

Legislative Drafting in France: The Better Regulation (BR) Approach

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Abstract

The quality of the law has always been a prime concern to French regulators. The last ten years have seen a flurry of reforms, including a constitutional amendment to introduce RIA and six simplification laws. This article, drafted by a practitioner, attempts to identify what is specific about the French approach, and to appraise the model and its results against international best practice as expressed by the “Better Regulation” principles. It will do so by first looking at the policy discussion, then taking a “hands-on” viewpoint, including personal experience. It concludes that much progress has been made but further improvements are necessary if the system is to guarantee economic accountability on a par with legal security, and remain an “attractive” model.

As of May 2012, after ten years of centre right rule, elections have returned a president supported by a different majority: over the two parliamentary terms, conditions were met for sustained administrative reform, with a consistent and rich regulatory agenda, including a constitutional amendment to introduce regulatory impact assessment (RIA) and six simplification laws. After such wide-scale changes, can the issue of quality of legislation be considered solved, and is the ensuing architecture and production on a par with international best practice? Are there any lessons to be learnt for other countries? Is the “French legal model” even more attractive than before?

This article will address legislative drafting in the context of its contribution to policy-making and delivery, which is central to the Better Regulation (BR) approach. It will attempt to summarize what is specific about the French approach, starting with a review of official reports published (in French only.) The objective is to determine to what extent the model meets international standards, as defined chiefly by the OECD in its regulatory governance recommendations revised in 2012¹⁸¹. The article will also capitalise on some 30 years of personal experience of drafting legal texts in four French Ministries. The starting point is my personal impression that the tradition of excellent drafting skills, which leads to a search for

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¹⁸¹ http://www.oecd.org/document/38/0,3746,en_2649_34141_2753254_1_1_1_1,00.html

formal excellence, may have somewhat obscured, or reduced the urgency of, the need for keeping the legal corpus manageable, and guaranteeing economic relevance, two of the basic tenets of Better Regulation.

The issue will be examined from two angles:

- a review of the policy debate: examining the French officially adopted quality definitions and standards from the international perspective;
- a “hands-on” view: checking that the resources supporting drafting and the quality control procedures are effectively delivering regulatory quality.

The issues are presented by a practitioner for research purposes and do not represent the official point of view of French authorities, but a personal contribution to the understanding of this governance issue. The article will briefly describe specific technical resources used by professionals engaged in legislative drafting, not currently available in English.

In writing this personal testimony, the author is indebted to the conceptual study of what constitutes quality of legislation by Prof. W. Voermans¹⁸² as well as to the comments by an anonymous (academic) peer-reviewer. He wishes to thank both these eminent experts.

THE POLICY DISCUSSION

Our starting point is provided by two series of documents representative of two quite different standpoints:

- the French official sources, such as the Council of State 2006 report on “legal security and complexity of the law”¹⁸³;
- the OECD literature, especially the 2010 review of French regulatory capacities,¹⁸⁴ seen as a compendium of international best practice.

The issue at stake is whether the French approach, as incorporated in official reports and subsequent reforms, meets the international standard when it comes to quality of legislation, as defined in the OECD literature.

LEGISLATIVE QUALITY IN FRANCE

The most widely held viewpoint in France is that a country of longstanding tradition in all matters administrative, with a recognised experience in legal production, can be proud of its well-managed body of law. This confidence is boosted by the perceived external appeal of the “French model” for legal and administrative skills. The National School of Administration, which trains the upper echelon of policy-makers and regulators, has been used as the template for some 30 similar institutions around the world. The national

¹⁸² Voermans, Wim J. M., Concerns About the Quality of EU Legislation: What Kind of Problem, by What Kind of Standards? (2009). *Erasmus Law Review*, Vol. 1, No. 2, 2009. Available at SSRN: <http://ssrn.com/abstract=1492104>

¹⁸³ <http://www.ladocumentationfrancaise.fr/rapports-publics/064000245/index.shtml>

¹⁸⁴ http://www.oecd.org/document/47/0,3746,fr_2649_37421_45710063_1_1_1_37421,00.html

authorities themselves devote significant attention to the issue of “attractiveness of French law”¹⁸⁵ viewed as an alternative to the “Anglo-Saxon” model. In this context, legal drafting has always been a prime concern in France, central to normative production. The government regularly updates guidance to policy-makers, the most recent such document being the *Circular of 7 July 2011*¹⁸⁶ “on the quality of the law”. This document highlights the need for improved steering of the normative production in our days of RIA, proportionality and legal consistency.

