BETTER REGULATION

NATIONAL EXPERIENCES AND EU INITIATIVE

I. INTRODUCTION

Globalisation, understood in economic, social and legal-institutional terms, has brought about a new set of challenges. National regulatory frameworks have lost much of their past impact. Barriers to movement of goods, services, capital and people are falling[1]. New levels of regulatory intervention are fast assuming central importance, the supra-state[2], the international[3].

Regulation may be defined generally as an external intervention in a domain of social or economic activity and performance consisting in setting and applying rules. Economic or market regulation[4] is defined as public intervention in sectors of the economy that have specific characteristics, qualifying them as of strategic importance for the State[5].

Meeting, however, the demands of the new, globalised, world, while at the same time preserving credible and effective regulatory instruments with which to monitor and control the socio-economic effects of this new reality, is a challenging task indeed. Poorly conceived and ill-considered regulation can be excessive and go beyond what is strictly necessary. Regulation may, also, be overly prescriptive, unjustifiably expensive or counterproductive. Layers of overlapping regulation can develop overtime, affecting businesses, the

[1] Or have already fallen, in the frame of the EU, at least on a theoretical level.
[2] Expressed in the European Continent by the EU, in North America by NAFTA etc.
[3] Characteristically, there is a massive increase of regulatory international organisations, with ever more regulatory competences, of a binding nature, and enforceable in national legislations.
[4] "*Regulation is broadly defined as imposition of rules by government, backed by the use of penalties that are intended specifically to modify the economic behaviour of individuals and firms in the private sector. Various regulatory instruments or targets exist. Prices, output, rate of return (in the form of profits, margins or commissions), disclosure of information, standards and ownership ceilings are among those frequently used.*" R. S. Khemani & D. M. Shapiro, *OECD Glossary of Industrial Organisation Economics and Competition Law* (Directorate for Financial, Fiscal and Enterprise Affairs, OECD, 1993), available at: http://stats.oecd.org/glossary/detail.asp?ID=3295.
[5] For example, they may produce goods and services that are of great importance for social and economic welfare, such as energy, telecommunications, transportation, banks etc.

voluntary sector, public authorities and the general public. Further, regulation can also become quickly outdated. Rapid technological developments, open and expanding global markets and ever-increasing access to information mean that regulation has to be kept under constant review and adapted to keep pace with the fast moving world.

Most crucially, perhaps, regulatory intervention risks yielding to pressures exercised by interest groups. Such groups[6] tend to exercise pressure in order to affect regulatory decisions and in that way to satisfy their diverging or even conflicting interests. This is the notion of "regulatory capture"[7]. Capture should be distinguished from lobbying, which is considered as acceptable as a manifest of interest group competition. Capture goes beyond lobbying and differs from the latter because it approaches the limits of illegality and leads regulatory institutions to abuse their regulatory discretion[8].

The present study is divided into two main parts. The first one explores and revisits that standards for better regulation set at European and international level. Relevant reports from the EU institutions, as well as from the OECD are reviewed in this part.

The second part turns the focus to Greece. The Greek case, as it has been – quite pejoratively- termed, involves, among other derogatory phenomena, degenerate regulatory practices. Initiatives towards the direction of remedying the shortcomings of regulatory standards in Greece are presented and assessed.

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[6] Enterprises, policy-makers, the administration, trade unions, consumers, financial and social institutions etc.

[7] The notion was introduced in 1971 by G. Stigler: "*as a rule, is designed and operated primarily for the benefits of the regulated industry*" G Stigler (1971) "The theory of economic regulation", Bell Journal of Economics and Management Science 2 (1), 3-21.

[8] F. Boehm, *Regulatory capture revisited – Lessons from Economics of Corruption*, WP July 2007. For a quite comprehensive exposition of the notion of capture, and of the various theories that have been elaborated through time, E. N. Iliadou, "Regulatory Capture: Causes and Remedies" in A. I. Pottakis (ed) *Transparency and Reform of Administrative Procedures. Especially Through E-Government Initiatives for a Better Public Administration* (European Public Law Series vol. XCVIII, 2010).

