

## **International Regulatory Reform Meeting** Madrid, 23-24 June 2010

*"Simpler, better and less burdensome: the road toward Smart Regulation"*

Workshop session 1b: "Habla con ellos": making SCM work across various levels of government

**"Multi-level governance in France: a balance between decentralisation and deconcentration" – Contribution from Charles-Henri Montin, Better Regulation Expert<sup>1</sup>, Brussels**

France is, with Portugal, a common reference for how a "centralised" model of public administration (as opposed to a "federal" or "regionalised" model) functions. With sub-national elected bodies getting more numerous in several European countries and being granted greater delegated regulatory powers, how is the centralised model bearing up to the pressure for local democracy? How well does it perform when it comes to quality of regulation?

Centrally governed states are often perceived as too distant from grass root realities and for that reason prone to bureaucracy, which often over regulates society. They would tend to impose a "one size fits all" regulation on diverse situations that would be better dealt with by local adaptations, if possible by elected bodies.

In this context, "making SCM work" equates with "improving the quality of regulation", avoiding burdens for business and citizens, providing a clear and easy to apply body of legislation.

This paper<sup>2</sup>, destined for experts of better regulation, examines some of the institutional and functional aspects a centralised model, and shows that France, by pursuing in parallel decentralisation (transfer of competencies to sub-national elected bodies) and deconcentration (setting up centrally managed local services representing central government), has managed to square the circle, achieving two contradictory objectives: maintaining a homogeneous and efficient legislation across the territory, while empowering regionally and locally elected councils to deal with issues where they are best suited to settle.

### **The mechanics of the centralised system**

- a hierarchy of territorial authorities (TAs, = locally elected bodies): three levels (commune, département, région)
- the preservation of the central power to regulate (pouvoir réglementaire); no legislative delegation except rare overseas regimes;
- a "localisation" of central government implementation functions ("deconcentration")
- the control of TA acts by the representative of the state and deconcentrated services
- (picturesque) the local executive also represents the central government (mayor)
- BUT: balancing forces do also exist: the Senate is supposed to be weighed to represent less populated country areas. Its indirect election mode favours less populated areas. Other forces are recognised to counterbalance the central government: trade unions and other civil society actors are recognised in the Economic and Social Council.

### **Regionalisation**

A long historical process:

In 1789, some legislators already knew that 40.000 communes (ex- parishes) were too numerous;

Local democracy dates from 1871 (départements) and 1884 (communes), granted "autonomy"

Regions appear progressively, with only economic powers, from 1947 to 1972 as public establishments (agencies) but not TA;

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<sup>1</sup> This is an analysis document and only includes personal opinions of the author

<sup>2</sup> This analysis document represents the personal views of the author. It can be found online at <http://replus.eu> with embedded hyperlinks to facilitate access to sources.

First decentralisation law: 1982: the region becomes a TA and state control reduced to a posteriori legal control; intercommunal cooperation; other grouping such as "pays"

1986: first regional elections

2004: following constitutional reform, major law listing all transferred competencies

2008: comité Balladur on the reform of TAs: criticises complexity

2009: new bill on TA reform under discussion to "simplify and clarify the institutional setup" and improve management of major cities. Tendency to concentrate the 3 levels into 2 "poles".

### **Deconcentration**

Regionalisation has been matched by a parallel effort to adapt central government to local realities: deconcentration. The two concepts, apparently contradictory, peacefully co-exist.

Deconcentrated services preceded, of course, any decentralisation, as they existed already in the Ancien Régime.

The new drive for deconcentration is also stems from the efficiency drive of central government (RGPP and LOLF)

Main recent phases:

- 1990's: deconcentrated services become the standard operator for delivering policy. Central government must limit itself to conceiving, evaluating and adjusting policy.
- 2004-2010: The functions of the regional echelon are progressively enhanced. Further streamlining (reduction of number of services) into interministerial services at département level (1/1/2010) The regional préfet is given authority over department préfets (a reversal of a 200 year old principle).

A zoom on **regulatory power** (pouvoir réglementaire) in France

This issue is the lynchpin of the whole centralised model.

- Exclusively belongs to the PM and his delegates
- Extends to primary legislation (since 1958)
- Theoretically TAs have been granted regulatory power, for their internal administration at least. But discussions in parliament show that this is very limited, "residual" "delimited", not a true regulatory power.
- The administrative courts have a long history of repealing regulations when taken by unauthorized authorities. TAs do not stand a chance of regulating outside their remit.

### **Issues in discussion in France**

- Too many layers ?

- Historical background (department = where you could reach on horseback within one day), now heavily criticised as outdated;
- Three layers, where two would operate more efficiently ? groupings contribute to further cloud the issue.

