relations of these agencies with their supervising body, the legal status of their staff, their governance structures, and their role for the economic development of Brazil have been subject to much domestic discussion. The degree of political and administrative independence and autonomy in relationship to the ministries concerned has been at the centre of debate. These issues are discussed at length in the rest of this report, focused on the governance aspect of regulatory authorities. This chapter will focus on the more general aspects of regulatory reform, which have been brought up more recently in the domestic debate, in order to bring Brazil closer to the mainstream of OECD countries.

The PRO-REG (Programa de Fortalecimento da Capacidade Institucional para Gestão em Regulação)

23. The Civil House, in articulation with the Ministry of Finance and the Ministry of Planning, Budget and Management, has proposed in 2007 to set up the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG). This Programme has been developed with the support of the Inter-American Development Bank (IADB) with the purpose of contributing to the improvement of the regulatory system and co-ordination among the institutions that participate in the regulatory process. The Programme aims at introducing new mechanisms for accountability, participation and monitoring from civil society and at strengthening the quality of market regulation. The following objectives are included in the framework of PRO-REG:

- To strengthen the regulatory system to facilitate the full exercise of functions by all actors;
- To strengthen the capacities to formulate and analyse public policies in regulated sectors;
- To improve co-ordination and strategic views between sectoral policies and the regulatory process;
- To strengthen autonomy, transparency and performance of regulatory agencies; and,
- To develop and to improve mechanisms for social accountability and transparency during the regulatory process.

24. The PRO-REG, through the activities of a Management Committee and a Consultative Committee, should serve to mobilise the different institutions inside the administration that are involved in the regulatory process. This Programme would be responsible for co-ordinating and promoting research analysis and formulation of concrete proposals to be implemented by the bodies responsible for regulation. The PRO-REG should also serve to provide technical support to the different bodies concerned with implementation and to establish a model of excellence for regulatory management.

25. In order to implement the PRO-REG, two bodies have been created: a Management Committee (*Comitê Gestor do PRO-REG, CGP*) and a Consultative Committee (*Comitê Consultivo do PRO-REG, CCP*), co-ordinated by the Civil House of the Presidency of the Republic:

- *Management Committee*. Composed by a representative from the Civil House, the Ministry of Finance, and the Ministry of Planning, Budget and Management, it is responsible for defining the strategic guidelines of the PRO-REG, for setting up priorities inside the Programme, for articulating among the different institutions involved in the implementation phase and for presenting reports on the improvements. The Co-ordinator of this Committee could invite representatives from private and public institutions, from the Legislative and the Judiciary, to participate in meetings. The Committee could set up temporary specific working groups or commissions to deal with concrete proposals.

- *Consultative Committee*. Composed by representatives from regulatory agencies, Ministries linked to these agencies, the Ministry of Justice and the Administrative Council for Economic Defence (CADE), it is responsible for putting forward proposals to improve the PRO-REG, to provide assistance, support and consultancy to the Management Committee and to improve the technical level of the actions undertaken.

26. The Office for Analysis and Follow-up of Governmental Policies (*Subchefia de Análise e Acompanhamento de Políticas Governamentais*) from The Civil House would be responsible for providing technical and administrative support to PRO-REG, preparing their meetings and following-up the implementation of the measures adopted. One of the controversial aspects of recent policy developments is to set up a regulatory quality oversight body, which will be discussed in detail in Section 2.2.1 of this chapter.

2. Drivers of regulatory reform: national policies and institutions

2.1. Regulatory reform policies and core principles

27. The 2005 OECD Guiding Principles for Regulatory Quality and Performance recommended that countries adopt broad programmes of regulatory reform at the political level 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.[16] It is an integral part of the process that links a policy goal, a policy action and regulation to support the policy action.

Box 5. 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, reviewed in *Taking Stock of Regulatory Reform: a Multidisciplinary Synthesis* (OECD, 2005d), the Guiding Principles form the basis of the analysis undertaken in this report. These principles state that governments should:

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.

2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.

3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.

4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.

5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.

6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.

7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Source: OECD (2005c), *Guiding Principles for Regulatory Quality and Performance*, Paris.

28. 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.[17] In Brazil, different sub-elements of such a policy exist in several initiatives and programmes that intend to create a framework for regulatory quality. These elements, however, are fragmented across the administration and have not been integrated in a whole of government approach to promote regulatory policy.

29. While the discussion about regulation concentrates mostly on the design of regulatory agencies, many other areas that are relevant for Brazil: the improvement of the quality of legislation, the continued efforts for legal consolidation and codification, the increase in the use of transparency and public consultation, the integration of a systemised use of impact assessments, the promotion of alternatives to regulation, etc. These elements would improve the framework for preparing new regulations, thus de-emphasising the focus from the agencies only towards a broader perspective. The transformation of the Brazilian State and the consolidation of its regulatory functions imply a new definition and implementation of public policies. But they also imply a different form to exert decision-making, going away from the traditional channel in which the central administration of the Executive exerted power in a vertical way, giving powers to regulatory agencies and introducing mechanisms to broaden public participation (civil society and stakeholders) for the definition of the content of regulation.

30. Very important aspects of regulatory reform policies already in place are described in the following existing legal documents:

- *Federal Constitution of Brazil*. Promulgated in October 1988, the Federal Constitution is the fundamental law of Brazil and it rules the system. The Federation is set on five fundamental principles: sovereignty, citizenship, dignity of the people, social value of labour and freedom of enterprise, and political pluralism. The Constitution, which was promulgated after years of military dictatorship, did not explicitly provide for State reform and economic transformation. It has been only through amendments and other legal norms that unclear provisions have been revised so that the Constitution now reflects the economic changes the country has experienced in the last few decades. The constitution is very detailed, which requires frequent amendments to update the constitutional framework when significant reforms are envisaged.

- *Law No. 9 784 from 29th January 1999* regulates the administrative procedures inside the federal public administration.

- *Supplementary Law No. 95 from 26 February 1998* lays down principles for elaboration, editing, amendment and consolidation of laws, according to Article 59 of the Federal Constitution. It also establishes guidance for consolidation of normative acts prepared by the Executive.

- *Law No. 9 986 from July 18th 2000* and *Law No. 10.871 from May 20th 2004* lay down norms for management of human resources inside the regulatory agencies.

- *Decree No. 4 176 from 28 March 2002*. This decree establishes norms and guidelines for the elaboration, editing, amendments, consolidation and sending of normative act projects elaborated by the competent bodies of the Executive branch. A particularity of this decree is that it contains very detailed indications about the form and the style to use for the law text visualization.

- *Decree No. 6 062 from 16 March 2007*. This Decree institutionalises the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG).

- *Manual for Law Drafting in the Executive branch (Manual de Redação da Presidência da República)*. It provides guidelines on how to draft legal instruments and official communications.

- *Guidelines for Parliamentarian Acting (Manual de Atuação Parlamentar)*, published for the first time by the Federal Parliament in 2002, as a guiding tool for each Parliamentarian. It provides information not only on the role of the Congress, but on its legal activity, including definition of terms, ways to draft initiatives, differences between legal documents and use of tools to simplify the work to draft legislation.

- *Manual for Drafting* (*Manual de Redação*), published since 2004 by the Federal Parliament. The manual provides a comprehensive view of the legislative process for those responsible for drafting laws in the Legislative branch. The objective of this document is to present common rules for drafting and communication. It is divided in three sections: general considerations for law drafting, use of the Portuguese language for legal purposes and indications for drafting administrative norms.

31. Many laws deal with the regulation of specific economic sectors. They are listed in Annex I, related to the creation of regulatory agencies.

2.2. Mechanisms to promote regulatory reform within the public administration

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

33. In Brazil responsibilities for regulatory reform and quality control of law drafting are diffused among several ministries and agencies. Brazil does not have a central body for co-ordination and control of regulatory quality even if the Presidency plays a strong role as a center of government. The country lacks a body connected with this centre of the government and which would be systematically dedicated to the supervision, promotion, co-ordination, and monitoring of the quality of the regulatory activity across ministerial departments and regulatory agencies.

Box 6. The law-making process in Brazil

The elaboration of a law is a complex process defined in Articles 59 to 69 of the Federal Constitution, according to the different possible legal instruments that complete the *legal corpus* of the Brazilian system. The law-making process in Brazil follows different stages:

Initiative. Laws in Brazil can be submitted by the National Congress (Chamber of Deputies and Federal Senate), the President, the Supreme Court, Superior Courts, the General Prosecutor of the Republic and citizens. According to its origins, law proposals go first either to the Chamber of Deputies or to the Senate.

Initiative from the Executive. Those normative acts coming from the Executive can be elaborated by the Ministries or any entity within the Presidency structure, according to its competency. Ministries have legal departments with experts who prepare the pre-law proposal that deserves analysis and comments from different internal bodies concerned. The procedures and design for the elaboration, wording, alteration and consolidation of normative acts sent by the President are defined in detail in Decree No. 4 176 of 28 March 2002. Once the project gets in the Presidency, the Civil House is responsible for the analysis of the proposal concerning the legality, merit and political convenience. Inside the Civil House the proposal goes through a process of revising and adjustments when needed, and the Civil House can co-ordinate with the agents involved. In case of controversy regarding the constitutionality or legality in the consolidation stage, the project is submitted to the Federal General Attorney. It is at the Civil House's discretion to divulgate for public consultation for the maximum term of 30 days. Then, the final version of the consolidated project is followed to the National Congress. When the proposal concerns administrative organization of the federal administration, the project does not need to be approved by the National congress and is published as a Presidential Decree.

Discussion. Once the law proposal is submitted either to the Chamber of Deputies or to the Federal Senate, the initiate body will conduct a technical analysis, formal and legal, done by the corresponding commissions.

Voting. Once the competent commissions of one of the chambers have approved it, the proposal will be sent to the plenary for voting. If the proposal is rejected, it will be filed.

Approval. If the proposal has been approved, it will be sent to the revising chamber, the one that did not put forward the proposal. If it rejects it, the proposal will be filed; the amendments made will send the proposal to the initiate chamber. If it approves it, the proposal will be sent to the President of the Republic for sanction or veto.

Sanction or veto. Once the law proposal has been received, the President can approve it or veto it. In case of veto, it has to be done following the 15 days and explicitly stated because of unconstitutionality or prejudice to the public interest. The presidential veto can only be rejected by absolute majority. If there is no veto, the law can be promulgated.

Promulgation. It is a competence of the President of the Republic (or the President of the Federal Senate in case the former cannot do it) to promulgate the law in 48 hours.

Publication. Promulgation is transmitted for publication in the Official Gazette (*Diário Oficial*). Once published, the law is in force.

34. In the Brazilian institutional model, the Legislative power establishes the legal framework, while the Executive branch formulates policies through the Ministries. Ministries have the authority to exercise the guidance, co-ordination and supervision of bodies and entities of the federal administration in their area of competencies (Article 87 of the Federal Constitution) and each and every single body of the direct or indirect federal administration is subject to the supervision of the appropriate Minister. Regulatory agencies, which are autonomous, are still supervised by the Ministries to which they are linked.

35. The following institutions deal with different issues of regulatory quality inside the Brazilian administration:

- *Civil House* (*Casa Civil*). Created in 1938, the Civil House is a key body of the Presidency of the Republic, responsible for assisting and guiding the President in his functions, basically in those related to co-ordination and integration of government action. The Civil House has actively participated in some regulatory discussions, such as taking a leading role during the creation of an inter-ministerial workgroup that put forward a proposal on regulatory agencies and co-ordinating the management of the PRO-REG initiative. Among the bodies that provide direct support to State Ministers are:

  - *Office for Analysis and Follow-up of Governmental Policies (Subchefia de Análise e Acompanhamento de Políticas Governamentais)*. This department is responsible for

    - i) monitoring the formulation and execution of governmental programmes and projects, carrying out the merit analysis of subjects related to States and municipalities, and the analysis of merit, adequacy and compatibility with the governmental guidelines of the proposals and projects submitted to the President, as well as those in process in Parliament;

    - ii) executing, in co-ordination with the Office of Articulation and Monitoring, the co-ordination and integration of governmental actions;

    - iii) requesting information and carrying out analysis and studies on projects, proposals and matters related to public policies under its responsibilities;

    - iv) participating in the monitoring and evaluation of management contracts of public entities, according to decisions by the State Minister; and

    - v) co-ordinating studies and measures aimed at carrying out the restructuring of the federal regulatory agencies.

  - *Office of Legal Affairs (Subchefia para Assuntos Jurídicos)*. The main responsibilities of this body are the following:

    - i) to advise the State Minister in matters of judicial nature;

    - ii) to pre-examine the constitutionality and legality of the presidential acts;

    - iii) to establish articulation with the ministries and respective juridical advising services, or equivalent bodies, on subjects of legal nature;

    - iv) to examine the legal foundations and forms of the acts proposed to the President, and to send them back to the generating bodies in case of disagreement with the effective norms;

    - v) to carry out studies and diligences as for the legality of the acts, projects, processes, and other documents, issuing reports;

    - vi) to monitor de elaboration of projects and normative rules by the Executive;

    - vii) to give legal advice to the bodies of the Presidency of the Republic.

- *Office of Articulation and Monitoring (Subchefia de Articulação e Monitoramento)*. This body is mainly responsible for the evaluation and monitoring of governmental action. It is currently in charge of evaluating and monitoring the Programme for Accelerated Growth (*Programa de Aceleração do Crecimento*) which intends to increase investment in infrastructure, stimulating different economic sectors in several Brazilian regions.

- *Ministry of Justice* (*Ministério da Justiça*). The Ministry of Justice is responsible, among others, for defending the legal order, the political rights and constitutional guarantees, as well as the economic order and consumer rights. Two institutions work on these issues:

  - *Secretary of Economic Law* (*Secretaria de Direito Econômico - SDE*).[18] This institution is responsible for formulating and co-ordinating policies in the area of competition (Department of Economic Protection and Defence – *Departamento de Proteção e Defesa Econômica*) and consumer protection (Department of Consumer Protection and Defence – *Departamento de Proteção e Defesa do Consumidor*). It is in charge of overseeing free competition in the Brazilian market, preventing infringements and controlling those economic activities that could lead to abuse of dominance. It performs investigative functions and some preliminary enforcement functions. It is also responsible for planning, elaborating and executing a National Policy for Consumer Protection, promoting activities and disseminating information on consumer rights.

  - *Secretary of Legal Affairs (Secretaria de Assuntos Legislativos)*. This body is divided in two different departments: The Department of Legal Drafting (*Departamento de Elaboração Normativa*) and the Department of Legal Process (*Departamento do Processo Legislativo*). The main responsibilities of these institutions are to co-ordinate the legal opinions of all legal acts presented by the Ministry of Justice to the President of the Republic, to oversee their constitutionality and to contribute to the consolidation and good drafting of all legal acts.

- *Ministry of Planning, Budget and Administration* (*Ministério do Planejamento, Orçamento e Gestão*). This Ministry is in charge, among others, of the evaluation of socio-economic impacts of policies and government programmes at federal level. It also participates in the elaboration of special analyses to formulate public policies.

  - *Secretariat for Management (Secretaria de Gestão – SEGES).* This institution has the authority to simplify and optimize the internal regulations and processes of bodies and entities of the federal public administration, as well as to co-ordinate the implementation of plans to regulate and deregulate their activities.