II. BETTER REGULATION: STANDARD SETTING

a. The OECD recommendations

In 1993, the Public Management Committee (PUMA) of the OECD was requested to draft a report on the criteria for regulatory efficiency. Two years later, the OECD Council, having adopted the proposed list of criteria of the PUMA report issued a recommendation to its member states. In fact, the OECD Council, by adopting the PUMA report, formed a list of ten criteria, in the form of a questionnaire that should be addressed when making decisions to impose a regulation. The questions/criteria are:

a. Is the problem correctly defined?
b. Is state intervention justified?
c. Is regulation the optimal form of state intervention?
d. What is the legal basis of the regulation as far as rules of greater force and principles of law are concerned?
e. What is the appropriate administration level to carry out the regulatory intervention?
f. Does the benefit of the regulation outweigh its costs?
g. Are the results of the cost-benefit analysis readily accessible to the concerned social groups?
h. Is legislation clear, coherent, comprehensive and accessible to those that will implement it?
i. Is the regulation being processed in a transparent and appropriate manner, so that the concerned parties may express their views?
j. How is the effective implementation of the regulation assured?

So, according to the relevant recommendation of 1995 by OECD, the most important criteria of better regulation, which will serve as the basis for analyzing the regulatory quality within the frame of electronic communications, are:

i) precise determination of the problem,
ii) justification of state intervention,
iii) selection of regulation as a better form of state intervention,
iv) legality and legal basis – in general – of the regulatory decision,
v) determination of the suitable state body(ies) for resuming action,

vi) justification of the cost induced by the regulatory decision in view of the benefits it produces,
vii) transparency in the distribution of benefits to the community,
viii) clarity, cohesion and completeness of the regulatory decision and accessibility to it,
ix) ability of interested parties to formulate views, and finally,
x) ascertaining implementation of the regulatory decision [9].

The 1995 OECD recommendation was addressed to all OECD member countries, and its preamble contained four main observations:

– the enactment of regulations ranks among the main instruments of state action; hence, high-quality regulation constitutes a major requirement for the effectiveness of the State.
– the environment of competition among private enterprises is to a large extent defined by the set of their obligations and commitments stemming from the regulation; high-quality regulations foster growth.
– the need to eliminate all formalities and obstacles to competition.
– the quality and the transparency of a regulation become increasingly important within an interdependent world where the impact of regulations is felt beyond national borders and cooperation in enacting regulations is necessary for solving urgent problems in sectors such as the environment, consumer protection, investment, and trade.

Since 1993, the OECD has, on several instances, revisited the principles and criteria for better regulation[10].

[9] The conclusion drawn from the above Guidelines of 15-6-2005 is that the Commission's approach with reference to the evaluation of impacts, comprises the following main points:
- Analysis of the subject or problem, its causes, the factors affecting it and whether handling it on the EU level (according to the principle of subsidiarity) is expedient.
- Determination of certain main objectives for handling the problem· these aims must be consistent with other EU policies and strategies, such as viable development and the strategies of Lisbon.
- Evaluation of other alternative capabilities for the achievement of the objectives, always reviewing whether it would be expedient to not take any action on the EU level and whether alternative approaches are available that do not involve regulatory decisions.
- Evaluation of potential impacts of specific political choices, whether these are voluntary or involuntary, taking into consideration all social, financial and environmental aspects· the impact outside the EU will also have to be reviewed in the analysis.
- Based on the regulatory impact analysis (RIA), comparison of alternative possibilities in order to ascertain whether it is possible to rate them and determine the best option.
- Provision is also made for the first time in the new guidelines for a procedure for the completion of the RIA report in those cases where it is decided, possibly following impact assessment, to not forward the proposal any further.
- Throughout the procedure, there must close cooperation between the Commission departments in order to ensure that all related factors are taken into consideration. The requirement regarding consultation with all interested parties, also ensures the formulation of a complete picture with reference to possible impacts.

[10] See, e.g. Recommendation by the Board of OECD of 1995; Report by the Board of OECD of 1997.

The report by the Council of Ministers of the OECD of May 1997 included recommendations on the policy of what is known as "regulatory reform", i.e. a reform in the production of regulations, without however amending the teleology of this reform[11]. Thus, it suggested:

- Adopting at a political level broad regulatory reform programmes with clear targets and action frameworks.
- Systematically reviewing the regulations.
- Ensuring their transparency and non-discrimination during application.
- Reviewing and strengthening the objective, effectiveness and implementation of competition policy.
- Reforming economic regulations in all sectors so as to strengthen competition.
- Abolishing the regulations that impose unnecessary barriers to trade.
- Verifying the existence of important linkages with other policy targets, and developing policies for their achievement in a way that supports the reform.

b. EU initiatives

Legislating at European level has reduced much red tape. Applying one common rule in all Member States is much simpler and more efficient than a complex web of varying rules on the same subject matter at national and regional level.