Understanding the official policy is facilitated by the wealth of policy statements issued over the last 10 years.

- In parallel with work conducted under the aegis of the European Union in the early 2000s, a group of experts under the chairmanship of Mr D. Mandelkern produced a landmark report on the regulatory quality in 2002¹⁸⁷. Notwithstanding the usual reference to normative inflation as the main reason for seeking change, the suggested reforms are very close to OECD and EU thinking at the time, with measures to improve consultation, RIA and implementation. It approaches quality of legislation through criteria of necessity, proportionality, effective consultation and careful implementation.
- About a year later, at the time of the first review by OECD of France’s regulatory capacities, the Government adopted a more narrow set of measures, by way of two circulars dated 26 August 2003, under the heading “combating normative inflation and improving regulatory quality.” These texts set up a network of officials in charge of regulatory quality, muscled up the RIA system, but did not mention consultation or delivery. The results were disappointing; RIA did not take off and the network did not publish any official guidance.
- Finally, the Council of State 2006 report, which updates a previous report published in 1991, makes the case for enforcing a principle of legal security, without losing sight of the immediate objective of curbing the over-production of norms. But pages 300 to 336 take stock of current international best practice to present an array of solutions inspired by international best practice. It is interesting to examine the language, which distinguishes two main thrusts for reform to enhance legal security and curb over production:
 - closer compliance with constitutional prescriptions; and
 - effective implementation of existing regulatory management instructions.

These orientations are materialised in detailed proposals that implicitly refer to some of the principles and tools of Better Regulation:

¹⁸⁵ See the work of the Foundation for continental law: http://www.fondation-droitcontinental.org/jcms/c_5105/accueil

¹⁸⁶ http://circulaire.legifrance.gouv.fr/pdf/2011/07/cir_33427.pdf

¹⁸⁷ <http://www.ladocumentationfrancaise.fr/rapports-publics/024000213/index.shtml>

- use of alternatives such as self-regulation;
- regulatory impact analysis (page 303); and
- clearer separation between policy-making and legislative drafting (page 302).

Other recommendations seem more specific to the French constitutional framework:

- stricter respect of respective spheres of competence of parliament and government, one of the key principles of the current constitution;
- sounder use of the amending process to avoid the proliferation of norms;
- “new working methods for Parliament”, including a stronger commitment to evaluation (page 322); and
- better implementation of texts (p. 328) and information of the public.

All in all, the 2006 report, which provided the conceptual background for the 2008-2010 reforms, offers a much wider scope for reforms, all seeking increased legal security, but with a corresponding dilution of the management of economic impacts of regulation. The 2002 Mandelkern report had been closer to the OECD and EU definitions of quality of legislation, as it placed more emphasis on economic accountability of regulators and less on responsibility for legal security.

THE OECD ASSESSMENT

In its 2010 review of French regulatory capacities, the OECD researched in full the French model and *inter alia* concluded: “*The definition and policy field of French regulatory governance do not always fit the expression “Better Regulation”, which is difficult to translate into French. France does not have a regulatory governance strategy in the strict sense, but a set of measures to improve the quality of regulation, which are driven essentially by the perception of a “French disease”, namely the overproduction of legal norms.*”¹⁸⁸

To close this section on policy issues, the French approach to “quality of the law”, still appears closely associated with the notion of “legal security,” which has driven the reform agenda over the past 10 years. The ensuing practice is seen by the OECD to fall short of the full Better Regulation agenda as defined in international best practice.