- *Ministry of Finance* (*Ministério da Fazenda*). This is the institution dealing with the formulation and the execution of the economic policy in Brazil. The Ministry, through one of its bodies, deals with regulatory issues, mainly concerning regulatory agencies:

  - *Secretariat for Economic Monitoring (Secretaria de Acompanhamento Econômico – SEAE).* It is responsible for monitoring the implementation of the regulation and management models developed by regulatory agencies, sectoral ministries, and other similar bodies, issuing opinions, whenever deemed necessary or requested on, among others:

    - i) adjustments and revisions of utility rates and public prices;

- ii) bidding processes that involve the privatisation of companies belonging to the Union, aiming at guaranteeing maximum conditions of competition, analysing the rules for setting initial rates of utilities and public prices, as well as parametric formulas of adjustments and the conditions that affect the revision processes; and

- iii) market evolution, especially in case of utilities subject to the privatisation processes and on administrative decentralisation, to recommend the adoption of measures that stimulate competition and economic efficiency in the production of goods and in service delivery. The Secretariat also has the authority to co-ordinate the implementation of plans to regulate and deregulate the activity of bodies and entities of the federal public administration.

- *Federal General Attorney* (*Advocacia-Geral da União - AGU*). Besides being the legal representative of the Executive branch, the Federal Attorney has an important function in providing legal assistance and consultancy to the federal bodies of the Executive branch. A legal advisory office of the Federal General Attorney is adjudicated to the different ministries and sectoral institutions of the federal administration. The main responsibilities are:

  - i) to advise the State Minister in matters of juridical nature;

  - ii) to exercise the co-ordination of the activities of the juridical bodies of the entities connected with the Ministry;

  - iii) to define the interpretation of the Constitution, laws, treaties, and other normative rules to be uniformly followed in their areas of actuation and co-ordination, when there is no normative orientation from the Federal General Attorney;

  - iv) to support the State Minister in the internal control of the administrative legality of the acts to be performed by him/her or that have already been performed, and of those originated in bodies or entities under his/her juridical co-ordination.

- *Federal General Comptroller* (*Controladoria Geral da União – CGU*). This institution is responsible for supporting the President of the Republic in issues related to the use of public funds and the increase of transparency in management and performance through internal control, auditing, prevention and fighting corruption. The CGU makes regular performance and management evaluations of regulatory authorities.

- *Administrative Council for Economic Defence (Conselho Administrativo de Defesa Econômica – CADE).*[19] CADE is an independent federal agency, associated with the Ministry of Justice for budgetary purposes. CADE's role in competition law enforcement is to adjudicate alleged violations of the law and to impose appropriate remedies and fines.

36. In the Legislative branch, the Brazilian Parliament also has an important role in promoting regulatory quality. Law proposals are discussed at different stages of the process and specialised commissions are in charge of revising their legality and proportionality. The Commission of Constitution and Justice and of Citizenship (*Comissão de Constituição e Justiça e de Cidadania*) is responsible for looking at constitutional and legal aspects, as well as legal technique of law proposals and amendments sent to the Chamber of Deputies and its Commissions. The Group for Legal Consolidation of the Chamber of Deputies is in charge of different measures tending to improve the quality of regulations, such as identification of obsolete legislation, revocation of laws no longer in force and those in contradiction with the Federal Constitution, and consolidation and codification by topic.

2.2.1. Promoting regulatory quality with a 'whole-of-government' approach

37. The discussion about the institutional setting for regulatory quality in Brazil has been mainly guided by concerns on sectoral issues, especially focused on the institutional design of regulatory agencies. Even if this has been a constant in the political debate, the dialogue between core institutions at the centre of government and regulatory agencies remained more limited, in particular in the early years of the deregulation and privatisation process. This has led to a fragmentation of the process "strongly driven by the conceptions of the ministries and by the bureaucracy of each sector, and not by a general directive guideline, which impacted the formal and operation of the agencies that were created".[20] The fragmented approach to regulatory reform so far has resulted in sub-optimal outcomes, with a lack of policy coherence.

38. As a result, most of the debate has been concentrated on the design of regulatory agencies, putting less attention to the need to integrate a "whole-of-government" approach for regulatory quality, which could envisage the set up of an oversight body responsible for regulatory reform (see Box 7).

Box 7. Central oversight bodies for regulatory quality: the 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).

Note: See table on regulatory oversight bodies across OECD countries in Annex II.

39. It is only recently that the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG), supported by the Decree number 6 062, from 16 March 2007, envisages, as one of its key components, the conception and set-up of a Unit of Co-ordination, Monitoring, and Evaluation of Regulatory Issues in the Executive branch. This Unit, on a par with its peers in other OECD countries, would be responsible for improving regulatory quality inside the Brazilian administration and would be supported by a collegial independent body, composed by government representatives, businesses, academics, consumer associations and other stakeholders, that would support and provide advice to the federal government on regulatory issues and good practices.

40. According to the Programme for the Strengthening of the Institutional Capacity for Regulatory Management, such a Unit would be responsible for the following issues:

- Design and implementation of a government network for regulatory quality, composed by officials from Ministries, agencies and academia, and in charge of data bases and information on regulatory issues.
- Design of a strategy to introduce Regulatory Impact Analysis (RIA) as a tool to improve regulatory quality.

- Development of management tools to build consensus and agreements on strategic objectives of sectoral policies, to support the role of regulatory agencies and to ensure their financial autonomy.

- Technical assistance to implement those tools and training for government officials from Ministries and agencies.

Box 8. Oversight bodies in OECD countries: some examples of key functions

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.

Co-ordination and advisory role

In **Korea** a Regulatory Reform Committee has been set up by law with a "general mandate to develop and co-ordinate regulatory policy and to review and approve regulations." Its main functions are to give some strategic perspective in the regulatory reforms, to undertake research, to monitor improvement efforts of each agency and to make sure there is coherence between their actions. The Prime Minister, a significant group of experts and six Ministers participate in this body, and it is one of the cases where more power has been given to this kind of institution, multiplying the 'engine of reform' effect.

The "challenge" function

In the **United Kingdom** there were changes in the regulatory reform framework since the approval of Budget 2005. The Better Regulation Task Force was replaced by the Better Regulation Commission (BRC) to provide independent advice to government, from business and other external stakeholders, about new regulatory proposals and about the Government's overall regulatory performance. The Commission will continue the challenge role carried out by the Better Regulation Task Force, as well as take on new responsibilities following the announcements in Budget 2005, including vetting departmental plans for simplification and administrative burden reduction.

Australia's Office of Best Practice Regulation (OBPR) is located within the Productivity Commission, which was established in 1998 as the Government's principal advisory body on all aspects of microeconomic reform. The OBPR vets and reviews draft regulations to ensure that they are properly formulated and that they include assessments of, among others, administrative compliance.

Advocacy and support to regulators

In **Japan**, the Administrative Evaluation Bureau promotes the appropriate implementation of policy assessments by regulators, and co-ordinates and publishes reports on the progress of the implementation of policy evaluations. At the same time it provides government-wide training in regulatory policy evaluation.

In **Mexico**, one of the primary and permanent responsibilities of COFEMER (Federal Regulatory Improvement Commission) is to organise training seminars on Regulatory Impact Analysis. From October 2001 to February 2004, COFEMER chaired 33 seminars, attended by more than 740 public employees. The objectives of the seminars were: to teach public servants how to put together a RIA and how to use online RIA systems; to improve the relationship and communications between COFEMER and public servants in charge of regulatory proposals; to develop skills in quantifying the effects of regulation and of regulatory and non-regulatory alternatives; to disseminate knowledge about RIA, and to clarify the review criteria that COFEMER employs.

Note: See table on regulatory oversight bodies across OECD countries in Annex II.

Source: OECD (2006), *Background Document on Oversight Bodies for Regulatory Reform*, Paris. Available at: *www.oecd.org/dataoecd/4/41/36785272.pdf*

2.3. Co-ordination between levels of government

41. 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 are characteristically 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.

42. Brazil is a Federal Republic characterised by important regional differences. Some states have per capita incomes above those found in some European economies, while other states rank amongst the world's poorest regions. The economic disparities already strong between the North and the South seem to be more acute in a country that has many small municipalities with limited administrative capacities.[21] The long existing debate between centralism and decentralisation came to an end with the promulgation of the Federal Constitution in 1988, in which different levels of government were granted with extensive powers.[22] This legal division of responsibilities and powers is confronted, in practical terms, to the way public policies are implemented between the different levels of government and the co-ordination mechanisms established for such purposes.

43. According to Article 18 of the Federal Constitution, the political and administrative organisation of the Federative Republic of Brazil comprises the Union, the States, the Federal District and the Municipalities, all of them autonomous. The federalism is protected by the Constitution, which forbids any way of amendment that could abolish this form of state (Article 60, § 4º, I). The Federal Constitution established powers and competencies to the different political entities: the Union, the states, municipalities and the Federal District, all of them assigned with political, administrative and tax autonomy.

44. In terms of regulatory powers for different levels of government, the Constitution establishes:

- i) exclusive powers to the Union (Article 22);
- ii) common powers between the Union, the states and the Federal District (Article 23); and
- iii) concurrent powers between the Union, the states and the Federal District (Article 24).

45. Within the scope of concurrent legislation, the competence of the Union is limited to the establishment of general rules and the competence of the Union to legislate upon general rules does not exclude the supplementary competence of the states. If there is no federal law or general rules, the states exercise full legislative competence. Municipalities have also the right to legislate upon matters of local interest and supplement federal and state legislation when pertinent (Article 30).

46. This division of responsibilities is not without conflict. In particular, common responsibilities, understood as those areas in which a joint action from different entities (Union, states or municipalities) should be envisaged to put in practice fundamental social policies, are difficult to implement. According to the Constitution, a supplementary law shall establish ways of co-operation between the Union, the states, the Federal District and municipalities. This has not been issued for each one of the different policy fields, creating legal uncertainty on the action of the different levels of government. There are, however, positive examples of co-operation between levels of government in different common policy areas, such as health.[23] In some cases, federal regulatory authorities also co-operate with state regulatory authorities for enforcement and supervision, such as ANTT and ANEEL.

47. In some economic sectors, responsibilities and competencies for each one of the political entities involved are not always clearly defined, which creates ambiguities and reduces the effectiveness of the appropriate government action. Issues of concern for the better functioning of the federal system concerning regulatory powers in Brazil are:

- the limits of the legal competency of the Union, in particular for concurrent powers, to establish general norms;

- the legislative and regulatory competence of the Union and its relationship with the other federal entities;

Box 9. Institutional forms of co-ordination mechanisms across levels of government in OECD countries

In **Spain** the relations between the central government (General State Administration) and the Autonomous Communities are based on the essential principle of co-operation between public administrations. This co-operation is implemented by a series of instruments, such as administrative agreements, sectional conferences and bilateral co-operation commissions, as well as various bodies that debate and take decisions on important issues concerning all public administrations.

Canada has an extensive set of institutional arrangements for managing between federal and provincial governments. Central to this are the "First Ministers' Meetings", which are called by the Prime Minister as the need arises, rather than according to a set timetable. These meetings constitute a forum for promoting inter-jurisdictional co-operation and a substantial number of inter-governmental agreements have been signed at such meetings, many of which are related to regulatory harmonisation and co-operation.

In **Switzerland**, 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: a) *Conferences of Cantonal Directors*, composed by the directors of the 26 cantons in 13 policy areas, serving to two purposes: i) co-ordination between the cantons and ii) 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; b) *Conference of Cantonal Governments*, created in 1993, 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); c) *Federal Dialogue,* is a forum in which a delegation of the Federal Council and a delegation of the "Conference of cantonal governments" biannually discuss questions and projects of overall importance; d) *Tripartite Agglomeration Conference* assembles representatives at the federal, cantonal and municipal level. It serves to streamline policies for the metropolitan areas and urban centers of Switzerland.

In **Italy**, the new constitutional balance of powers among different levels of government resulted from the 2001 constitutional amendments, co-ordination mechanisms have a fundamental role to regulate the relationship between national, regional and local levels. The main mechanism in Italy for this purpose is the so called "Conference" system, based on three specific co-ordination bodies: 1) the *Conference of State – Regions*; 2) the *Conference of State – Municipalities and other Local Authorities*, and 3) the *Unified Conference of State – Regions – Municipalities and Local Authorities*. The three Conferences are held in the Prime Minister's Office and constitute the most important co-operation instrument to co-ordinate the different levels of government. A law proposal presented in December 2006 aiming at unifying the three Conferences into one institutional body is pending in Parliament.

48. The quality of regulation at sub-national level is also linked to the capacities inside different levels of governments to respond to changing environments and to produce laws and regulations following quality standards. States and municipalities produce also laws and regulations that are not systematically subject to quality controls, even if major differences exist between more developed entities than others. This also exacerbates a tendency to litigation between different levels of government, an issue which is not unique to Brazil. Conflicts between federal and state laws are frequent and have to be solved through judiciary review, not only because of the uncertainty of the level of competence, but also because of a poor drafting, and the complexity and deficiencies of the legal system.[24]

49. Even if co-ordination mechanisms between institutions at different levels of government exist, they are not frequently exercised, due to the division of powers established by the Constitution. The case of regulatory agencies at sub-national level is paradigmatic. The decentralisation and privatisation process, as well as the divergences between the Union and States have led to the creation of a large number of regulatory agencies at state and municipal level (see Annex I).[25] This has created a situation in which there are competing authorities, exclusive authorities and complementing authorities. Sub-national agencies have been created, in most cases, only after the privatisation of the service took place, which has reduced the consolidation of their governance structures. These agencies, contrast to what happens at national level, tend to be multi-sectoral: 56.5% of them regulate different services and are not specialised.[26] Therefore, they tend to be more similar to the US Public Utilities Commissions.

3. Administrative capacities for making new regulations

50. 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

51. Transparency of the regulatory system is essential to 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, and codification. Transparency thus serves to make rules easy to understand and contributes the implementation and appeals processes being predictable and consistent.

3.1.1. Transparency of procedures for making new laws and regulations

52. 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.

53. In the Brazilian system, law proposals that require presidential sanction must be submitted to the analysis of the Civil House, which should follow the requirements established in Decree No. 4 176 from 28 March, 2002 (see Section 2.1), which establishes norms and guidelines for the elaboration, wording, consolidation and preparation for the normative acts of authority of the bodies of the Federal Executive branch.

54. Concerning administrative procedures, there is no standardisation for the elaboration of new regulatory acts foreseen by specific laws. Infra-legal level of regulations (ordinances, resolutions, etc.) is developed under the sole responsibility of the concerned body.

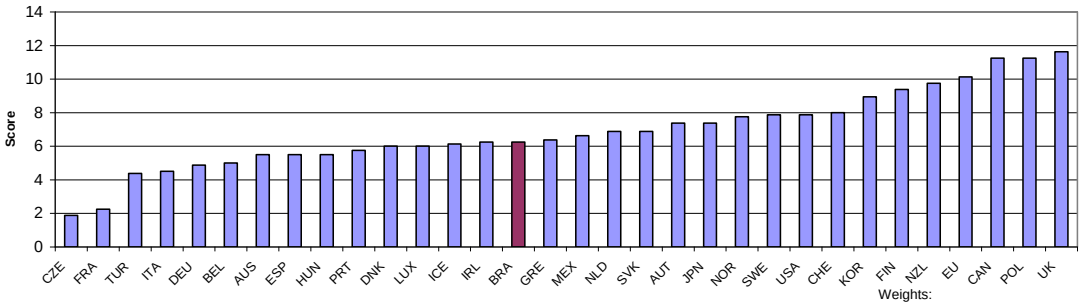
3.1.2. Transparency as dialogue with affected groups: use of public consultation

55. Public consultation gives citizens and businesses the opportunity to make a contribution 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 important, 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 law-making process

56. Consultation with affected parties is not compulsory in Brazil, but in general every draft of regulatory act that has an important impact on consumers or users is submitted to consultation and/or public hearing. The objective of this procedure is to get useful information for the decision-making, better understanding of relevant aspects of the issue to be regulated and to give publicity to the regulatory act.