The body of European law has expanded over the past two decades, especially since 1992, with the gradual introduction into the body of the *acquis* of more and more policy areas.

With this expansion of EU legislation, some areas of overlap and duplication were inevitable. There is, in fact, a perception that EU laws are particularly responsible for red tape is wrong. Yet, criticisms on the 'Brussels bureaucracy' turn out to have national laws as their source. The EU often pursues its objectives by adopting directives, setting out broad principles and objectives

[11] The OECD also prepared reports on Greece, the conclusions of which were accepted and had led to the drafting of a relevant bill (that never made it into law), and the issuance of a Prime Minister's circular in 2006 regarding good regulation. On this, more is discussed in the relevant part below.

and leaving implementation to be defined by the Member States. Member States can then choose how to meet the goals of the directive, adapting to their own institutional and administrative cultures. It is often at this stage that embellishments and refinements, not prescribed by EU law, are introduced. These can go well beyond the requirements set out in EU law, resulting in extra costs and burdens. Indeed, surveys consistently show that, in the minds of citizens and businessmen, 'red tape' is associated with areas of regulation that are not primarily dealt with at European level — such as taxation, labour laws, and planning and construction permits.

The initial enquiries regarding the question of good regulation came under a specific structure around the mid 1990s with the adoption of the Protocol of the Treaty of Amsterdam (1995), which first established the principles of good regulation that should be adopted at European Community level. At the same time, the European Commission took two initiatives in order to improve the regulatory quality in areas within the common market (SLIM) and to improve the administrative environment for small- and medium-sized enterprises (BEST). It gradually became clear that the best way to improve the "regulatory chain" (from the design of the regulation to its final application) was via coordinated action between the community and national levels. The conclusions of the European Council of Lisbon called the European Commission, the European Council and the EU Member States to specify by 2001 a strategy that would simplify the "regulatory environment" through "coordinated action".

The European Parliament, the European Council and the European Commission, by an inter-institutional agreement signed on 22 December 1998, adopted "common guidelines for the quality of drafting of community legislation"[12]. Subsequently, after taking into consideration as well the conclusions of the presidency of the European Councils of Seville 2002 and of Brussels of March 2003, the above institutional bodies signed in December

[12] C 73/1 17.3.1999.

2003 a new inter-institutional agreement on "better lawmaking"[13]. By this agreement the three institutional bodies decided to respect general principles such as democratic legality, subsidiarity and proportionality, as well as legal certainty. They also agreed to promote simplicity, clarity and cohesion in the drafting of legislative texts, as well as the maximum possible transparency of the legislative process. The agreement includes separate provisions for "joint regulation" and for "self-regulation". Joint regulation refers to the mechanism by which an act of community legislation assigns the achievement of the targets set by the legislative authority to the stakeholders recognised in this sector[14]. Self-regulation refers to the ability of the stakeholders to establish, among them and for their own use, common guidelines at European level[15]. With respect to improving the quality of the legislation, the agreement provides for pre-legislative consultation, assessment of the impact of the provisions, and cohesion of the texts. Regarding pre-legislative consultation, the inter-institutional agreement specifies that during the period prior to the submission of legislative proposals, the European Commission, informing the European Parliament and the European Council, shall proceed to hold the most broad and comprehensive consultation possible, the results of which shall be made public. Regarding the assessment of the impact of the regulation, according to the protocol on the application of the principles of subsidiarity and proportionality, the European Commission shall duly take into consideration the economic or administrative consequences of its legislative proposals, particularly for the European Union and the Member States. Moreover, the three institutional bodies, each in its field of competence, shall duly take into consideration the target of ensuring sufficient and effective application of the regulations in the Member States. Finally, regarding the cohesion of the texts, the European Parliament and the European Council shall take all the appropriate measures to strengthen their competent services' scrutiny of the wording of the texts approved according

[13] C 321/1 31.12.2003.
[14] Particularly economic agents, social partners, and NGOs.
[15] Particularly codes of conduct or sectoral agreements.

to the co-decision procedure, in order to prevent any inaccuracy or inconsistency.