A HANDS-ON VIEW OF LEGISLATIVE QUALITY IN FRANCE

Beyond policy announcements, how is quality pursued by the regulators in government offices and parliament? We will now focus on legislative drafting, and examine how the resources made available to desk officers engaged in drafting legislation (termed “legistics”) and the controls in the regulatory management procedure effectively deliver on the quality front.

¹⁸⁸ OECD, 2010, page 14.

Legistics: the cornerstone of drafting quality in France

A well supported concept

As mentioned above, the quality of legislative drafting is a highly valued skill in France. A “*guide de légistique*,”¹⁸⁹ a voluminous manual (500 pages) available on the web unfortunately without an English translation, provides a wealth of advice, ranging from the collection of legal data to drafting rules and style. The guide focuses on skills needed to draft new legislation, and does not adopt a comprehensive approach to the production of regulations or policy-making. Indeed, it appears from the guide that there is little effort at perfecting policy-making as a step that may influence the quality of regulation, in spite of the obvious connection. This can be explained by the fact that policy-making skills are expected to have been acquired before ingress into the public service, but not legislative drafting, which is best developed on-the-job.

Only the recent wider implementation of impact assessment can be said to be reversing, to a certain extent, this well-established and rather conservative approach to the production of regulation.

Content of *guide de légistique*

This key document, written for officials drafting regulations, contains both theoretical insights and practical tips on how to write good (legally secure) texts. This is the structure of the guide:

- Conception of draft legislation: describes the various types of norms and their hierarchy from constitution to standing instruction (“*circulaire*”). It purports to encourage regulators to question the “usefulness and efficiency of the projected new norm”;
- Stages in the preparation of the new text, “described on the basis of current rules published by the Prime minister”;
- Drafting of regulations: includes rules and examples of good practice, as well as solutions to common issues met when dealing with new legislation, presented as a series of practical presentations.

How effective is the legistics guide? The box above, summarising the contents, shows an emphasis on process rather than on product. Formal prescriptions are abundant, while little is said on how to collect evidence about the “usefulness and efficiency of the new norm.” Though supported in recent policy guidance following the constitutional reform, the impact assessment procedure has not been integrated into Legistics, and the instructions are published on a restricted intranet.

¹⁸⁹ http://www.legifrance.gouv.fr/html/Guide_legistique/accueil_guide_leg.htm

Training in legislative drafting for officials

Most public law studies in France include some training for policy-making skills, as part of the preparation for the practical use of public law. The best course is provided by the Institute of Political Studies in Paris, whose students will often be sitting the entrance examination to the senior civil service, *inter alia* the national school of administration (ENA). However, legislative drafting is provided mainly in the induction courses, such as those provided to graduates admitted to ENA, where it is one of the most important items on the curriculum. The skills are developed on the basis of real life dossiers, presented by practitioners from the ministries to help transmit the professional know-how. The training places great store on legal expertise, and less on social sciences, but also includes change management. Young officials handle real cases where reforms are often summarized by the necessary new legislation they entail. Around 100 officials a year receive this training.

In spite of this, during its 2010 review, the OECD recorded that there was a fairly widespread view in ministries that legal drafting capacities needed to be enhanced, particularly to produce texts that are clearer and easily accessible¹⁹⁰.

Tips to draft good legislation, according to the French tradition

(Detailed advice from the *guide de légistique*)

- pay scrupulous attention to the presentation of the new text: how to write the introductory report; how to situate the new rules in the legal corpus; the rules for organising the subject matter and the use of annexes;
- carefully quality control the language: vocabulary, syntax, use of acronyms, etc;
- provide a logical and clear technical layout, especially for texts modifying existing regulation;
- do not forget specific legal regimes (such as overseas territories);
- respect specific procedures which differ according to the type of text and specific rules (implementation of international conventions or EU Law, individual measures), or call for different consultation processes (compulsory or not), approval procedures and formal presentation rules.