Figure 2. Quality of consultation process



	Weights:
a) Is public consultation with parties affected by regulations a routine part of developing draft primary laws?	if no=0, in some cases=0.5, always=1
b) Is public consultation with parties affected by regulations a routine part of developing draft subordinate regulations?	if no=0, in some cases=0.5, always=1
If the answer is "always" or "in some cases" to a) or b): Primary laws b(i) Is consultation mandatory?	if yes, weight=0.5
If the answer is "always" or "in some cases" to a) or b): Subordinate regulation b(i) Is consultation mandatory?	if yes, weight=0.5
b(ii) What forms of public consultation are routinely used: Primary laws & Subordinate regulation - Informal consultation with selected groups? - Broad circulation of proposals for comment? - Public notice and comment? - Public meeting? - Internet? - Advisory group? - Preparatory public commission/committee? - Other?	if ticked, weight=0, 0.25, 0.5, 0.25, 0.25, 0.25, 0.25, 0.125
b(iii) Can any member of the public choose to participate in the consultation? Primary laws & Subordinate regulation	if yes, weight=0.5
c(i) What is the minimum period for allowing consultation comments inside government?	c(i) if 1 week=0.125, 2 weeks=0.25, 3 weeks=0.375, 4 weeks=0.5
c(ii) What is the minimum period for allowing consultation comments by the public, including citizens and business?	c(ii) if 2 weeks=0.125, 3 weeks=0.25, 4 weeks=0.375, 6 weeks=0.5, 8 weeks=0.375, 12 weeks=0.25
d(i) Are the views of participants in the consultation process made public? Primary laws & Subordinate regulation	until end, if yes, weight=0.5 except d(ii)
d(ii) Are regulators required to respond in writing to the authors of consultation comments? Primary laws & Subordinate regulation	
d(iii) Are the views expressed in the consultation process included in the regulatory impact analysis? Primary laws & Subordinate regulation	
d(iv) Is there a process to monitor the quality of the consultation process? (e.g. surveys or other methods, please specify in comments) Primary laws & Subordinate regulation	

Note: The relevant chart is intended to illustrate, with a two year lag, the general position of regulatory quality management systems in Brazil relative to OECD member countries. It is based on comparing the responses that were received from Brazil in 2007 to a questionnaire on indicators on regulatory quality management systems with the responses provided by OECD member countries in 2005. In the current chart, a higher score means that consultation processes are more formally structured and should in theory offer more opportunities for input. The current position of OECD countries may have changed in the intervening period.

Source: Jacobzone, S., G. Bounds, Ch.-W Choi, C. Miguet (2007), *Regulatory management systems across OECD countries: indicators of recent achievements and challenges*, OECD Working Papers on Public Governance, No. 4.

57. The Decree No. 4 176 from 2002 establishes that it is the responsibility of the Civil House of the Presidency of the Republic to decide about the promotion of wide awareness of the basic text of the project of normative acts of special political and social relevance, by putting the law proposal on the web site (*www.planalto.gov.br/ccivil_03/Consulta_Publica/consulta.htm*) or by holding public hearings, always with the objective of receiving suggestions from bodies, entities or people.[27] However, the Civil House only participates in the actions that come under the authority of the President of the Republic (provisional measures, laws, and decrees). Overall, when assessed against the general background of consultation practices in OECD countries, Brazil appears to be close to the OECD average in terms of formal provisions for consultation, on a par with countries such as Greece, Mexico, Portugal or Denmark. However, the size of the country and its multiple economic centers, reinforce the challenge of consultation and co-ordination.

Forward planning

58. 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. A number of OECD countries have established mechanisms for publishing details of the regulation they plan to prepare in the future.

59. Brazil does not have a consolidated process or document that indicates the most important regulatory actions that the Executive power intends to issue, whether at the level of the central administration or at the level of regulatory agencies. The information containing current proposals of different legal instruments made by the Executive is available for information in a web site maintained by the Office of Legal Affairs of the Civil House:
www.planalto.gov.br/ccivil_03/Projetos/Quadros/principal2003.htm

3.1.3. Transparency in the implementation of regulation: communication

60. 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.

61. According to Article 5 of the Constitution on fundamental rights and guarantees, access to information is ensured to everyone and the confidentiality of the source shall be safeguarded. Article 37 of the Federal Constitution establishes that "the direct and indirect public administration of any of the branches of the Union, States, Federal District, and Municipal Districts shall obey the principles of legality, impersonality, morality, publicity and efficiency, among others".

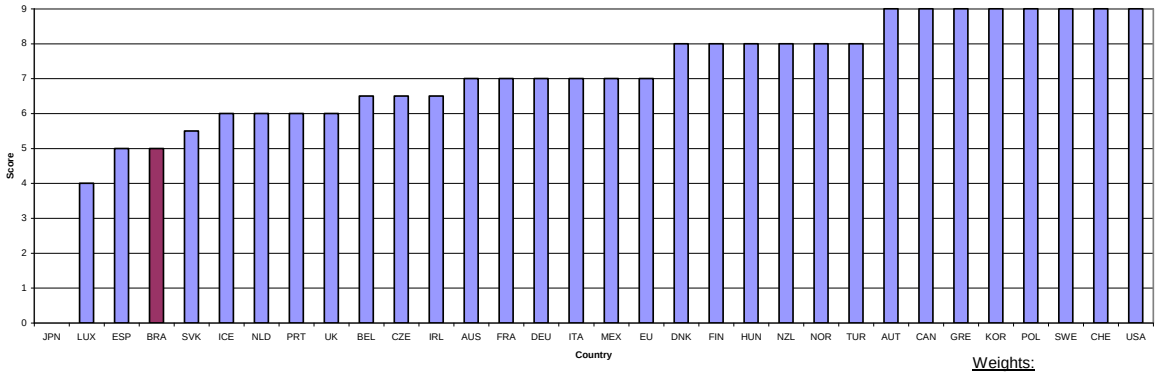
62. Due to this provision, several laws call for the publication and communication of the decisions and acts of public authorities. Among them, Law No. 9 784/1999 (Law of the Administrative Process, see Section 2.1.) is relevant, establishing that "in the administrative processes, there shall be the following, *inter alia*, of the criteria of (…) official publication of administrative acts, except in the case of the hypothesis of confidentiality established in the Constitution".

63. The National Printing Office (*Imprensa Nacional*) publishes since 1862 the official gazette (*Diário Oficial*,), in which are included all administrative acts by the Brazilian government. The electronic version (*www.in.gov.br/imprensa/jsp/destaque.jsp*) is available since 1994 and it contains three different sections: i) publication of laws, decrees, resolutions, normative instructions and other legal acts; ii) publication of acts of interest for civil servants; and iii) publication of contracts and other public announcements.

64. Concerning dissemination of the legal framework, there are several web sites (Presidency of the Republic *www.presidencia.gov.br*, the Brazilian Parliament *www.camara.gov.br* and the Brazilian Senate *www.senado.gov.br*) with databases that cover the whole federal administration. The government has put in place a database (*base da legislação federal*) available at the following address: *www.presidencia.gov.br/legislacao*, containing all normative acts of high hierarchy since the proclamation of the Republic in 1889. It is responsibility of the Office for Legal Affairs of the Civil House to up-date it regularly.

65. The Secretary for Legal Affairs of the Ministry of Justice is establishing Sisnorma (*Sistema de Acompanhamento de Normas*), a system that makes available the heritage of the Legal Documentation Co-ordination (*Coordenação de Documentação Legislativa, CDL*), which is composed by around three million documents and 370 000 reference files. The system contains all constitutional amendments, supplementary laws, provisional measures, legislative and presidential decrees, ordinary laws with their respective discussions in the National Congress, indicating the proposed changes, revocations and codification. Sisnorma is available at: *http://sisnorma.mj.gov.br*.

Figure 3. Transparency and easy access to regulations



	Weights:
Are there systematic procedures for making regulations known and accessible to affected parties?	if yes, weight=2
If the answer is "yes", which of the following measures are employed: Codification of primary laws?	if yes, weight=1
If "yes": Is there a mechanism for regular updating of the codes? (at least yearly basis)	if yes, weight=1
If the answer is "yes", which of the following measures are employed: Publication of a consolidated register of all subordinate regulations currently in force?	if yes, weight=1
If "yes": Is there a provision that only subordinate regulations in the registry are enforceable?	if yes, weight=1
If the answer is "yes", which of the following measures are employed: Public access via the Internet to the text of all or most primary laws?	if yes, weight=1
If the answer is "yes", which of the following measures are employed: Public access via the Internet to the text of all or most subordinate regulation?	if yes, weight=1
If the answer is "yes", which of the following measures are employed: A general policy requiring "plain language" drafting of regulation?	if yes, weight=0.5
If "yes": Is guidance on plain language drafting issued?	if yes, weight=0.5

Note: The relevant chart is intended to illustrate, with a two year lag, the general position of regulatory quality management systems in Brazil relative to OECD member countries. It is based on comparing the responses that were received from Brazil in 2007 to a questionnaire on indicators on regulatory quality management systems with the responses provided by OECD member countries in 2005. In the current chart, a higher score means that more mechanisms are in place to ensure transparency and easy access to regulation. The current position of OECD countries may have changed in the intervening period.

Source: Jacobzone, S., G. Bounds, Ch.-W Choi, C. Miguet (2007), *Regulatory management systems across OECD countries: indicators of recent achievements and challenges*, OECD Working Papers on Public Governance, No. 4.

66. However, contrary to some European countries, such as France with the Commission for Access to Administrative Documents (*Commission d'Accès aux documents administratifs, CADA*), or to Mexico

with the Federal Institute for Access to Information (*Instituto Federal de Acceso a la Información Pública, IFAI*), Brazil has not felt until now the need to create a specific federal authority in charge of transparency. On the whole, practices towards transparency and access to regulations appeared less developed than in most OECD countries in 2005. For example, the consolidation of all the sub legal regulations remains unfinished. Similarly, there are no provisions that only the official regulations mentioned in public registries are enforceable, as well as a lack of systematic codification and update.

Plain language

67. The Decree No. 4 176 of 28 March 2002 contains norms establishing that the dispositions of normative texts should be written with clarity, accuracy, and logical order. To enhance clarity, words and expressions in common use should be preferred, unless the topic corresponds to a technical matter. Sentences should be clear and precise, avoiding redundancies and neologisms. Accuracy can be reached by using a simple language that expresses the intended objectives, the content and the scope of the normative act. Instructions on how to get the logical order of a law are also stipulated.

68. The Manual for Drafting of the Presidency of the Republic constituted the first attempt by the government to start the set-up and standardisation of the editing rules for acts and official communications, simplifying the administrative language. The Manual has been followed by all the organs that compose the Brazilian public administration, standardising the language and the structure of the official communications and the normative acts enacted in the federal executive, providing both a style code and a legislative drafting manual.

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

69. 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 of appeal 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, as mentioned in the OECD 2005 Guiding Principles for Regulatory Quality and Performance.

Compliance and enforcement

70. In Brazil there is no specific policy to assess the possibility of compliance with regulations. In OECD countries, *ex ante* assessment of compliance is increasingly a part of the regulatory process, although the level of resources and attention focused on it varies significantly (see Box 10).

Box 10. 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 structured 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.

71. Compliance problems in Brazil are inevitable, as authorities and institutions sometimes lack precise definition of the functions and responsibilities during the regulatory process and co-ordination among bodies and levels of government is missing.[28] The limited analysis of the impact of regulations cannot be used as empirical evidence about the way citizens and business could cope with the effects of the proposed law or regulations. Effective checks on the application of regulations are not systematically undertaken.

72. Government capacity to apply and enforce regulations can also be supported by the knowledge and understanding of the regulatory requirements imposed to businesses and citizens, as well as the willingness to comply with them. In Brazil, however, legal and institutional uncertainty is sometimes generated by conflicts and unco-ordinated behaviour. Informality in the economy also imposes compliance and enforcement constraints for government action.

73. Compliance is facilitated by different ways of supervision and control. One of the responsibilities of the Federal General Attorney (*Advocacia-Geral da União, AGU*) is to minimise the risk of complaints by making a legal control of law proposals *ex ante*. This institution also contributes, as the legal representative of the Executive power, to conciliation. Recent initiatives envisage creating a body responsible for conciliation which could support the *ex ante* analysis of legal and constitutional issues.

74. The bodies and entities of the federal Executive branch, subject to accountability and responsibility, should provide a management report to the Federal Court of Accounts (*Tribunal de Contas da União, TCU*), together with an auditing certificate, an opinion from the internal control body and the statement of the State Minister supervising the area on a regular basis. The institution has to make it public after thirty days of its delivery. The TCU, which is accountable to the Federal Parliament, has also accomplished several comprehensive operational audits of public policies. Those audits evaluate the government capacity to reach results as a whole and the public policies during formulation and drafting. The TCU has been critical in those reports, showing that sometimes results are neither achieved nor justified. The Federal General Comptroller (*Controladoria-Geral da União, CGU*), as part of its responsibilities for auditing and comptroller, has recently made assessments of regulatory agencies on the quantitative and qualitative management results in relation to the efficiency to comply with their objectives.

The Public Prosecutor

75. The Public Prosecutor *(Ministério Público, MP)* in Brazil is an extremely active watchdog of the actions of other political actors. The Brazilian Public Prosecutor is not only responsible for prosecuting, in the name of the State, those who commit crimes. Due to changes that began in 1985 when a legal instrument known as the "public civil suit" (*ação civil pública*) was created, the Public Prosecutor has taken an additional role: it can take to court any person or entity doing harm to the environment, consumer rights, or the artistic, cultural, historical, tourist and landscape patrimony of the nation. These public civil suits can be initiated by states, municipalities, public companies and civil society, but in practice it is the Public Prosecutor that takes the initiative or is invoked to do so.

76. With the 1988 Constitution, the scope of these public civil suits was amplified by stating that it is the institutional role of the Public Prosecutor to "promote civil inquiries and public civil suits for the protection of public and social patrimony, or the environment and of other diffuse and collective interests" (Article 129-III). With this decision, the Constitution established that issues of political nature could be also brought into the judicial arena.[29] The Constitution also granted this institution the instruments to carry out its role: autonomy in terms of isolation from interference and in terms of budget; resources such as highly competitive salaries for its staff and powerful legal and judicial instruments such as the capacity to impose fines or to ask for free advice from the police or other governmental organisation to investigate on

a given issue. This has contributed to make the Public Prosecutor a body that actively participates in policy-making: the possibility to act as "the advocate of society" goes to defend many diffuse and collective interests, impacting on checks it makes to other political actors, through constraining political action, but also serving as arbitrators, mediators, co-ordination mechanisms and notaries. The public prosecutors also play an important role in ensuring consumer protection, including in the regulated sectors.

The Brazilian system of Ombudsmen

77. In Brazil, the function of the ombudsman (*ouvidor*) can be found in the constitutional principles by which the direct or indirect public administration shall obey the principles of lawfulness, impersonality, morality, publicity and efficiency (Article 37). *Ouvidor* is a professional that is present in almost all public and private entities in Brazil. The main function of the *ouvidor* is to defend citizens whose rights were damaged or threatened by acts from the public administration. Any citizen has the right to present a direct complaint to the *ouvidor*, orally or in written form. The *ouvidor* has no decision power; his/her work is based on persuasion methods and recommendations to reformulate decisions in case they have been against the client and user.