In line with the OECD recommendations, the European Council set in 2000 the strategic goal of making Europe within the decade that is being concluded these days the most competitive and dynamic economy in the world, based on knowledge, with a viable economic growth, with positive employment policies and greater social cohesion. Achieving this broad objective, the Council recognised the necessity of a entrepreneurial-friendly environment, most notably for the growth of small and medium-size businesses. The control of the cost of entrepreneurial activities and the lifting of unnecessary restrictions were considered central features of this objective.

Following the abovementioned conclusions of the Lisbon European Council of 2000, the Council of Ministers of Public Administration that convened in the same year in Strasbourg decided to:

- create a high-level consulting group to actively participate in monitoring and processing policies for improving regulation in member-states,
- instruct this group to develop in close association with the Committee of the EC a comprehensive approach and to make suggestions, particularly in regard of determining more specifically a common method for assessing regulations. The formation of an impact study system for regulations, the transparency of the procedures preceding the adoption of a regulation, the simplification of existing regulations and the generalisation of their codification were among the central tenets of this common method to be developed.

For its part, the European Commission was charged with developing and promoting principles, practices and guidelines on better regulation[16]. The final recommendation of the high level Advisory Group presided by the Chairman of the French Conseil d'Etat D. Mendelkern[17], submitted on November 13, 2001, available on the Internet[18], represents an extremely

[16] See, indicatively, http://ec.europa.eu/governance/better_regulation/index_en.htm and http://ec.europa.eu/governance/better_regulation/key_docs_en.htm#_br.

[17] Mendelkern Group on Better Regulation Final Report.

[18] See http://ec.europa.eu/governance/better_regulation/documents/mandelkern_report.pdf. See also the subsequent Communication from the Commission [COM (2002) 278(01)], Action plan "Simplifying

significant effort to the effect of submission of proposals to the bodies of the European Union and the member states for better regulation.

The Mandelkern Committee, in both its initial and interim reports to the European Council of the Commission of the European Communities, took into consideration the aforementioned target of the European Communities for the enactment of better regulations, and put forward the following basic rules:

- Legislative action only where necessary
- Broad consultations and impact analysis before any proposal
- Choose the appropriate instrument
- Speed up the legislative process
- Ensure rapid and correct transposition and effective application
- Evaluate the effects of the legislation
- Speed up the simplification and codification of existing texts.

It is almost a decade now that the European Commission has embarked on an ambitious 'Better Regulation' exercise. A far-reaching programme was launched in 2002 to simplify and generally improve the regulatory environment, drawing from similar experiences and projects in other legal orders, most notably the USA[19]. It is designed to cut red tape, modernise and improve the quality of regulation and design better laws for consumers and business alike. This means taking action at different stages in the policy cycle: looking at new initiatives, proposals still under negotiation and legislation already on the books. The Better Regulation strategy therefore included a mix of different actions:

• introducing a system for assessing the impact and improving the design of major Commission proposals.

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and improving the regulatory environment", http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0278en01.pdf, and the Guidelines adopted on 15-6-2005 (update 29-9-2005) for the regulatory impact assessment.

[19] The USA, for example, has a long experience in looking at the impacts of regulations proposed by federal agencies. This regulatory oversight is conducted by the Office of Information and Regulatory Affairs (part of the Office of Management and the Budget, and directly attached to the White House). Federal agencies are required to do analysis on all economically significant regulatory actions. The American approach differs in scope from the European one as the emphasis is on executive acts rather than basic laws and it focuses on cost benefit analysis, rather than a broader analysis of policy options. That being said, the American approach offers interesting insights.

The Commission early on recognised that an important part of making better laws is having a full picture of their impacts. Proposals can then be tailored to have the best effect, and to minimise negative side-effects. The Commission, hence, examines the economic, social and environment impacts of its proposals. It has made impact assessment compulsory for major policy proposals and, since 2002, the Commission has completed over 400 impact assessments. In 2008 alone, 135 were carried out. According to the Commission itself, the result has been a marked change in how policy is shaped inside the European Commission. It has now shifted to a knowledge-based approach — aimed at ensuring that decisions on whether and how to proceed with an initiative are based on solid evidence and a thorough analysis of options.