After examining logistics we will now address questions of process and quality control, starting with the possibly questionable proximity between policy-making and legislative

¹⁹⁰ OECD (2010) page 17.

drafting in France. Further sections will address quality considerations during the design of new regulation, then guarantees applied after enactment and finally we will briefly examine drafting in Parliament.

Legislative drafting in support of policy-making

In France, legislative drafting starts rather early in the policy-making process, comparatively to other countries, and is not entrusted to a specific body of lawyers (such as in the UK). Legislative drafting is considered as part of the substantive policy officials' tasks, for which specific training has been provided, mainly early in the career. There is a belief that these skills can best be acquired, on the basis of sound legal training, by real-life experience of policy-making, because of the complexity of the legal framework and variety of policy constraints. Additional guarantees are provided by the series of quality checks operated under the general supervision of the Council of State.

The question is how effective is that approach? Though sometimes criticised, the near parallel management of policy-making and legislative drafting, which is predominant in France and in other countries of similar administrative tradition, has a number of positive consequences on the quality of the ensuing product:

- in the minds of those who built the French model over the past two centuries, closely associating the two functions ensures that all the evidence available to the policy-maker (including evaluation of existing policy) is naturally fed into the preparation of the projected new rules. It is difficult enough to ensure that the evidence base is fully used without having to convey the information to an outsider such as a lawyer, who may by profession be less inclined to take full account of the factual constraints.
- the early drafting of the new rule focuses the reform efforts on the insertion of the policy content into the existing legal framework. The danger is of course to restrict the scope of the changes by giving too much weight to existing structures or concepts;
- the existence of an early draft of the new legislation is also an asset during the consultation process with other administrations and with stakeholders, as the nature and extent of the changes can be more immediately apparent.

On the downside, once the initial draft of a new bill has been completed, it could be more difficult to consider alternative options, hence the need recognised as an international best practice is to avoid premature drafting.

On balance, the advanced legal culture of policy-makers, their recognised expertise in guaranteeing legal consistency and clarity may contribute to delay the urgency of migrating towards a broader set of quality standards for regulation, including simplicity and economic relevance. France is not the only country to have experienced difficulties in introducing the regulatory impact assessment (RIA) into the legislative drafting process,¹⁹¹ which is one of

¹⁹¹ See the loi organique dated 15 April 2009 (<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020521873&fastPos=2&fastReqId=187094993&categorieLien=cid&oldAction=rechTexte>) and circulaire of the same day

the most common ways of starting a better regulation policy. The system however does also include several quality checks at various stages of the rule-production process, which will be the topic of the next sections.

Quality control during the design of new legislation

Production of the first legal draft

Policy-makers in Ministry regulatory offices are used to “converting” new policy into regulation. It is, in France, an essential component in the policy-making process, ensuring a seamless passage from the policy document to the draft legislation, once the preferred option has been selected formally or informally by the minister or his private office (*cabinet*).

The insertion of the reform into the current corpus of regulation is ensured thanks to a good deal of ongoing work to maintain and consolidate the body of current legislation and guidance precisely, in anticipation of future reforms. This task, which used to be done manually in the files, is now supported in a more efficient manner by the online database of legislation, *Légifrance*¹⁹². The prime contribution of that online database is to offer immediate consolidation of new legislation, as it is published in the Official Journal, with high standards of professionalism, without claiming absolute legal value. Several other countries operate such registries, but few have devoted such extensive resources to the venture.¹⁹³

In the higher profile policies, there are of course formally approved (voted in Parliament) codes such as the Civil Code and the Penal Code. The formal codes and informal technical consolidations can also be privately funded publications aimed at specific, more specialised users, and are often more attractively presented (like the Administrative Code, which compiles hundreds of texts and is a bible for all professional policy-makers). Finally, if there is no formal publication, it is up to each *bureau* (service) to keep its own consolidation.

These resources are supplemented by collections of official documents and standing instructions (published official ministry bulletins) concerning implementation of current norms, including the precious *circulaires* (standing instructions) which contain practical guidance and are not supposed to convey any regulation (but are often the most popular source of information). It is the core responsibility of the desk officer supporting policy-making to maintain the link between policy discussions (debates in Parliament, Government declarations, official reports) and the body of law.