78. These are the same orientations that guide the General Ombudsman of the Republic (*Ouvidoria Geral da República*), an institution that is linked to the General Comptroller of the Union (*Controladoria-Geral da União, CGU*). It is responsible for getting, revising and forwarding any complaint, suggestion and praise related to the procedures and actions of agents, agencies or entities of the federal Executive. The General Ombudsman is also competent to co-ordinate all other *ouvidorias* across agencies of the federal government and to produce quantified data and an annual report[30] on the user's level of satisfaction of public services offered by the public administration.

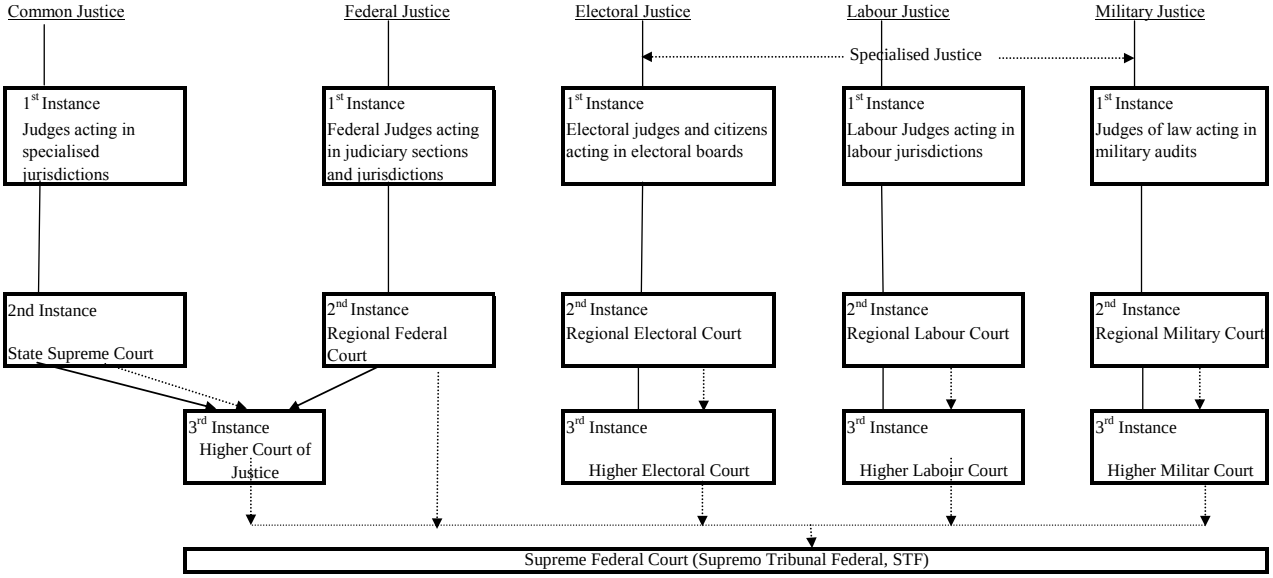
Public redress and appeals

79. A sound regulatory system requires clear, fair and efficient procedures to appeal administrative decisions based on a regulation as well as the regulation itself.

80. The Federal Constitution, in Article 5, establishes that "no one shall be deprived of freedom or of his/her assets without the due process of law; (that) everybody, within the legal and administrative sphere, is ensured the reasonable duration of the process and the means that guarantee the celerity of its procedure, (and that) litigants, in judicial or administrative processes, as well as defendants in general, are ensured of the adversary system and of full defence with the means and resources inherent to it".

81. The Brazilian judiciary is divided into federal and state court systems (see Figure 4), each having a different jurisdiction. The prerogatives and duties of judges are the same, the differences being only in the competences, structure and composition of the Courts. Both systems are subordinated to the Supreme Federal Court (*Supremo Tribunal Federal, STF*), which is the court of last instance in cases involving constitutional law. The federal system is composed by courts of appeals and, at the first instance, superior courts. Each state has its own constitution and establishes its own judiciary, and each has a court of appeals and courts of first instance. Federal courts only have jurisdiction over commercial cases that involve the government.

Figure 4. The Judicial system in Brazil



82. The Brazilian Judicial branch is composed by the Supreme Federal Court, the Higher Court of Justice, the Federal Regional Courts and Federal Judges, the Labour Courts and Judges, the Electoral Courts and Judges, the Military Courts and Judges, and the Courts and Judges of the States and of the Federal District. The jurisdictions of the Supreme Federal Court, the Higher Court of Justice, and the Higher Courts cover the entire territory.

Box 11. Appeal procedures in Brazil

The Brazilian system of appeals functions in the following way: In first instance, cases are heard by federal or states judges, who act in forums, judiciary sections or specialised jurisdictions (*varas*). The country is divided into judicial districts named *comarcas*, which are composed of one or more cities. Each *comarca* has at least one court of first instance. There are specialized courts of first instance for family litigation or bankruptcy in some cities and states. Judgments from theses district courts can be the subject of judicial review following appeals to the courts of second instance. Judgments of courts of first instance are usually made by only one judge. The Brazilian judiciary system uses jury trials only for judging crimes against the person.

The sentences can then be appealed to the respective Regional Court: the States Supreme Courts or Regional Federal Courts. Each state has a State Supreme Court (*Tribunal de Justiça—TJ*) where the governor, with approval by the State Assembly (*Assembléia do Estado*), appoints the judges to the court. This court has the prerogative of appointing special state circuit judges to deal with agrarian problems. In addition, it is responsible for organising and supervising the lower state courts.

Concerning the federal judicial branch, the national territory is divided into five regions, which are composed of one or more states. Each region is divided in Judiciary Sections (*seções judiciárias*) with a territory that may not correspond to the states' *comarcas*. The “judiciary sections” have federal courts of first instance and each region has a Federal Regional Court (*Tribunal Regional Federal*) as a court of second instance. The five Federal Regional Courts - Recife, Brasília, Rio de Janeiro, São Paulo, and Porto Alegre — were created by the 1988 constitution. Each Federal Regional Court must have at least six judges, appointed by the president and approved by the Senate.

In addition to the regular civil court system, Brazil's judicial system has a series of special courts, covering areas such as military, labour, and electoral affairs. In cases concerning these matters, the appeal of a first instance decision is heard in the specialised Regional Court: Regional Electoral Court (*Tribunal Regional Eleitoral, TRE*), Regional Labour Courts (*Tribunal Regionais do Trabalho, TRT*) and Military Justice Court (*Tribunal de Justiça Militar, TJM*).

Sentences can be appealed in the third instance courts. The Higher Court of Justice (*Superior Tribunal de Justiça, STJ*) is the Brazilian highest court in non-constitutional issues and grants a special appeal (*recurso especial*) when a judgement of a court of second instance offends the federal statute disposition or when two or more second instance courts make different rulings on the same federal statute. There are parallel courts for labour law, electoral law and military law: the Higher Electoral Court (*Tribunal Superior Eleitoral, TSE*), the Higher Labour Court (*Tribunal Superior do Trabalho, TST*), and the Higher Military Court (*Superior Tribunal Militar, STM*). These courts do not analyse any factual questions in their judgements, but only the application of the law and the constitution. Facts and evidences are judged by the courts of second instance.

The Supreme Federal Court (*Supremo Tribunal Federal, STF*) grants extraordinary appeals (*recurso extraordinário*) when judgements of second instance courts violate the constitution. The STF is the last instance for the writ of habeas corpus and for reviews of judgements from the STJ and is the only Federal Court responsible for making the concentrated control of constitutionality.

Administrative appeals

83. Law No. 9 784 from January 1999 regulates the administrative procedures of the federal public administration and establishes basic norms about the administrative procedures within the federal administration, aiming at protecting the rights of those who are administered and the better compliance with the objectives of the administration. The claimants who can log an administrative appeal are the following: those entitled with rights and interests and who are part of the process; those whose rights and interests were indirectly affected by the decision; organisations or representative associations, related to collective rights and interests; and citizens or associations, in terms of diffuse rights or interests. Administrative appeals can be logged ten days after the decision was taken and the delay for an action should not exceed thirty days. In case of non-action, the affected parties can appeal the decision up to three administrative instances. The administrative appeal has no suspension effect.

The Judiciary and regulatory quality

84. The role of the judiciary is essential for regulatory quality control and better economic performance. The effectiveness of the process arises from the ability of the judiciary to consider regulations' consistency with principles of constitutionality, including notably proportionality and the right to be heard. It also arises from courts' scrutiny of whether delegated legislation is fully consistent with primary legislation.

85. In Brazil, the liberalisation of economic sectors and the privatisation of former state-owned companies brought new responsibilities for the judicial branch, mainly to guarantee property rights and to make stakeholders and the State comply with contracts. The situation has led to an increase in caseloads, which has made evident the need to reform the judiciary system, in order to make it more efficient and diligent. Two of the main concerns facing Brazil's legal system are a lack of public confidence and slow processing times (see Tables 2 and 3).

Table 2. Public confidence in the judicial system

Why is it not worth to look for justice?	Agrees (%)
Justice is slow	39.8
Justice does not work	29.1
Justice is not trustworthy	22.3
Justice is expensive	4.4
Others	4.4

Source: Centro de Pesquisa de Opinão Pública DATAUnB (2005), *Pesquisa de Imagem do Judiciário junto a População Brasileira*, 13º Relatório de Atividades, Universidade de Brasília, Brasilia, October, p. 13

Table 3. Opinion about the time for cases in justice

Main reason for the duration of judicial processes	Per centage
Complexity of justice	30
The judges	23.5
The law	18.8
The lawyers	7.1
Civil servants of the Judiciary	6.9
The interested parties	3.8
Prosecutors	3.5
Does not know	6.4

Source: Centro de Pesquisa de Opinão Pública DATAUnB (2005), *Pesquisa de Imagem do Judiciário junto a População Brasileira*, 13º Relatório de Atividades, Universidade de Brasília, Brasilia, October, p. 17.

86. These perceptions also have important consequences for the way businesses relate to the judiciary system. While many businesses contribute also to the distortion of the judiciary system by appealing government decisions to slow down the process and take advantage of this situation, others have opted for avoiding any contact with the judiciary, even if that would imply loss of opportunities and greater inefficiency. The costs that this situation imposes on the economy as a whole have been estimated by the way the improvement in the judiciary would impact other issues: the volume of annual investment could increase by 13.7% and the number of enterprises could grew by 18.5%.[31]

87. In Brazil, there is the phenomenon of the "judicialisation" of the political conflict, understood as the tendency of the political powers to transfer to the judicial branch disputes of eminently political nature that are not solved within the proper spheres, leaving to the "politisation" of the judiciary.[32] A specific case concerns the legislative procedure, in which, the incapacity of producing clear political majorities to approve unambiguous and well-defined laws, leads to sometimes ambiguous texts, which reflect the need for political compromise, and leave the more difficult issues and tradeoffs to the judiciary to handle at a later stage.

88. The judiciary is then placed in the situation of becoming responsible for arbitrating political conflicts, instead of simply applying the law. This can also be a source of legal unpredictability. Very few regulatory reforms aiming at redefining the role of the State in Brazil were approved without being subject to some form of veto by the judiciary. Several cases, in opposition, demonstrate the impact of judges and judicial courts in the policy-making process in Brazil, demanding an analytical tradition concerned with "when", "how much" and "how" those actors: (*i*) constrain the set of choices of policies available, (*ii*) influence the processes of implementation of the public policies and (*iii*) change the courses of the reforms undertaken in the context of the political and economical transition of Brazil since the re-democratisation of the 1980s.

3.2. Choice of policy instruments: regulations and alternatives

89. A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. As experimentation occurs, the range of policy tools and their use is expanding, 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 and use alternatives to regulations. 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.

90. Since the 1990s and in accordance to the privatisation of state-owned enterprises, the elimination of state monopolies, the creation of regulatory agencies and the introduction of competition mechanisms in

different sectors providing essential services, control and command mechanisms have been left in a secondary position, underlining the idea that competitive pressure makes the companies more productive and efficient.

91. The use of alternatives to regulations is not yet widespread in Brazil. There is, however, a request to reflect on possible alternatives to the regulatory measure when drafting law proposals. The Decree No. 4 176 from 2002, in its Annex I, contains a list of issues that should be taken into consideration while elaborating normative acts. Section 2 of this annex refers to the use of alternatives and looks at whether they are available to policy-makers (see Box 12).

Box 12. The use of alternatives in the Brazilian regulatory system

The questions listed in the Decree No. 4 176 from March 2002 related to the use of alternatives available to policy makers are the following:

- What is the result of the analysis of the problem? What the origins of the problem? Under which causes can the action to undertake have an effect?
- What are the instruments that seem adequate to reach the expected objectives, in general or in part? (Examples: measures for the execution of existent regulations; campaigns to work with the public opinion, broad understandings; agreements; investments; incentives; support to find solutions for those affected by regulations; use of judicial review to solve problems).
- What are the adequate instruments, considering the following aspects?
    - Burdens for citizens and the economy;
    - Efficiency (precision, probability degree to reach the expected goal);
    - Costs and expensed for the public budget;
    - Effects on the legal order and already established objectives;
    - Secondary effects and other consequences;
    - Understanding and acceptance from those affected and responsible for the execution;
    - Possibility to appeal before the Judiciary.

Source: *Decree No. 4 176*, Annex I, March 2002, p. 16.

Voluntary agreements

92. Voluntary agreements are established 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.

93. Voluntary agreements, in particular in the environmental field, are being promoted by Brazilian authorities. Some examples of this trend are the following: An employer-union collaboration to address benzene contamination of workers, including government officials and institutions was signed, what led to the "Tripartite Agreement on Benzene". Trade unions become an equal partner, which unlike joint government and industry agreements involve trade unions as full-pledged signatories. This nationwide voluntary agreement spurred significant reductions in benzene emissions in the metal and petrochemical industries.[33] Voluntary agreements have also been proposed to sign with the cane industry, as Brazil is the world's top supplier of ethanol, over the government's demand for a local price cap and instead of imposing export quotas if international prices become too attractive. Voluntary agreements have also been signed for the implementation of the Globally Harmonised System for Classification and Labelling of Chemicals (GHS), whose implementation started in 2001 through the set up of a sub-group of the National Commission on Chemical Safety chaired by the Ministry of Development, Industry and Foreign Trade and composed by other ministries and stakeholders.

Education and information policies

94. These instruments act to change behaviour by making more information available so that businesses and consumers can make more informed decisions. These instruments allow people to make decisions on the basis of greater information than would otherwise be available, rather than imposing a single solution on all as is often the case with traditional command and control regulation. Information and education campaign are examples of these instruments

Box 13. Crescendo Project: Regulation and Active Citizenship

The Project "*Crescendo: Regulação e Cidadania Ativa*" is executed since 2002 by the Regulatory Agency of Public Services (Energy, Transport and Communications) of the State of Bahia (*Agência Estadual de Regulação de Serviços Públicos de Energia, Transportes e Comunicações, Agerba*) in co-operation with the Federal Regulatory Agency for Electricity (*Agência Nacional de Energia Elétrica, ANEEL*).

The project consists of school campaigns, in which teachers are trained and students informed on the importance of public services, in particular electricity and transport, and the rights of consumers. In the State of Bahia, experts have visited more than 1 800 public schools and education institutions and the project has reached more then 1.5 million students. The goal is to disseminate information about the objectives and services provided by the regulatory agency, underlining the right of consumers and citizens, as well as the social responsibilities of citizens.

The information campaign includes two kits of didactic materials, one for the electricity and another one for the transport sector. The kits include books, videos and CDs, in which information on the institutional reform of the electricity sector, the regulatory agencies, the legal principles and normative aspects of the regulatory frameworks, the quality of the services and the rights and obligations of users are described.