• implementing a programme of simplification of existing legislation.

In recognising that legislation may be overly complex in certain areas, the Commission has undertaken an ambitious programme to review existing Community legislation, with a view to making it clear, understandable, up-to-date and user-friendly. This programme covers over 200 laws[20].

Further, the existing body of law needs to be examined on an ongoing basis so that it does not become obsolete and/or outdated. The Commission is making use of either sunset or review clauses so that this type of review becomes standard practice.

Moreover, sometimes, legislation needs repeal as circumstances change. In 2005, the Commission reviewed all proposals pending before the Council and the European Parliament, which had been adopted by the Commission prior to 2004 to make sure they were in

[20] The initial focus is on the automobile, waste and construction sectors. Other sectors such as foodstuffs, cosmetics, pharmaceuticals or services will follow. The Commission also intends to tackle administrative burdens, especially for small business, by simplifying cumbersome form-filling to compile statistics or by modernising the customs code to facilitate electronic exchange of information.

line with current priorities and had been the subject of sufficiently rigorous impact assessment[21].

In addition, codification of laws is an important tool for the simplification of legislation. It means bringing all amendments to a given piece of law adopted at different times into one law, and thus reducing the volume of EU legislation, providing more readable and legally clear texts, and facilitating transparency and enforcement. In going over laws and their amendments, instances of incoherence and inconsistency can be exposed in single laws and between laws. So, in addition to bringing all amendments into a consolidated text, it is sometimes necessary to revise the law[22].

• testing Commission proposals still being looked at by the Council of Ministers and the European Parliament, to see whether they should be withdrawn, and factoring consultation into all Commission initiatives.

The Commission has an obligation to consult widely before proposing legislation. By seeking views from a broad spectrum of society, it is possible to test whether policies are workable in practice[23].

• looking at alternatives to laws and regulations (such as self-regulation, or co-regulation by the legislator and interested parties).

Co-regulation (entrusting the achievement of the goals set out in law, for example, to the social partners or to non-governmental organisations) and self-regulation (voluntary agreements between private bodies to solve problems by taking commitments between themselves) can be more cost efficient and effective ways to address certain policy objectives than the classic legal tools. The 'new approach' directives, based on the standardisation of technical requirements by

[21] The Commission decided that 67 pending proposals were no longer relevant and could be withdrawn.
[22] This process is referred to as recasting.
[23] The Commission has a long tradition of extensive consultation through various channels: Green Papers, White Papers, communications, fora (such as the European Energy and Transport Forum or the European Health Forum), workshops, permanent consultative groups and consultations on the Internet.

independent bodies, are an example of a well-recognised 'co-regulation' instrument[24].

In a pertinent Communication on June 2005, by means of the revisal of its guidelines for better assessment of the impacts of the proposals it submits, the Commission underlines its dedication to the commitment it has undertaken for better regulation. The revised guidelines preserve the Commission's integrated approach on the impact assessment, whereas more clear direction is given in the sectors associated with financial issues and competitiveness. The revised guidelines also provide for the review of compliance with the Charter of Fundamental Rights. Guidance is also offered on the method in which consideration is to be given to the potential administrative cost for the citizens, the enterprises and public bodies, for actions resumed on the level of the EU. According to the new approach of the Commission for the improvement of regulation, the revised guidelines ensure that the agencies submitting proposals will also take into consideration alternative possibilities, which do not involve the use of "typical" forms of regulation. This document also underlines that it is particularly important to ensure that the principles of subsidiarity and proportionality are also taken into consideration[25].

[24] For many industrial and consumer products, the 'CE' marking attests that a product has been certified and can be marketed in the EU. EU legislation only sets certification requirements and mandates private bodies. Thousands of industrial products are regulated in this way.

[25] In 2009, the Commission published the "*Third strategic review of Better Regulation in the European Union*", http://ec.europa.eu/governance/better_regulation/documents/com_2009_0015_en.pdf.

III. THE GREEK CASE

a. Identifying the problems

If one were to summarise the registered negative features of the Greek regulatory framework, the following would definitely make it into the list:

- the existence of many regulations, both legislative and administrative, focusing on detail, drafted on several occasions to protect and promote vested interests,
- the long-standing practice of laws containing provisions irrelevant to their main subject,
- excessive regulatory inflation by the extended use of legislative authorisation.