Finally, the quality of the drafting process is dependent on the maintenance of dossiers on each item of legislation, collecting as much evidence as possible about implementation, including correspondence with citizens, and, if applicable, the outcome of litigation.

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020522151> which emphasize legal consistency and consistency, including with the European level of legislation.

¹⁹² <http://www.legifrance.gouv.fr/>

¹⁹³ For more on consolidated databases, see author’s article on “Legifrance, the French legal portal” on http://montin.com/archive/documents/legifrance_cairo.pdf

The finalisation of the draft is the prerogative of the minister's private office or circle of close advisers, which will always include the necessary legal expertise. This may or may not have been preceded by discussions and formal correspondence with other ministries once the main lines are agreed between lead and interested ministries.

The draft legislation during the consultation process

In the French policy-making setup, great emphasis is placed on “prior consultation” of stakeholders, but usage does not correspond to what is generally meant by this in international best practice. This process is, compared to those in other countries, very formally organised: consultative bodies are numerous (3000), and they are all established by a legal text which determines their competence. Failure to comply with a consultation requirement can be a cause of annulment of the resulting text, though it is very rare. There is a permanent effort to abolish obsolete consultative bodies, and reduce their overall number, but with limited success.

Consultation may be obligatory or optional. In some cases, agreement of the consulted body is required before the reform can be approved. Usage distinguishes clearly between this “formal” consultation and prior consultation or discussion with ad hoc partners. The consultation need not necessarily be on the draft legislation itself, but it must raise all relevant questions (about the policy). It is more prudent, however, to present the draft itself, as recommended in the Legistics. Recently, there has been a relaxation of the rigid legal framework to allow “open” consultation, i.e. using modern IT tools¹⁹⁴.

Quality checks of new draft bills

Though the desk officers and their supervisors are competent, the norms of quality are high enough to warrant centralised oversight. The General Secretariat of the Government (in French “SGG”), which operates in concert with the Council of State and has its own legal capacity. It helps that the PM's office also supervises the operation of Légifrance.

The SGG's first role is to manage the legislative process and ensure that the government functions as a unit. In case of disagreement between ministries on specifics of a reform, arbitration is ensured by the Prime Minister's office and the SGG to bring about agreed government policy: the SGG is a highly efficient machinery, not limited to solving quarrels, which often monitors programmes or keeps pressure on to achieve important reforms; they manage the legislation planning tool and since 2009, also make sure that the impact assessment requirement is met.

All draft regulations must be agreed at PM level in a formal meeting, before they can be enacted by the Council of Ministers. There are well over 1000 such meetings a year to finalise draft regulations.

An additional layer of quality control has been recently added, with the scrutiny of all new texts impacting local government on the one hand, and business on the other, by the Commissioner, whose role is to monitor the moratorium on government regulations

¹⁹⁴ <http://www.smartregulation.net/2011/12/open-consultation-now-operational.html>

concerning local authorities, enforce the common commencement dates scheme and check the quality of RIAs. The Commissioner's first annual report¹⁹⁵ (April 2012) indicates that the Commissioner examined around 700 draft texts concerning local government and business, rejecting 14 and placing reservations on some 45% of them. Another new product related to the Commissioner's work is the online registry of business-related regulations¹⁹⁶ ranked by commencement date. It already lists 500 texts.

Scrutiny by the Council of State

The Council of State is the Supreme Court of the administrative order of jurisdictions, as well as an adviser to the Government. This high court is especially sensitive to issues of legal security and predictability and plays a leading role both in theory and in practice in keeping the primary legislation consistent.¹⁹⁷ The scrutiny extends to new secondary legislation of greater legal complexity, or belonging to areas specifically designated in the law. Failure to comply with the obligation to consult the Council can result in the repeal of the text by the constitutional court, though such cases are naturally extremely rare and would not occur as a deliberate manoeuvre from Government.