Standardisation

95. The Brazilian Association of Technical Standards (*Associação Brasileira de Normas Técnicas, ABNT*)[34] is the body responsible for the technical standardisation in the country, providing the necessary foundation for the Brazilian technological development. Created in 1940, it is a private non-profit entity, recognised as the only National Forum of Standardisation through the Resolution number 07 of the National Council of Metrology, Standardisation and Industrial Quality (*Conselho Nacional do Metrología, Normalização e Qualidade Industrial, CONMETRO*), from August 24, 1992.

96. The ABNT is a founding member of the ISO (*International Organization for Standardisation*), COPANT (*Pan-American Commission of Standards*) and AMN (*Mercosul Standardisation Association*). The ABNT is Brazil's sole and only representative in the following international entities: ISO, IEC (*International Electro-technical Commission*); and of the regional normalization entities COPANT and AMN.

Self-regulation

97. In Brazil self-regulation applies to several professions, including physicians, dentists, lawyers, etc, which have professional councils. The most widely known entities are the Federal Council of Medicine (*Conselho Federal de Medicina*), created in 1957, and the Brazilian Bar Association (*Ordem dos Avogados do Brasil*), established in 1930.

98. The Brazilian Stock Exchange is also self-regulated. It has the authority to monitor the respective members and security operations carried out within it, in the terms of Article 17 of Law No. 6 385/1976. An example of successful self-regulation created by the São Paulo Stock Exchange (BOVESPA) is the "Listing Regulation of the New Market" and the "Regulation of Differentiated Practices of Corporate Management". Those instruments helped to structure a type of self-regulation that aims at developing the stock market, and the defense of the public interest is ensured by the framework of the established model. In the financial market, the National Association of Investment Banks (*Associação Nacional dos Bancos de Investimento, ANBID*) proposed to the group of institutions participating in the security market the implementation of Self-regulation Codes for the activities developed by them, such as the distribution of public offers and the acquisition of securities, investment funds, continued certification programmes, qualified services to the stock market, and private banking in the domestic market. Similarly, the Brazilian Federation of Banks (*Federação Brasileira de Bancos, FEBRABAN*) has been discussing the creation of a self-regulation code for the activity of financial institutions.

99. In Brazil the National Council of Advertising Self-regulation (*Conselho Nacional de Auto-regulamentação Publicitária, CONAR*), is a non-governmental organisation aiming at promoting the freedom of speech in advertising and defending the constitutional prerogatives of the commercial advertising. Its legal foundation derives from Law No. 4 680/1965.

Box 14. Self-regulation in the Brazilian health system

Hospital accreditation is one of the most representative cases of self-regulation in the health system of Brazil. This standard allows the Ministry of Health to make investments through the REFORSUS programme (*Reforço a Reorganização do Sistema Único da Saúde*), aiming at inducing private bodies to participate in the National Accreditation Organisation (*Organização Nacional de Acreditação, ONA*). The results can be found in the creation of quality standards in the market, reducing the costs of bureaucratic regulation for a greater ordering in the competition among hospitals for public and private resources.

Self-regulation is also represented in the health system by the professional councils, which regulate the individual professional practice through the elaboration of norms and ethical proceedings. These institutions are considered part of the Brazilian State, as a result of traditional corporate legislation. This could be seen as paradoxical in terms of a self-regulation system, but the organisational autonomy obtained after the political re-democratisation process in the country and the professional autonomy of physicians and dentists, define its features in the regulatory policy.

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

3.3.1. Regulatory Impact Analysis (RIA)

100. The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of Regulatory Impact Analysis (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*.[35] The 2005 *Guiding Principles for Regulatory Quality and Performance* recommends that RIA be conducted in a timely, clear and transparent manner.[36]

Box 15. Regulatory Impact Analysis in OECD countries

What is Regulatory Impact Analysis (RIA)?

RIA is a regulatory tool that examines and measures the likely benefits, costs and effects of new or changed regulations. It 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. A poor understanding of the problems at hand or of the indirect effects of government action can undermine regulatory efforts and result in regulatory failures. RIA is used to define problems and to ensure that government action is justified and appropriate.

Key elements of a RIA programme

RIA in the context of the OECD countries takes many forms, reflecting a variety of government policy agendas. The objectives, design and role of administrative processes differ among countries and among regulatory policy areas. There is, however, a key element related to the institutional framework that makes RIA a successful regulatory tool: the quality control through independent review, which contributes to assess the substantive quality of new regulations and ensures that ministries achieve the goals embodied in the assessment criteria. Oversight bodies responsible for RIA must be able to question its quality and regulatory proposals. An oversight body needs the technical capacity to verify the impact analysis and the political power to ensure that its view prevails in most cases.

Good RIA practices identified in OECD countries:

1. Maximise political commitment to RIA.
2. Allocate responsibilities for RIA programme elements carefully.
3. Train the regulators.
4. Use a consistent but flexible analytical method.
5. Develop and implement data collection strategies.
6. Target RIA efforts.
7. Integrate RIA with the policy-making process, beginning as early as possible.
8. Communicate the results.
9. Involve the public extensively.
10. Apply RIA to existing as well as new regulation.

Source: OECD (1997) *Regulatory Impact Analysis: Best Practice in OECD Countries*, Paris.

101. In Brazil there was at the time of writing this report no obligation to conduct RIA in the policy and decision-making process. Some ministries and government institutions undertake some type of analysis of the impact of the introduction or modification of regulatory norms, but in an incomplete way and without systemic application. Decree No. 4 176 from 2002 establishes that besides a Statement of Justification when sending the proposal to The Civil House, a form should be filled including the following elements: the synthesis of the problem or situation that requires action; solutions and actions proposed by the regulation; existing alternatives to the proposed measure; costs; reasons that justify the urgency, in case of provisional measures; impact on the environment; proposed modifications compared with the previous drafting; synthesis of the opinion of the juridical body. The Annex I of this Decree requests that the description of possible impacts of the regulations to be adopted is explained. These represent a form of preliminary elements that could lead to a fuller RIA process.

102. Building on these existing requirements and as part of the implementation of the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG), mentioned above, it is expected that RIA will be integrated gradually into the regulatory policy in Brazil. OECD experience shows that RIA implementation is a process that requires accurate planning, dedicated resources and short and medium term goals. Specifics to the RIA system depend on the political, economic, cultural and legal background of the country. Each country has found different solutions to set up a RIA system; there is no single model to transpose. The following section intends to provide an overview of institutional issues Brazil is considering while designing its own RIA system. They are assessed against practices and experiences in OECD countries.

Road map to implement RIA based on international good practices

103. RIA is fundamental to consolidate a comprehensive regulatory approach since it is a tool that provides objectives elements, such as costs, benefits and options, for decision-making. An RIA system can only be consolidated and improved over time and following different stages in which a combination of elements should be taken into consideration. The road map to implement RIA in Brazil requires evaluation of the following issues:

104. *Maximise political commitment to RIA*. The OECD experience shows that the use of RIA to support reform should be endorsed at the highest levels of government. RIA has to be supported by a legal instrument that makes it compulsory for bodies inside the administration (see Box 16).

105. According to the Programme for the Strengthening of the Institutional Capacity for Regulatory Management, RIA will be implemented in Brazil as part of the efforts to improve regulatory quality. The Civil House of the Presidency of the Republic, the Ministry of Finance and Ministry of Planning, Budget and Management would be bodies responsible for implementing RIA, as these institutions will constitute a Committee which will be in charge of the management of the Programme. This institutional arrangement would allow having strong political support and commitment for regulatory quality.

106. There is no planning yet however to create a legal instrument that could institutionalise the use of RIA as a tool for *ex ante* analysis inside the administration. The law proposal No. 3 337 from 2004, concerning regulatory agencies, currently discussed in Congress, envisages that these agencies should present annual reports and meet with thematic commissions from both the Senate and the Federal Congress, to discuss and evaluate the proposed goals and objectives, explaining the impacts of their actions and the obtained results.

Box 16. Legal basis for RIA in OECD countries

OECD countries have adopted various legal forms requiring RIA to be included in draft legislation. The **Czech Republic**, **Korea** and **Mexico** have adopted RIA by law. RIA is required by a presidential order in the **United States**, and by prime-ministerial decree or guidelines in **Australia**, **Austria**, **France**, **Italy** and the **Netherlands**. In **Canada**, **Denmark**, **Finland**, **Japan**, **Hungary**, **New Zealand**, **Norway**, **Poland**, **Germany**, **Portugal**, **Sweden** and the **United Kingdom**, the use of RIA is based on a cabinet directive, cabinet decision, government resolution or policy directive.

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

108. The Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG) would be led by the Civil House of the Presidency of the Republic. This institution envisages close co-operation with the Committee on Regulatory Policy (*Câmara de Políticas Regulatórias*),[37] which might be created in the future, the Ministry of Finance, the Ministry of Planning, Budget and Management, regulatory agencies, and the Ministries supervising them.

109. *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.

110. In the current proposal to introduce RIA in Brazil's policy-making, special attention is reserved for the training of officials who would be responsible for undertaking and challenging RIA. Initially, training is fundamental for civil servants from The Civil House, the Ministry of Finance, the Ministry of Planning, Budget and Management and those Ministries responsible for regulatory agencies. But RIA has to be known also by officials from the Executive and the Legislative, who should be acquainted with the obligations and competencies that RIA imposes. It is also important to involve other stakeholders, such as businesses, academics and consumer protection agencies, who would participate in public consultation and provide data required for conducting RIA.

111. The Brazilian government foresees that The Civil House, the Secretary of Management and the National School of Public Administration from the Ministry of Planning, Budget and Management, and the Superior School for Finance Administration from the Ministry of Finance could be the bodies responsible for the supervision of training courses for RIA.

112. *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."[38] 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).

113. Decree No. 4 176 from March 2002 contains an Annex in the form of a checklist that includes some guidance on the way the evaluation of the problem and the proposed solution should be presented. There is, however, no concrete definition of the methodological approach that government offices are obliged to follow. Neither there is an obligation to conduct an economic analysis of the costs and benefits of the proposed piece of legislation, even if government bodies are suggested to reply to questions such as: what are the charges imposed to citizens and the economy?; what are the costs and charges for the public

budget?; is there an equilibrium between the costs and benefits?, can enterprises, in particular SMEs, cope with those additional charges?, was a cost-benefit analysis done?; what were its results?; how can charges and collateral effects be evaluated after the piece of legislation has come into force?

114. *Target RIA efforts*. RIA is a difficult process that is often opposed by ministries unfamiliar with external review or are under 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. OECD countries have opted for different approaches to target RIA (see Box 15).

Box 17. Targeting RIA efforts: the OECD experience

OECD countries have opted for different approaches to target RIA. In **Korea**, the RIA system requires a rough estimate of costs for all regulations, and defines as "significant" regulation those that have an annual impact exceeding KRW 10 billion (USD 0.9 million), an impact on more than one million people, a clear restriction on market competition, or a clear departure from international standards. Significant regulations, as defined, are subject to the full RIA requirements.

The **United States** adopts similar criteria, requiring a full benefit/cost analysis where annual costs are estimated to exceed USD 100 million or where rules are likely to impose major increases in costs for a specific sector on region, or have significant adverse effects on competition, employment, investment, productivity or innovation. This means, the US oversight body, OMB, reviews roughly 600 regulations a year (around 15-17% of the rules published), of which fewer than 100 (around 1-2% of the rules published) are "economically significant", and thus require a full benefit/cost analysis.

The **Netherlands** adopts a two part approach to targeting RIA effort. The first stage involves the application of a set of criteria, similar to those discussed above, which the effect that only about 8 to 10% of draft regulations are subjected to RIA. The second stage involves the adaptation of the questions to be addressed in the RIA to the specific regulation. A Ministerial Committee reviews the regulatory proposal and determines which of the 15 standard questions contained in the Directive governing RIA must be answered for each regulation.

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

115. The current Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PROG-REG) does not foresee any kind of special targeting for RIA. The government acknowledges that energy and transport are challenging regulatory areas in Brazil, but there is no agreement to start on those policy fields, neither on which legal instruments RIA could be used, such as laws, decrees, regulations, etc. The Programme does neither contain a reference to extend, in the medium and long term, RIA to other levels of government, which is essential for regulatory coherence and co-ordination as a whole. However, targeting is crucial for the success of any RIA system. Otherwise, efforts are diverted, resources lost, with little achievements in the end. The most promising target should concern the economic impact and the scope of the text envisaged with impacts that may depend on Brazil's current economic situation.

116. *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.

117. Brazil is relatively well equipped in terms of data production and analysis, but the distribution of the expertise remains uneven. Ministries and regulatory authorities tend to produce data used for official purposes. However, the policy assessment functions of a number of ministries do not allow them to effectively assess policies. A number of public institutions at federal level, such as the Institute for Economic Research (*Instituto de Pesquisa Econômica Aplicada, IPEA*), the Brazilian Institute for Geography and Statistics (*Instituto Brasileiro de Geografia e Estatística, IBGE*) and a number of federal universities conduct economic research to better understand market performance and social developments. There are also private entities, such as the Confederation of National Industries (*Confederação Nacional das Indústrias, CNI*), the National Confederation of Transports (*Confederação Nacional dos Transportes, CNTC*) that also produce reports on the evolution of different economic sectors. Non-governmental institutions, such as the Institute for Consumer Protection (*Instituto de Defesa do Consumidor, IDEC*) also conduct analysis on different government policies, to improve consumers' rights.

118. *Integrate RIA in the policy making process, beginning as early as possible*. Integrating RIA in 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 and possible sanctions for non-compliance. More important, it would require that policy makers be convinced of and request the added-value of RIA.

119. In the framework of the Programme for the Strengthening of the Institutional Capacity for Regulatory Management, RIA is seen as a tool that can help improving the decision-making process in Brazil. RIA is conceived as a dynamic process that would avoid the immutability of the relations created during the regulatory process, providing useful information and proposing, when necessary, appropriate and justified suggestions for changes. The Programme, however, does not call for RIA implementation at the beginning of the policy-making process. There will necessary be a period in which decision and policy-makers need to be acquainted with this instrument.

120. *Communicate the results*. The assumptions and data used in RIA can be improved if they are tested through public disclosure and consultation. Releasing RIAs along with draft regulatory texts as part of the consultation procedure is a powerful way to improve the quality of the information available about new regulations, and so improve the quality of the regulations themselves.

121. The Programme for the Strengthening of the Institutional Capacity for Regulatory Management foresees the publication of RIA results. As RIA is a way to show different possibilities for government action, it is important that not only the Executive, but also the Legislative and the Judiciary are aware of RIA results.

122. *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. The extensive use of other different strategies, such as consultation, can be seen as an important means of collecting information and integrating the public in the decision-making process. The challenge is to use this information in a structured and critical way, avoiding promoting interests of particular stakeholders.

123. Even if public consultation is not always mandatory in Brazil, a growing number of laws and regulations that have an impact on consumers and users are circulated for consultation or public hearings. This process already in place could serve as a basis for the incipient RIA and their link is essential to ensure that consultation mechanisms are improved. The objectives of this practice are different: to get better information and data for the decision, to include comments and suggestions made by stakeholders and to identify the relevant aspects of the issue. This practice, mainly co-ordinated by The Civil House, refers exclusively to those legal instruments proposed and issued by the Executive (provisory measures, laws and decrees).

124. *Apply RIA to existing as well as new regulation*. RIA is equally useful in reviewing existing regulation as it is in assessing proposed new regulatory measures. In fact, reviewing existing regulation involves fewer data problems, so the quality of the resulting analysis is potentially higher. Consistently applying RIA to existing regulation is a key priority. Parts of the regulatory structure that are not directly subject to government disciplines should be included in the analysis, such as local government regulations or the actions of independent regulators.