- unfair geographic delimitation ?: very political issue, heavily discussed (out of scope of this paper)

- unclear distribution of competencies (sharing or exclusive) ?: this is the issue which has been most discussed. The outline commonly accepted is:

- Regions: economic development
- Départements: social services
- Communes: proximity services

Some competencies are shared: schools, roads, transport, which introduces confusion.

The situation is further complicated by the groupings (joint ventures between TAs) and contracts between different levels, often endowed with appealing designations, such as "pays", communauté urbaine, etc.

- excessive central control ? : the history (above) shows that decentralisation has been matched with measures enhancing central control at local level (including the last reform in 2010). At best, the deconcentrated services can oversee local autonomy

- limits to uniformity: the centralised system is not optimal to cover very different types of territories:

- Alsace-Lorraine received a specific legal system after 1870
- Corsica has been granted a special setup since 1995
- Overseas territories: TOM and DOM (with variations) since 2003 can actually adjust the implementation of national laws to their territory (except La Réunion)
- Major cities are only just being granted an ad hoc regime.

- Funding not sufficiently connected to responsibility? The transfer of competencies must be accompanied by corresponding tax resources. The principle was raised to constitutional status in the 1980s but it remains a very technical matter, and is intensely discussed whenever an additional responsibility is transferred (example roads).

## **Solutions: old and new**

### **1. Structural**

- groupings either permanent structures between TA (syndicates of communes and other TA) or for implementation of contracts between TAs and central government (pays). As stated above, not the ideal solution but probably indispensable, hence heavily used in the 2010 reform;

- reduction of number of levels: no consensus to enact it but it has been slowly happening. The 2010 reform further promotes cooperation between communes to deal with the lower end, and enhances the links between the two highest by amalgamating the electoral process (same elected officials).

- new types of entities: the 2010 reform introduces the possibility of fusion of departmental and regional levels, and creates a new regime for metropolis (where groups of communes receive department, regional and even central government competencies).

### **2. Competencies**

- experimentations (authorised by the organic law of Aug 2003): temporary derogation to competency limitations (severely limited);

- "chef de file" notion: where TA competencies are still possibly conflicting;

**Summary:** concepts focusing the discussion of the issues and solutions

- libre administration des CT
- financial autonomy
- clause de compétence générale
- pouvoir réglementaire des CT
- prohibition of cumul

Three-pronged dilemma: institutions, competencies, funding

## **Assessment from a BR perspective**

Lessons that can be drawn from the French model

- a clear legal basis for exercising regulatory power, with practically no regional regulations. Regions apply public policies and spend on programmes, they do not regulate;
- quasi homogeneous organisational structure throughout the national territory, an optimal solution for businesses; there is very little or no talk of regional disparity in the implementation of legal acts. The deconcentrated administrations are tightly controlled by rules and inspections: they apply a consistent set of national instructions, with mobile civil servants. Local authorities use "syndicated" content for their practical delivery of services. There is a central control of official forms.
- devolution of powers has been prudent and progressive, even if the result is still puzzling to some, and the distribution of competencies still being improved

- flexibility in public service delivery: regionalisation has, within a binding framework, brought about real differences in spending within agreed national policies: example the regional strategic action plans
- the BR deficiencies of the French system are not due to the centralised system (unless you say it is too efficient): legislative "inflation", complexity, lack of consultation.

### **Administrative burdens**

- Regional disparities were considered during the measurement phase but the interviews in 4 départements for each information obligation did not reveal any significant disparity;
- The legal regime seems quite homogeneous, and administrative practice is consistently homogenised throughout the territory;
- Relations between the administration and companies is addressed by government policy: since 1 January, a dedicated service has been set up in each region, operating as a network coordinated from Paris, to assist business in its relations with the administration;
- Though there are still many unnecessary burdens, they cannot be laid at the door of the multilevel structure.

### **Conclusion: is France over-centralised?**

In his speech on the occasion of the 150th anniversary of the the attachment of Savoy to France, on 22 April 2010, President Sarkozy explained : "l'unité de la France a plus à craindre d'une uniformité rigide que d'une souplesse dans la diversité et la reconnaissance de chacune des identités de notre territoire". "On ne bâtit pas un grand pays en niant les identités de toutes ses petites patries qui font la grande patrie française". It is precisely the success in setting up an efficient central government which now makes it possible to offer local diversity without jeopardizing economic efficiency and the preservation of the republican ideals of "liberté, égalité, fraternité".

### Links

National assembly:

<http://www.assemblee-nationale.fr/histoire/decentralisation.asp>

General information about French public administrations:

<http://www.vie-publique.fr/th/acces-thematique/collectivites-territoriales.html>

Ministry of Interior reform of local authorities:

<http://www.interieur.gouv.fr/sections/reforme-collectivites/discours/examen-projet-rct-assemblee>