The usefulness of this step is highlighted by the occasional consultation in cases where the step is not formally obligatory and by the opening in 2011 to the Parliament of the possibility of consulting on draft bills of parliamentary origin. This quality check is mainly over legal consistency, but can at times extend to relevance/efficiency issues. The CE can edit the draft, in which case the government will be able to use the new text or revert to its draft (no mixing of versions).

To ensure a fair hearing of evidence other than legal, originating services are always invited to "defend" their draft and supply technical information. It is considered a highly rewarding moment for the drafters to be asked to account for their work before such a top-notch assembly of lawyers, who are also very much attuned to government policy imperatives.

In general, the text is much improved formally after its passage in Council. This high jurisdiction is also reputed, as noted by OECD, to successfully resist shallow or hastily prepared reforms. The judges are sensitive to the fact that any remaining textual inconsistency or ambiguity would assuredly bring the regulation back their attention under their judiciary powers. It is unfortunate that, the opinions of the Council are only rarely published: citizens cannot ask for their release, as they are considered "preparatory documents."

¹⁹⁵<http://www.gouvernement.fr/premier-ministre/un-commissaire-pour-simplifier-le-cadre-reglementaire-applicable-aux-entreprises>

¹⁹⁶ <http://www.legifrance.gouv.fr/entreprise-entree-en-vigueur-des-textes>

¹⁹⁷ See the seminal report entitled "[quality of the norms and legal security \(2006\)](#)", still a major source of inspiration for legislative drafters. <http://www.ladocumentationfrancaise.fr/dossiers/qualite-normes-securite-juridique/index.shtml>

Approval by the Council of ministers

These sound institutional arrangements for the production of good regulations, further enhanced recently by a completely dematerialised workflow¹⁹⁸, culminate in this final decision before publication in the Official Journal, which is, barring specific exceptions, the condition for a *décret* to enter into force, or transmission to Parliament if the subject matter falls within the legislator's competence. The enactment of *décrets* (executive acts signed by the Prime minister and "countersigned" (signed off) by ministers as required for implementation and monitoring of application) takes place immediately.

The presentation of the text in the council of ministers is planned some 5 to 6 weeks before the coming into force date. All policy divergences and legal issues must of course be sorted out before the matter may be put to the Council for approval.

Quality control after enactment

In the Better Regulation approach, it is not enough to produce a clear and relevant legal text: the rules need to be understood, produce the desired policy outcomes, and be regularly reviewed. Only when those goals are met can we consider that the text was "good."

Implementation

The first issue faced by new legislation, once drafted, is implementation. New texts generally require more detailed measures ("*décrets d'application*") as well as non-binding guidance (*circulaires*). There are two reasons why these complementary texts are not always forthcoming:

- (a) to prescribe implementation particulars, you need to know the background, and this evidence is not always easy to gather from Paris ; and
- (b) there are just too many demands on drafting capacity: for instance, the recent reforms of Environment legislation (following the vast consultation known as the "*Grenelle de l'Environnement*"), a July 2010 law , required no fewer than 199 *décrets*, half of which had not yet been adopted a few weeks before the end of this Parliament's term in June 2012.

There is no time limit for government to come up with the *décrets*, which endangers effective implementation and compliance with the law. There have been attempts by Parliament to put some pressure on government, by introducing into the law a clause asking for regular reports on the production of *décrets*, but with little success. The government has not been indifferent to this endemic issue, and there is a central monitoring system to try to avoid too many reforms remaining orphans¹⁹⁹.