125. The introduction of RIA in the framework of the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG) does not foresee a specific evaluation of the existing regulations. Laws are produced in Brazil according to the requirements established in the Decree 4 176 from 2002, which does not call for the analysis of existing regulations. There are neither systematic procedures to review nor up-date regulations.

4. Dynamic change: keeping regulation up-to-date

4.1. Revisions of existing regulations

126. 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* recommend that the assessment of impacts and the review of regulations include *ex post* evaluation.

127. Brazil has made efforts for keeping regulations up-to-date, mainly through consolidation and codification strategies, basically as part of the national efforts to modernise the public administration: in 1979 the National Programme to Debeaurocratisation (*Programa Nacional de Desburocratização*) started and presently the National Programme of Public Management and Debeaurocratisation (*GesPública*), following the Decree No. 5.378 from February 23th 2005 is still in place. Consolidation has been a way to avoid confusion of contradictory texts, to eliminate outdated regulations, to review existing regulations, to codify and to use single texts.

Box 18. Legal consolidation efforts in OECD countries

A systematic approach to review and up-date regulations helps to ensure consistency in approaches and review criteria, generates momentum and ensures that important areas are not exempted from reform due to lobbying by powerful interests. *Ex post* reviews are a complement to rigorous *ex ante* RIA, rather than a substitute for it. *Ex post* review can help to determine whether legislation is meeting its initial objectives, but cannot substitute for RIA's role in providing a systematic basis for the weighing of policy alternatives from the very beginning. *Ex ante* analysis avoids problems, while *ex post* analysis corrects problems early.

Substantial reviews of existing laws and other regulations have been carried out in different OECD countries. In 1992, the **Canadian** federal government started a comprehensive review of all existing regulations, "to ensure that the use of the government's regulatory powers results in the greatest prosperity for Canadians". At the end of the review (complete by June 1993), 835 out of a total of about 2 800 regulations then listed in the Consolidated Index of Statutory Instruments were identified for revocation, revision or further review. **Korea** succeeded in eliminating 50% of its regulations in less than a year, while **Mexico** revised over 90% of its national legislation in about six years. Australia completed of a six-year review of 1 700 Acts and subordinate regulations that were identified as containing restrictions on competition.

128. The Supplementary Law No. 95 from February 1998 provided a framework for the consolidation of normative acts. According to this regulation, consolidation is the integration of all pertinent laws of a given subject in a single volume. This Law was amended and refined by the Supplementary Law No. 107 from April 2001. As such this is useful as it helps to collate all the relevant texts in a single volume. This activity refers to consolidation, revision and up-date of legal acts.

129. The Decree No. 4 176 from 2002 was enacted for the application of this law. It foresaw the establishment of an Executive Group for Consolidation of Normative Acts, technically and administratively supported by the Civil House, in charge of co-ordinate and implement the consolidation of normative acts. This work is currently undertaken by the Ministry of Justice. According to the Decree No. 6.061 from March 15th 2007, the Secretary for Legal Affairs is responsible for knowing the existing stock of regulations in order to consolidate them and the Department for Legal Drafting is in charge of co-ordination inside the Ministry of Justice and promotion with other bodies in the Executive power concerning efforts for legal consolidation.

130. The consolidation work was done by permanent commissions (regulated from Art. 42 to Art. 51 of the Decree), responsible for the consolidation and evaluation of normative acts. These commissions were established by ministries or other governmental bodies, being responsible for reviewing those legal acts that concern them in order to consolidate the legal texts. Commissions were composed by at least four members, including a representative from the Federal Attorney and co-ordinated by a Lawyer. More than 160 legal experts worked together on this project.

131. The results were presented to the Federal Congress including 11 projects for consolidation in different policy fields (see Table 4). The study showed that more than ten thousand laws could be consolidated in sectoral volumes. More than 17 000 legal documents, such as retirement, , promotions or credit entitlements, could not be included in that effort.[39] However, the work done by the Executive was not completed at the time of writing this report; the Ministry of Justice is currently working on a follow-up of those efforts.

Table 4. Some proposals for consolidation sent to Congress by the Executive

Consolidated legislation	No. of Law Proposal	Complete revoked laws	Current situation
Oil sector	LP – 4 633/01	2 ordinary laws and 7 law decrees	Approved by the Commission* – Ready to be sent to Plenary
Subjects to the Ministry of Agriculture	LP – 4 944/01	10 ordinary laws, 1 law decree, 1 delegated law	Approved by the Commission – Ready to be sent to Plenary
Transport sector	LP – 4 000/01	16 ordinary laws, 36 law decrees, 4 legislative decrees	Ready for discussion in the Commission
Social security	LP – 4 202/01	96 ordinary laws, 169 law decrees, 2 supplementary laws and 3 legislative decrees	Approved by Senate
Labour issues	LP – 4 402/01	28 ordinary laws, 58 law decrees	Ready for discussion in the Commission
Transportation	LP - 4 490.01	9 ordinary laws, 6 law decrees	Ready for discussion in the Commission
Cultural issues	LP – 3 757/00	12 ordinary laws, 14 law decrees	Approved by Senate
Telecommunication services (radio and post)	LP – 6 189/02	48 ordinary laws, 76 law decrees, 26 decrees to the Legislative powers	Ready for discussion in the Commission
Devolved land and colonization	LP – 3 999/00	3 ordinary laws, 7 law decrees	Waiting for “relator” in the Commission
Foreigners	LP – 4 489/01	38 ordinary laws, 13 law decrees, 4 legislative decrees	Not GT-LEX

* Permanent Commission for Constitution and Justice.

132. The Federal Congress and the Senate have also been active in implementing consolidation procedures. The consolidation of national laws at the Federal Congress started with the set-up in 1997 of a Working Group of Parliamentarians (*Grupo de Trabalho da Consolidação Brasileira, GT-LEX*), whose work is regulated by the Internal Rules of the Congress (Articles 212 and 213). This Working Group is in charge of presenting its proposals to the Permanent Commission for Constitution and Justice that, once it has revised them, has to send them to the Plenary for discussion and approval. Final instance for sanction is the Senate. The initial results of this Working Group consisted of two concrete proposals for consolidation, one approved by the Plenary and other filed without success. The GT-LEX has been reactivated in 2007 with the aim at continuing the efforts on other areas, including a deep review of the existing regulations in Brazil. Thematic groups, such as tax law, telecommunications, financial services, etc. and chaired by a Parliamentarian, have been created in the Brazilian Congress to work on this consolidation effort. Similar projects have been undertaken at state level, as administrative burdens at the state level also represent a significant challenge. The state of São Paulo has made significant efforts in this field (see Box 19).

Box 19. Legal consolidation in the State of São Paulo

Since 1835 and 2006, the State of São Paulo issued more than 33 000 normative acts (laws and law-decrees). Most of them were not longer valid neither adequate to the Federal Constitution from 1988. Some others were not clear and confused the citizens and businesses. In 2005, the Commission of Constitution and Justice of the regional Congress decided to give priority to the legal consolidation process. At the beginning, the Commission decided to "clean" the legislation, reducing the number or existing laws in the State. Between 2005 and 2006, 16 law proposals led to the revocation of 13 000 laws and law-decrees created between 1891 and 1972.

The Executive Board of the Congress of São Paulo, through the Commission for Constitution and Justice, the Attorney and the Department of Documentation and Information, continues its work on the project to simplify the regional legislation and to consolidate the state laws. The main objective is to classify the state legislation and to consolidate them in a single law, facilitating its content and dissemination to citizens. The Legislative works in close co-operation with the Executive and the Judiciary, as well as the regional *Ministério Público*. Until 2002 the results of this process has led to the revocation of 17 000 normative acts.

The consolidation process also has led to the up-date of the State Constitution. Through the Constitutional Amendment No. 21 from February 2006, the Constitution of the State of São Paulo has been adapted to reflect the 54 amendments of the Federal Constitution since its promulgation in 1988.

Source: *www.al.sp.gov.br; www.vaccarezza.com.br*

5. Conclusions and recommendations

5.1. General assessment of current strengths and weaknesses

133. Brazil has consolidated its economic fundamentals, with a development model based on market reforms, outward orientation and sound fiscal policy. Brazil has managed to achieve macroeconomic stability, imposing a tight monetary policy and a relatively strict budgetary policy. This has created a better framework for investment in the economy in general, as well as for foreign investment. However, one of the main challenges of the Brazilian economy is to achieve sustained long-term economic growth, in a way that would ensure increased living standards for its growing population. The government Growth Acceleration Programme aims at facing this challenge.

134. This also entails improving regulatory frameworks and oversight for key infrastructure sectors, essential to ensure long term growth, and where significant economic bottlenecks exist. The consolidation of institutional capacities for regulatory reform is essential to reach these objectives. The country is facing a need for private investment in infrastructure sectors. Broader and better regulatory policies and implementation through an institutional framework supporting the regulatory process are key for the future. Despite some efforts at the federal level to develop a regulatory quality programme, the burden resulting from a large number of federal laws and regulations often represents a challenge for small and medium size enterprises. Regulatory policy can contribute to meet these needs by easing regulatory burdens, simplifying economic activity, reinforcing the rule of law and increasing certainty for the private sector.

135. The Brazilian administrative and legal settings have evolved rapidly over the past two decades, first following the democratic transition in the mid 1980s, and second the economic liberalisation and privatisation programmes in the mid 1990s. The process of institutional and legal adjustment is still ongoing. Brazil has started its approach to regulatory management by concentrating on economic regulation. In the future, a systematic, comprehensive, continued and coherent approach could help to improve government capacities to make them more effective, efficient, and at less costs. The current trends in Brazil may also mirror the situation and efforts of many other OECD countries that have faced a process of political transition, or that are middle income countries.

136. Given the specific circumstances of Brazilian institutional history, much of the debate has focused on the need to improve the institutional design of regulatory agencies, which is fundamental for the well functioning of key economic sectors. While it is important to strengthen the capacities of these agencies, discussed elsewhere in this report, other areas of regulatory management also require attention. Positive recent steps include the development of the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG), which could positively influence policy developments, if it is conceived as a way to promote broader regulatory policy, and not only increase regulatory quality controls on the regulatory authorities only, where much progress has already been made. One of the issues is also the need to clarify the functions, role and regulatory implications of a whole range of institutions included in the "indirect administration", characterised by a large number of decentralised bodies in most parts of the Brazilian federal administration.

137. Brazil has the basic elements of a structured regulatory process. While a formal regulatory quality assurance programme does not exist, a formal process frames the preparation of new laws. Co-ordination and attention to regulatory quality aspects when regulations are prepared in the Executive branch, involving different institutions, may help to strengthen the overall regulatory framework. As part of the legislative process, the increasing role of Parliament in issuing or amending legislation has significant implications in terms of regulatory quality and for the co-ordination of regulatory policy.

138. Brazil has relatively developed, albeit not necessarily formal, consultation procedures, with a full access to the legal texts, and with also consolidation efforts in a number of policy areas. In spite of its complexity, the regulatory framework is accessible for citizens and businesses. But as a result of increased legal and regulatory activity, a large flow of regulations has been produced by federal but also sub-federal levels of administration, leaving scope for further improvement of the co-ordination mechanisms across these levels concerning regulatory matters. Brazil is making use of a number of alternatives to regulation, as well as self regulation, either for standards, specific professions or through educational and training activities. Brazil has also devoted significant efforts towards a dynamic update of its growing stock of regulations. The consolidation efforts are impressive, but they do not necessarily entail as such the elements of a full-fledged administrative simplification policy.

139. Certain aspects of regulatory policy are still lagging behind current practice of OECD countries. Capacities for regulatory quality are fragmented and scattered across the administration and co-ordination mechanisms, sometimes in place, still leave scope for improvement. The country lacks a systematic use of different regulatory quality tools. Regulatory Impact Assessment is one of them. It has received significant policy attention, but efforts towards a fuller regulatory impact assessment system may still take significant time in the coming years. Another issue may involve compliance, with a lack of certainty of some regulatory texts, calling for action by the Judiciary. The functions of the Judiciary, as is often the case in a large federal state and in a middle income country, represent a significant challenge. While this can be acknowledged, a fuller discussion of their policy implications may go beyond the scope of the current report. Still a better understanding of the implications of the judicial system in terms of regulatory quality, as well as for the economy as a whole, could also serve as a long-term investment for capacity building in the country.

140. At present, Brazil seems, however, well positioned to address these challenges. There is broad consensus among political actors, the different powers of government, businesses and academia, that the country requires changes to improve its capacities for regulatory quality. There is a growing understanding of the need to increase transparency and accountability in the system, to introduce new tools for regulatory performance and to make necessary adjustments to the Judiciary. There is also, in spite of all the recent political debate, a growing domestic consensus, as well as understanding of main trends across OECD countries, of the functions and roles of regulation.

5.2. Policy options for consideration

141. This section identifies measures based on international consensus about good regulatory policies and on concrete experience in OECD countries that could help the Brazilian authorities in their efforts to improve regulation. 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. Broaden efforts to integrate a "whole-of-government" approach for regulatory quality supported at the highest political level

142. Regulatory policy may be defined broadly as an explicit, dynamic, continuous and consistent "whole of government" policy to pursue high quality regulation. In Brazil, the issue of regulatory quality emerged in the context of deregulation and regulatory management for economic sectors. In this framework, the role of the State in economy changed, a vast privatisation programme was introduced and regulatory agencies were created. There is a need, however, to adopt a broader focus: Brazil is currently looking for options to a more consolidated approach for regulatory quality under the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG). As many other OECD countries, Brazil has elements of a regulatory policy in place. It also has a strong centre of government. These need to be integrated in a comprehensive programme for regulatory quality. A broad scope of government actions for regulatory quality, in order to consolidate a modern regulatory State, would minimise the risk of conflicts of interest and of capture, enhancing certainty and more clearly separating policy-making from implementation. The implementation of an effective regulatory policy with a "whole of government" perspective is a complex task which cuts across several policy areas.

143. In the Brazilian context, there is agreement that regulatory agencies need to be strengthened, as is discussed elsewhere in this report. However, there is limited reflection on other key aspects of regulatory quality, such as the way the quality of overall legislation and regulations could be improved, the need to revise the current stock of regulations and the use of regulatory tools to improve economic performance. Institutional arrangements for sectoral agencies represent a necessary step; they are not sufficient to build capacities across the whole administration, to create co-ordination mechanisms between institutions, and to improve the quality of regulations in specific policy fields. The final objective is to adopt regulations that are more efficient and effective and the pursuit of environmental, social and economic policy objectives.

144. The PRO-REG represents a first step to close this gap. But institutionalising a new approach for regulatory quality requires attention to a certain number of fundamental issues. 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;

it should contain explicit and measurable regulatory quality standards; and,

it should provide for a continuing regulatory management capacity.

145. Adoption of the policy at high political levels lends authority to the institutions of reform and ensures that the government has incentives to strive to achieve the policy's objectives and goals. Reinvigorated political commitment is essential to maintain progress. In Brazil, the Civil House, the Ministry of Finance and the Ministry of Planning, Budget and Management are already involved in this effort. They need to play a leading role to make sure that the Programme reaches its objectives by getting the political support needed. These institutions should be able to clarify the relevance of regulatory reform to larger social and economic goals and to communicate with stakeholders and the public.