¹⁹⁸ OECD (2010) page 43 and <http://www.frlil.org/spip.php?article62>

¹⁹⁹ See *circulaire* dated 29 February 2008

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000018217158>

Codification

Codification of approved texts is considered, in France, as a major contribution to the quality of legislation, as it generally succeeds in making the norms easier to access and sometimes understand. It shows up duplications and possible inconsistencies. But some articles, such as the definition of the employment contract, have been modified so many times (up to once a month during certain periods) that codification has difficulty keeping pace. Codification, which must be carefully distinguished from the consolidation mentioned in earlier sections, has absorbed enormous efforts over the last two centuries. Along with the over-production of norms, it could also be listed as another French disease. Today, more than 40% of the laws in force are grouped into almost 70 codes. However, not all legislation can be codified, as many issues, however important, do not justify adding yet another code to the already lengthy list, and maintaining existing codes requires considerable resources when faced with the flow of new or amended regulations. Codification has also been identified by groups of stakeholders as a tool to obtain recognition of a specific regime, leading to a popular demand for ever more codes. An eminent lawyer ironically remarked: “we now know that there is a code of the mountain, as the legislator has decided that there should be one; now, it is up to us to draft it.” Five years later, there is still no code of the mountain, in spite of the announcement.

In summary, can codification be considered a key component of the search for legislative quality? The French example shows how excessive reliance on codification has reached its limits and can no longer be said to alone guarantee legal clarity and certainty, with such an overloaded body of legislation. Tackling the complexity of legislation *ex post* is not enough to streamline the corpus. As Better Regulation teaches us, regulators must use alternatives to regulation wherever possible, and make sure that *ex ante* assessment avoids over-production. That is what the OECD concluded when it recommended that “*codification must be not only an ex post remedy for the proliferation of regulations but needs to be associated with efforts to control the flow of regulations upstream, initially impact assessment.*”

Legislative drafting in parliament

Here again, the main concern is for overproduction of legal norms. Observers regularly remark that the Parliament, bogged down by government bills, was suffering most from the phenomenon in its daily operation and in its image as legislator. This is caused by the backlog of proposals to be discussed and voted, and especially the lengthening of texts (often over 200 pages) with superfluous detail and esoteric wording. This situation may have been instrumental in bringing about the constitutional reform in 2008 imposing RIAs on all bills of government origin. The same reform also tried to make it easier for MPs to table new legislation. This major reform had been preceded by the *de facto* transfer from government to parliament of the initiative of legal simplification, as though the ministries had conceded defeat on that mandate.

The paradox is that Parliament does not have all the sophisticated quality controls that operate in Government. The staff is much less numerous, and does not hold the information

about implementation of existing legislation. Bills tabled from the floor, often drafted with the help of less-skilled parliamentary assistants, are particularly poorly written. There is no thought of doing RIAs on such texts, and even substantive amendments to Government proposals are not likely to be considered for RIA. Faced with that situation, the Parliament is trying to strike back. The recent constitutional reform opened the possibility for the chambers to send a draft to the Council of State for advice, opening the way to a modicum of quality control. Both chambers also want to make the most of the obligation to file RIAs in support of intended legislation, with the hope that this will curb production. Parliament must now develop its own internal resources to make the best use of such newly provided evidence.

Following this somewhat imperfect inception, a draft from a parliamentary initiative faces a difficult time in discussion, starting with the competition to be put on the agenda, then a shower of amendments, some even originating from Government, or considered as “riders”: i.e. not directly connected to the subject matter. In most cases, the resulting legislation will be quite general, implementation difficulties unanticipated, and government services not always prepared or willing to apply it.

FINAL CONSIDERATIONS

This article hopes to have made the point that the French policies that have been seeking, over the past 10 years, to improve the quality of legislation still seem to favour process over product, or the principle of legal security over that of economic accountability. This is best illustrated by the pre-eminence of legistics as the prime resource for legislative drafting.

As recommended by the OECD 2010 report, the system needs to embrace more wholeheartedly the principles of Better Regulation. Most urgent are a true subscription to the spirit of RIA as a pre-condition for the decision to regulate, and a sincere commitment to open consultation.

Subject to these changes being adopted, the French model, which has been exported to many countries in Africa and South America via cooperation agreements, could remain attractive. A number of reforms signalled in this article have already been undertaken and show that the model is indeed capable and willing to evolve and is likely to remain a reference in coming years for excellence in legislative drafting.