146. In OECD countries, regulatory policy has evolved to include new elements and more policy areas. The international experience shows that decision processes have become progressively more empirical. This trend relies on economic, social and feasibility assessments supported by full-fledged cost-benefit analysis to supplement traditional checks on technical legal quality. PRO-REG should reflect this trend if it wants to become an instrument to expand the capacities for regulatory management across the administration. Even if this initiative concentrates on regulatory agencies, there is a need to broaden the scope of institutions involved. There should not be any justification for making exemptions in different policy areas and institutions once experience has been accumulated. If PRO-REG intends, for instance, to improve consultation mechanisms and to integrate the compulsory use of impact assessments for some sectors and agencies, this should evolve over time and apply in due course for the entire public administration, and not only to sectoral agencies. It is fundamental for the success of the project to maintain momentum and to be able to consolidate the need for regulatory quality. PRO-REG could be reinforced by integrating its core principles in more detailed national plans, which could then be linked to a broader strategy for regulatory reform.

2. Set up institutional capacities for regulatory quality

147. Institutional frameworks for implementing programmes of regulatory reform are essential for success. The institutional architecture for regulatory policy reflects the cultural, legal, political and social conditions of any country. This is complex and in many cases remains fragmented, as particular areas might require particular efforts and dealing with different entities might be difficult. The OECD experience shows that each country has found particular solutions, but the trend also indicates the need to set up an oversight body for regulatory quality.

148. The relationship between an effective, general comprehensive regulatory policy and the existence of a central oversight body appears to be strong. They are mutually supportive. These bodies should act as "engines for reform" with clear accountability for results. They should ensure that regulatory quality principles are successfully applied.

149. Successful regulatory policies invariably include some mechanisms for managing and co-ordinating the achievement of reform, monitoring and reporting on outcomes. The Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG) envisages setting up a management and co-ordination unit. The Brazilian authorities should also consider the possibility to establish a yearly programme for regulatory quality, in which clear objectives and measures to be taken should be described, that could provide for continuing regulatory capacities.

150. Oversight bodies in presidential systems have the advantage of the capacity for cross-cutting, top-down policy reforms, following the institutional structures of these systems. Countries such as the United States, Mexico or Korea have made impressive gains in improving their domestic regulatory systems.

151. In Brazil, the creation of such a body should be accompanied by adequate resources to undertake its tasks. Its staff should be regularly trained and have the capacity to make effective use of consultation with stakeholders. The idea would be to increase regulatory capacities throughout the administration. Key tasks in support of this role include the dissemination of extensive written guidance and the conduct of training in regulatory quality issues.

152. An oversight body for regulatory quality in Brazil should also have the authority to find agreement and support from ministries, regulatory agencies and other institutions. While functions need to be adjusted according to the domestic context, the possibility that the scope of its work should cover the entire administration needs to be explored. The Brazilian government could follow the example from other

OECD countries that have requested ministries and agencies concerned to designate a responsible person dealing with regulatory quality in each institution. This could help to create a network of officials responsible for regulatory quality inside the whole administration and to expand the knowledge on the different tools to be integrated into the decision-making process. While the centre of government is entrusted with the leadership, the sectoral ministries also need to reinforce their policy-making and quantitative expertise, to be in a position to develop full evidence-based policy-making. This may require significant capacity-building in Brazil, as many ministries had lost some of their capacities for policy making in the context of the deregulation and privatisation efforts.

153. If the use of Regulatory Impact Analysis (RIA) is foreseen, the oversight body should have the capacity to act as an independent body assessing the substantive (not only legal) quality of new regulation and working to ensure that ministries comply with the quality principles embodied in the assessment criteria.

154. Capacities for regulatory quality also concern other institutions that could support the oversight body. The Consultative Committee created in the framework of the PRO-REG should be reinforced. While the current proposal makes this Committee an internal advisory entity, it could also evolve in the medium term to play a crucial role as an external advisory body for regulatory quality, comparable to those existing in countries such as Canada, the United Kingdom or the Netherlands. OECD experience shows that external advisory entities are fundamental for spreading the understanding of the regulatory agenda. They support with advice and guidance, by giving voice to other stakeholders and interest groups, at early stages of the regulatory process. It would be important to give this Committee a permanent existence with flexible tasks that could evolve according to the needs of the regulatory agenda in the country. The participation of civil society, private sector and stakeholders is fundamental to get credibility to the project and to expand the evaluation of possible actions on regulatory quality.

3. Improve co-ordination mechanisms and clarify responsibilities for regulatory quality

155. A fundamental aspect of the implementation of a sustained regulatory quality programme is the co-ordination and co-operation needed to establish a general framework for regulatory policy. Co-ordination is essential to ensure coherence and comprehensiveness in reforming the regulatory environment. Co-ordination can be done inside the administration, but also with other levels of government that participate in the national regulatory process. A clarification of roles in the regulatory process, avoiding duplication of tasks and reducing the risks of regulatory failures, is a challenging task for the Brazilian government.

156. In Brazil, there are no formal co-ordination mechanisms between Ministries, agencies and other regulatory institutions that could lead to a full use of competences and to broaden the responsibilities during the regulatory process. Specific arrangements, however, exist between the competition authorities and some of the regulatory agencies and will be discussed elsewhere in the report. The Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG) intends to bridge between some of the institutions concerned with regulatory issues, but a more strategic vision should be envisaged for the medium and long-term of the project. In some OECD countries, formal inter-ministerial co-ordination, *e.g.* in the form of regular meetings or making compulsory for ministries to present periodically strategies for regulatory quality, has been essential to move forward the regulatory agenda.

157. Co-ordination between levels of government is a growing issue of concern in some OECD countries, and in Brazil as well. Regulatory decisions taken without any systematic and formal co-ordination are having a clear impact on the economic performance of the country. This issue has not been clearly evaluated and assessed, which reduces the possibility to find appropriate solutions. One major problem is the overlapping of regulatory competences which in some cases is due to an unclear definition

of responsibilities. In some economic sectors, regulatory agencies at different levels of government, in particular national and state level, have already established co-ordination mechanisms, which could serve as a starting point for further development. But much remains to be done.

158. The legal production at different levels of government lacks stable co-ordinated efforts to introduce quality controls and harmonisation on the way legal documents are produced. The Brazilian government could support the set up of a co-ordination mechanism, *e.g.* a conference or meeting, for legal experts at different levels of government, which could then take responsibility for improving law-making procedures from the technical and legal point of view.

4. Implement Regulatory Impact Analysis as an effective tool for regulatory quality

159. Regulatory Impact Analysis (RIA) is a tool to assist governments to make their policies more efficient. This is an important factor in responding to the impact on modern economies of open international markets and budgetary constraints and the consequences of competing policy demands. A key feature of RIA is its consideration of the potential economic impacts of regulatory proposals. Brazil does not use RIA systematically, but in the framework of the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG) it intends to introduce an RIA system.

160. OECD experience shows that RIA, to be effective, has to be in the hands of a body responsible for quality control and is able to challenge the use of RIA in other government institutions. In the Brazilian case, this task is closely linked to the creation of an oversight body for regulatory quality. This Unit could be located in Casa Civil, since this institution has the political support and plays a key role for co-ordinating government policies. This oversight body should have as one of its main functions to revise and support the use of RIA across the whole administration. Ministries and agencies should be able to undertake RIA as early as possible in the decision-making process. This would imply to train the responsible staff so they can successfully accomplish their task.

161. Some fundamental issues that need to be assessed before putting in place the RIA system are the following:

Legal mandate for RIA

162. In several OECD countries, RIA is supported by administrative procedures laws or presidential and cabinet decrees, thereby giving a legal mandate for RIA that cannot be ignored by other institutions. There is a need for Brazil to enforce the use of RIA, once consolidated, compulsory for all institutional bodies of the Executive branch entrusted with regulatory powers. RIA is an instrument that only can make a difference if it is undertaken in a comprehensive way. All bodies of the federal administration should be responsible for undertaking RIA, without exception. One possible solution would be to amend the Decree No. 4.176 from 2002 to integrate the obligation for RIA.

Public consultation during the RIA process

163. Systematic public consultation should be also established for the RIA process. Consultation can provide important information on the feasibility of proposals, on the range of alternatives considered, and on the degree to which affected parties are likely to accept the proposed regulation. Furthermore, the assumptions and data used in RIA can also be improved if they are tested after the carrying out of the RIA through public disclosure and consultation.

164. A successful RIA system in Brazil should include some guidance on how to establish consultation, and also to make consultation more formal and systemic. This implies to identify some of the pre-requisites for a good consultation process. Among the issues that need to be born in mind is that

consultation objectives should be set in order to identify the target audience and select the appropriate consultation method. The stakeholders need to be carefully identified and also the departments or agencies that need to be involved in the process. If the Brazilian RIA system opts for written consultation procedures, then the nature and form of the questions should be considered. It could also be useful to envisage that public authorities be given the duty to provide a response to the comments received, and why they may not have been considered as part of a regulatory proposal.

Methodology for RIA

165. The checklist contained in Decree No. 4.176 from 2002 constitutes a building block that could be further developed. The Brazilian government foresees to consolidate a methodological approach to RIA, perhaps through the implementation of a pilot project in which regulatory agencies could participate. It would be advisable to start with regulatory agencies that do not present wide geographic dispersion, but whose actions cover a wide range of services and for which consumers and users have complained about the regulated services. The challenge of the methodology to choose is to scale it to the specific capacities of the country. This means, basically, that RIA should serve more as a process of asking the right questions to the right people, early enough in the policy-making process, thus creating a framework for regulatory policy-making, than about technically precise impact statements that might be difficult to fulfil.

Targeting RIA efforts

166. As other OECD countries, Brazil could target RIA efforts based on specific thresholds about economic costs. The risk is otherwise that the requirements for an RIA be transformed into an empty administrative process, realised ex-post and without significant impact. Given the large number of laws and regulations produced yearly, as well as the concrete needs to foster economic activity and to attract investment for infrastructures, the issue of the threshold above for which laws and regulations should be subject to RIA, is fundamental.

5. Improve the quality of the regulatory stock to ensure the efficient attainment of economic and social objectives

167. Regulatory policy needs to focus on two dimensions of regulatory activity: it has to reform the regulatory appraisal of new regulations (flow), as discussed above with the RIA system, and advocate the reform of existing regulation (stock). This requires the adoption of a dynamic approach to improve regulatory systems over time and to make sure that reforms are carried out in a logical order.

168. Most OECD countries conduct review of the legal quality of the text of draft laws and regulations prior to their enactment or presentation to Parliament. Brazil lacks a procedural tool to ensure that an empirical and comparative approach to the achievement of the policy goals has been taken during policy development, and that this has been informed by the involvement of a wide range of affected groups. The relationship between primary and secondary legislation, including co-ordination between these two levels of regulation and the consistency of scrutiny and quality controls applied to each, is also missing in the current model, in spite of the legal checks performed by the AGU and the Legal Office in Casa Civil.

169. The dynamic approach should also apply to review the existing regulation. OECD countries have followed different strategies to make sure that the existing regulation corresponds to current economic and social conditions. Brazil has made important efforts to consolidate and codify its legal corpus. This has been, however, insufficient. A joint effort between the Executive and the Legislative is needed to adopt an approach that could make a significant difference in the way this has been done so far, and with a view to promote administrative simplification beyond mere codification. Ministries and agencies producing regulation should be mobilised to participate in this effort, with input from the private sector on the most crucial areas for action in terms of simplification.

6. Improve transparency and increase social participation in regulatory processes

170. Transparency covers a broad range of issues essential for the regulatory process. Most OECD countries have made considerable improvements on increasing transparency, not only in consulting with stakeholders and making regulations more accessible for the public, but also in drafting laws and regulations in plain language and reducing legal uncertainty by communicating regulatory proposals and decisions on time.

171. Brazil has made good progress in introducing transparency principles in its regulatory process, at least in a formal sense. But these efforts could be complemented by other measures. Notwithstanding any RIA system discussed above, public consultation, for instance, should be compulsory for the discussion of any regulatory proposal and for all ministries and agencies of the public administration. This should be complemented by establishing specific deadlines for public consultation and making available to the public the different opinions received on a particular issue. OECD countries have opted for different tools to deal with public consultation, such as circulation-for-comment or notice-and-comment. Mechanisms already used in Brazil could be improved: informal consultation can be supported by new procedures, such as circulation-for-comment procedures, in a more systematised way, which could have a positive impact on accountability and scrutiny and reinforce confidence on government actions. These comments should be provided in a fixed period of time (in some countries this delay varies from thirty days to three months) and in written form, which could be also a good way to get data for decision-making.

172. The use of information and communication technologies (ICT) to strengthen public consultation by broadening access to more groups, speeding up information flows, and reducing the costs of distributing and obtaining information, could be also improved. Brazil has already well-developed web sites with information on government actions. These web sites, however, could be more interactive and easier for access, with more content information. The use of ICT is also relevant for another aspect of transparency: communication with the public. In this area, the Brazilian government has made important improvements in making available the existence and content of all regulations. But in a country where regulatory inflation remains a concern, the challenge is to link this positive aspect to more comprehensibility of the legal system and the improvement of the quality of new and existing regulation.

Notes

1. World Bank (2007), *World Development Indicators Database*, Washington, April.

2. The regulatory authorities discussed in the rest of this report are generally *autarquias*, which is a form of decentralised administrative agency.

3 Decree No. 3.029 from April 16th 1999.

4. Management contracts have been introduced for some of the authorities discussed in this report.

5. These councils exist in several of the policy areas discussed in this report, but they are generally not supported by a substantive secretariat.

6. The concession process worked as follows: The winner of the contract would operate a facility for a limited period of time (usually 20-25 years) at the end of which the assets would revert to the State unless a new concession would be granted either to the old firm or a newcomer after an appropriate auction. The contract would include provisions for rate and tariff readjustments, investment obligations for both maintenance and upgrading the relevant facilities, etc. Amman, Edmund and Baer, Werner (2005), "From the Developmental to the Regulatory State: the Transformation of the Government's Impact on the Brazilian Economy" in *The Quarterly Review of Economics and Finance*, No. 45, University of Illinois, p. 424

7. Law No. 8 031 from April 12th 1990.

8. The National Council for Privatisation (*Conselho Nacional de Desestatização, CND*) was created by Law No. 9 491 from September 1997.

9. For more detail see OECD (2005a), *Competition Policy and Law in Brazil*, Paris.

10 The ANP is currently called National Agency of Petroleum, Gaz and Biofuels (*Agência Nacional de Petróleo, Gás e Biombustíveis*).

11 DNIT is an executive agency, not a regulatory body.

12. The number of current laws in the Brazilian legal system has been estimated to 3 510 804 norms. Amaral, Gilberto et al. (2007), *Quantidade de normas editadas no Brasil: 18 anos da Constituição Federal de 1988*, Instituto Brasileiro de Planejamento Tributário, Curitiba.

13. OECD (2006), *Economic Survey Brazil*, Paris.

14. OECD (2005b), *Economic Survey Brazil*, Paris, p. 94.

15. Melo, Marcus André (2001), "A Política da Ação Regulatória: Responsibilização, Credibilidade e Delegação" in *Revista Brasileira de Ciências Sociais*, Vol. 16, No. 46, June, pp. 55-69.

16. 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 (2004), *Building Capacity for Regulatory Quality: Stocktaking Paper*, GOV/PGC(2004)11, Paris, April.

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

18. See OECD (2005a).

19. For a comprehensive analysis of the Brazilian Competition Policy System (*Sistema Brasileiro de Defesa da Concorrência*) see OECD (2005a).

20. Pó, Marcos Vinicius and Abrucio, Fernando Luiz (2006), "Desenho e funcionamento dos mecanismos de controle e accountability das agências reguladoras brasileiras: semelhanças e diferenças" (Design and work of the control and accountability mechanisms of the Brazilian regulatory agencies) in *Revista de Administração Pública*, Vol. 40, Num.4, Rio de Janeiro, Jul./Aug, p. 683.

21. Nearly 74% of the municipalities created after the 1988 Federal Constitution has less than 10 thousand inhabitants.

22. Even if municipalities had been recognised in previous Constitutions, it was only in 1988 that these political entities acquired political autonomy and status as federative entity. For a broader view on the role and the evolution of municipalities in Brazil see Tomio, Fabricio Ricardo de Limas (2002), "A criação de municípios após a Constituição de 1988" in *Revista Brasileira de Ciências Sociais*, Vol. 17, No. 48, February.

23. Abrúcio, Fernando Luiz (2005), "A coordenação federativa no Brasil: a experiência do período FHC e os desafios do Governo Lula" in *Revista de Sociologia e Política*, No. 24, Curitiba, p. 58.

24. In a research conducted with Magistrates, 29.3% of those interviewed responded that "deficiencies of the legal system are very important to explain the lack of predictability of judicial decisions". This is the one of the first obstacles to anticipate judges' decisions. Pinheiro, Armando Castelar (2003), *Judiciário, Reforma e Economia: A Visão dos Magistrados*, Texto para Discussão No. 966, IPEA, Rio de Janeiro, July, p. 45.

25. Between 1997 and 2005, 23 regulatory agencies were created in 18 Brazilian States. Only two of them correspond to municipal agencies. Olivieri, Cecília (2006), "Agências regulatórias e federalismo: a gestão descentralizada da regulação no setor de energia" in *Revista de Administração Pública*, No. 40 (4), Rio de Janerio, July/August, p. 570.

26. *Ibid*., pp. 572-573.

27. Article 34, II, of the Decree Number 4 176, from 2002.

28. Gesner, Oliveira and Fujiwara, Thomas (2005), *Brazil's Regulatory Framework: Predictability or Uncertainty?*, São Paulo, p. 8.

29. Alston, Lee *et al.* (2006), *Political Institutions, Policy-Making Processes and Policy Outcomes in Brazil*, Inter-American Development Bank, Washington, p. 33.

30. The General Ombudsman produces newsletters called "*Escuta Brasil*" and an annual report (*Relatório de Atividades*).

31. Pinheiro, Armando Castelar (2001), *Economia e Justiça: Conceitos e Evidência Empírica*, BNDES, p. 16.

32. In a research with Magistrates, 33.6% of them admitted that "frequently" they have to decide on issues of political nature that should be resolved at the political level. Pinheiro, Armando Castelar (2003), *op. cit.*, pp. 23-24.

33. Freitas, Nilton and Gereluk, Winston (2002), "A National Tripartite Agreement on Benzene in Brazil" in: ten Brink, Patrick (ed.), *Voluntary Environmental Agreements: Process, Practice and Future Use*, Sheffield, U.K., Greenleaf Publishing, pp. 176-190.

34. *www.abnt.org.br*

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

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

37 This Committee would formulate or propose guidelines concerning the relationships between the Ministries and the regulatory authorities.

38. OECD (1997b), *Report on Regulatory Reform*, Vol. I, Paris, p. 221.

39. Jornal do Senado, 7 August 2003.

ANNEX 1. REGULATORY AGENCIES AT FEDERAL, STATE AND MUNICIPAL LEVEL IN BRAZIL (1997 – 2005)

Regulatory agencies at federal level	Legal base and date of creation
Agência Nacional de Energia Elétrica – ANEEL	Law No. 9 427, 2 December 1996
Agência Nacional do Petróleo – ANP	Law No. 9 478, 6 August 1997
Agência Nacional de Telecomunicações – ANATEL	Law No. 9 472, 16 July 1997
Agência Nacional de Vigilância Sanitária – ANVISA	Law No. 9 782, 26 January 1999
Agência Nacional de Saúde Suplementar – ANS	Law No. 9 961, 28 January 2000
Agência Nacional de Águas – ANA	Law No. 9 984, 17 July 2000
Agência Nacional de Transportes Aquaviários – ANTAQ	Law No. 10 233, 5 June 2001
Agência Nacional de Transportes Terrestres – ANTT	Law No. 10 233, 5 June 2001
Agência Nacional do Cinema – ANCINE	Provisional measure No. 2 228-1, 6 September, 2001
Agência Nacional de Aviação Civil — ANAC	Law 11 182, 27 September, 2005
Regulatory agencies at State level	**Legal base and date of creation**
Agência Estadual de REgulaçào dos Serviços Públicos Delegados do Rio Grande do Sul – Agergs/RS	Law No. 10 931, 9 January 1997
Agência Reguladora de Serviços Públicos Concedidos do Estado do Rio de Janeiro – Arsep/RJ	Law No. 2 686, 13 February 1997
Comissão de Serviços Públicos de Energia (Sào Paulo) – CSPE/SP	Supplementary Law No. 833, 17 October 1997
Agência Reguladora de Serviços Públicos Delegados do Estado do Ceará – Arce/CE	Law No. 12 786, 30 December 1997
Agência Estadual de Regulação e Controle de Serviços Públicos – Arcon/PA	Law No. 6 099, 30 December 1997
Agência Estadual de Regulação de Serviços Públicos de Energia, Transportes e Comunicações da Bahia – Agerba/BA	Law No. 7 314, 1998
Agência Reguladora de Serviços Concedidos do Estado de Sergipe – Ases/SE	Law No. 3 973, 10 June 1998
Agência Reguladora de Serviços Públicos do Estado de Minas Gerais – Arse/ES	Law No. 12 999, 31 July 1998
Agência Estadual de Regulação dos Serviços Públicos Delegados do Estado do Mato Grosso – Ager/MT	Law No. 7 101, 14 January 1999
Agência Reguladora de Serviços Públicos do Rio Grande do Norte – Arsep/RN	Law No. 7 463, 2 March 1999

Agência Goiana de Regulação, Controle e Fiscalização de Serviços Públicos – AGR/GO	Law No. 13 550, 11 November 1999
Agência Reguladora dos Serviços Públicos Concedidos do Estado do Amazonas – Arsam/AM	Law No. 2 568, 25 November 1999
Agência Estadual de Regulação dos Serviços Públicos Delegados do Estado do Pernambuco – Arpe/PE	Law No. 11 742, 14 January 2000
Agência Reguladora de Serviços Públicos do Estado de Alagoas – Arsal/AL	Law No. 6 267, 20 September 2001
Agência Estadual de Regulação dos Serviços Públicos de Mato Grosso do Sul – Agepan/MS	Law No. 2 363, 19 December 2001
Agência Reguladora de Serviços Públicos Delegados de Transportes do Estado de São Paulo – Artesp/SP	Law No. 914, 14 January 2002
Agência Estadual de Vigilância Sanitária da Paraíba – Agevisa/PB	Law No. 7 069, 12 April 2002
Agência Estadual de Energia da Paraíba – Ageel/PB	Law No. 7 120, 28 June 2002
Agência Reguladora de Energia e Saneamento Básico do Estado do Rio de Janeiro – Agenersa/RJ	Law No. 4 556, 6 June 2005
Agência Reguladora de Serviços Públicos Concedidos de Transportes Aquaviários, Ferroviários, Metroviários e de Rodovias do Estado do Rio de Janerio – Agetransp/RJ	Law No. 4 555, 6 June 2005
Agência Executiva de Gestão das Águas do Estado da Paraíba – Aesa/PB	Law No. 7 779, 7 July 2005
Regulatory agencies at municipal level	**Legal base and date of creation**
Agência Municipal de Regulação dos Serviços de Saneamento de Cachoeiro de Itapemirim – Agersa/ES	Law No. 4 798, 1999
Agência Municipal de Regulação dos Serviços de Água e Esgotos de Joinville – Amae/SC	Law No. 4 341, 2001

Source: Brazilian Association of Regulatory Agencies (*www.abar.org.br*); Casa Civil (2003), *Análise e avaliação do papel das agências reguladoras no atual arranjo institucional brasileiro*, Relatório do Grupo de Trabalho Interministerial, Brasília.

ANNEX II. REGULATORY QUALITY OVERSIGHT BODIES IN OECD COUNTRIES

Countries	Name & location	Date	Main mission	Resources & Comments
Australia	Office of Regulation Review in the Productivity Commission	1998	- Advise departments/regulatory agencies on appropriate quality control for development of regulatory proposals and review of existing regulations - Encourage right use of regulation and reduction of unnecessary regulation - Examine and advise the government on Regulation Impact	- A staff of approximately 20
Austria	The Legal Service of the Federal Chancellery		- Secure regulatory quality at federal level surveying the compliance of drafts with national constitutional law, European law and regulatory policies - Securing the clarity, comprehensibility and coherence of regulation - Develop new regulatory policies and legislative guidelines	
Belgium	Agency for administrative simplification in the Prime Minister's Office		- Initiate simplification projects in all domains, Stimulate simplification projects, Co-ordinate the simplification policy on administrative level - Develop tools (measure administrative burdens)	
Canada	Regulatory Affairs and Orders in Council Secretariat, Privacy Council Office		- Develop and manage the government's regulatory reform and research agendas - Support to the Cabinet on regulatory matters, including secretariat services for the Cabinet committee that approves most federal regulations	- The President of the Treasury Board has a mandate for promoting the implementation of Smart Regulation in Canada
Czech Rep.	Department for Regulatory Reform and Quality of Public Administration in the Ministry of Interior		- Prepare strategy materials in the area of central state administration reform and regulatory reform, co-ordination of these reforms - Oversight of RIA quality	- The Department has 30 employees 20 of which are dealing with regulatory reform agenda
Denmark	Division for Better Regulation in the Ministry of Finance		- Ensuring high quality in new and existing regulation. - Develop Governments regulatory policies, and co-ordinate the preparation and examination of the governments annual law planning programme - Co-ordinate the governments annual action plans for simplification - SCM-measurement of the administrative burdens and assist other ministries in performing Business Impact Analysis as part of their RIA-process * Ministry of Justice, a division on law quality is monitoring the legal coherence and quality of draft regulation	- Ministry of Finance: a Head of Division and six heads of section - Danish Commerce and Companies Agency: a Head of Division and fifteen heads of section - Ministry of Justice: a Head of Division and four heads of section
Finland	Bureau of Legislative Inspection, Ministry of justice			
France	*Missing*			
Germany	Regulatory control council		- This body will be associated to the Federal Chancellery and has to assess the red tape and the necessity of new and existing laws	- Regulatory control council is scheduled to begin its work in autumn 2006

Countries	Name & location	Date	Main mission	Resources & Comments
Greece	Central Regulatory Impact Unit, General Secretariat of the Government, Prime minister's Office		- Co-ordinate the vertical ministerial units and provide guidelines on RIA - Draft reports for the prime Minister's edicts & Ministers Council regulations - Report the progress of better regulation policy to the Parliament * Ministry of the Interior, Public Administration is responsible for some parts of the better regulation agenda, such as simplification and codification	
Hungary	Ministry of Justice		- General quality assurance and control of the legislation	
Iceland	Consultative committee on official monitoring rules, office of the Prime Minister		- Examine monitoring rules or the implementation of specific activities - Comment on parliamentary bills/draft government instructions on rules - Keep track that the review of monitoring rules is consistent with Act. no. 27/1999 and present suggestions for review where appropriate - Advise government authorities on the review of monitoring rules and implementation of monitoring in keeping with the objectives of Act. no. 27/1999 * The Prime Minister reports to parlaiment every three years	- The committee has no permanent staff but uses the staff of the ministry and independent consultants
Ireland	Better Regulation Unit in the Public Service Modernisation Division, Prime Minister's Department		- Overseeing regulatory impact analysis - Supporting implementation of EU Action Plan of Better Regulation and representing Ireland at other international bodies - Performing advocacy role in relation to better regulation issues at national level	
Italy	Presidency of Council of Ministers		- Promoting regulatory policy/monitoring/reporting/co-ordinating ministries activities	- RIA unit has 4 staff members and 5 advisors, under the supervision of the Head of Department
Japan	Council of the Promotion of Regulatory Reform		- Researching and deliberating what is necessary to push ahead with structural reforms of social economy, 1) necessary items about the reform of the nature of the regulations when outsourcing central/local governments' operations/office works; 2) other fundamental items about the nature of regulations	
Korea	The Office of Regulatory Reform (ORR), the Prime Minister's Office	1998	- Support the Regulatory Reform Committee which examines newly establishing or strengthening regulations of each ministry * The Regulatory Reform Task Force (RRTF) under the Office of regulatory reform plays the role of improving existing regulations, or bulk regulations that affect many ministries	- ORR: 40 staff members (1 deputy minister level; 2 director general level; 10 director level; 4 Special experts; 23 staff members) - RRTF: staff of 53 (3 director general level; 6 director level; 23 special experts; 15 members)
Luxembourg	*Missing*			
Mexico	Federal Regulatory Improvement Commission, Ministry of Economy		- Improve the quality of the regulatory framework by means of the Biennial Programs of Regulatory Improvement (PBMR) - Integrate & maintain updated the Federal Register of Formalities and Services - Review/improve federal drafts generating fulfillment costs to the citizens - Collaborate & offer technical support to the States and Municipalities to establish regulatory reform programs	

Countries	Name & location	Date	Main mission	Resources & comments
Netherlands	Bodies within the Ministries of Justice, Finance, Economic Affairs and Council of State Actal	2000	- Since 2000 the independent Advisory Board on Administrative Burdens (Actal) has been scrutinizing impact assessments with specific attention for the quantification of administrative burdens. Because of Actal's independent status it plays no direct role in deciding whether a legislative proposal is ready to go ahead to the Council of Ministers, but its opinions are made public alongside the legislative proposal and can thus play a role in Parliamentary debate	- Also the Minister of Finance on occasion does draw on Actal's judgement when proposals are discussed in the Council of Ministers
Norway	Ministry of Modernisation			
New Zealand	Ministry of Economic Development		- The RIA Unit has issued guidelines for the preparation of Regulatory Impact Statements - Review RISs and provides adequacy statements on them - Provide training & advice on regulatory issues to officials to build capability for undertaking regulatory impact analysis	- From the 8 staff members in the Regulatory Policy Unit, approximately 4 full-time equivalents are dedicated to the work of the RIA Unit - Other Ministry of Economic Development staff may assist
Poland	Inter-ministerial Regulatory Quality Team (Minister for Economic Affairs & Labour is the head of the team) Department for Economic Regulation in the Ministry of Economic Affairs and Labour		- Development of draft government positions on regulatory reform - Undertaking measures on administrative burdens and eliminating needless administrative burdens and procedures to entities - Development of RIA guidelines - Providing access to information and dissemination of knowledge ❖Other issues pertaining to regulatory quality as commissioned by the Council of Ministers or the Prime Minister Implementation of Regulatory Reform Programme * The team is a consulting and advisory body to the President of the Council	- The Team is composed of representatives, including those in the rank of a secretary of state, undersecretary of state, president or deputy president, from 21 ministries and bodies of state administration
Portugal	*Missing*			
Spain	Ministry of Public Administration, Prime Minister's Office Agency for Evaluating Public Policies		- Prime Minister's Office: dealing with quality on drafting regulations - Public Administration Ministry: dealing with Better Regulation Policy and promoting of government wide progress on regulatory reform - Comisión de Secretarios de Estado y Subsecretarios: monitoring the quality of all regulations produced by ministries before presenting the text to the Council of Ministries - Agency for Evaluating Public Policies has been created at the end of 2006 and began to work 1 January. It monitors quality of RIAs and develops guidances	

Source: Jacobzone, S., Ch.-W. Choi and C. Miguet (2006), *Quality Indicators of Regulatory Management Systems*, OECD Working Papers on Public Governance, No. 4

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