The problem is not new, nor its recognition. Several experts' reports were commissioned in the course of the last decades, since WW II[26]. The most recent, comprehensive, experts' report was drafted by the Spraos Committee and published in 1997. The Committee recognised the central role of qualitative improvement of regulatory instruments[27]. The report presented some quite important finding concerning the requirements for the introduction of an efficiency improving system for regulations:

a. Establishment of a regulation management system, by taking the following steps:

- adoption of the system's policies by the high level of political authority and the decision to organise and monitor that system through the Administration,
- setting analytical standards on the efficiency of regulation and adopting principles of decision-making for the creation and implementation of regulation,

[26] E.g., the 1952 Varvaressos report, the 1964 Langrod report, the 1990 Kanellopoulos Committee report, and the 1997 Spraos Committee report.

[27] "*The efficiency of regulatory interventions is connected with, and directly reflects the efficiency of, the administration and the state. The framework of regulatory intervention is today the most effective tool in a government's arsenal for changing the direction of the economy and of society. For this reason, the establishment of an efficiency assessment system for laws is a concern internationally for all those who are responsible for creating the right conditions for coherent and continuous socio-economic development within a constantly changing environment…*".

- creating a central service with the authority to manage regulation. Such agencies can only be effective if they operate as part of central administration and at a high level of authority

b. Efficiency improvement of the new regulations, with the following steps:

- establishment of regulatory impact analysis studies, in order to improve the quality of information upon which decisions are based,
- adoption of consultation initiatives, involving concerned citizens, accompanied by mechanisms to control the influence of powerful pressure groups,
- thorough studies and evaluation of alternative suggestions for more efficient and low-cost mechanisms and procedures,
- Improvement of co-ordination in the application of regulations, so that multiple objectives may be incorporated in policies.

c. Fresh assessment of the efficiency of existing regulations, with the capacity to abolish, simplify etc existing regulation and to reduce bureaucratic codes and procedures (deregulation).

In its 2001 report, the OECD noted that there are very few guaranties ensuring the quality of a norm, and particularly a legislative norm, set in Greek law.

Article 74 §1 of the Constitution requires mandatory submission to Parliament of an explanatory report to a bill. Moreover, in case of an amendment of a provision of a law, the explanatory report must include the entire text of the provision being amended, while the text of the bill must incorporate the entire new provision as worded after the amendment.

The Constitution provides also for the public disclosure of the proceedings of the Parliament and the parliamentary committees, and therefore promotes the exercise of the legislative work under conditions of transparency. In addition, the parliamentary scrutiny committees may invite any person whose views they deem important in performing their scrutiny role.

b. Introducing Standards

In 2006, the Prime Minister issued a circular on the subject of *"legislative policy and assessment of the quality and effectiveness of legislative and administrative regulations"*.

In the introduction to this Prime Minister's decision, reference is made to the phenomenon of over-legislation and of the lack of quality of the legislative and administrative regulations.

According to the circular,

> "*good regulation should refer to a legislative policy that aims at improving the quality of the legislative and administrative regulations, based particularly on the assessment of their impact on the economy and competitiveness, the simplification of the processes, the observance of legislative drafting rules, the codification of the regulations, and the transposition of community law. Good regulation also includes the framework required for the assessment of the consequences of the laws and the effects of their application*".

The circular recognised and established principles of good regulation, in line with the conclusions entailed in reports and policy documents of EU institutional and the OECD. The following principles were identified:

1. Necessity, appropriateness and proportionality of the regulations for the achievement of the intended purpose.
2. Simplicity and clarity of their content.
3. Full harmonisation with the applicable national, community and international law, the rules of the European Convention on Human Rights and the case law of the European Court of Human Rights.
4. Effectiveness, efficiency, and prevention of unnecessary financial expenditure during their application.
5. Transparency and identification of the organs responsible for the application of the relevant regulations.

The provisions of this Prime Minister's decision bring forth a combination of *ex ante* and *ex post* control, with both a vertical and a horizontal system for managing and controlling the quality of the regulations, against the background of the interaction between international recommendations and European rules.

The ex ante processes for guaranteeing high quality regulations identified were:

1. Specifying the matter to be regulated.

2. Assessing through a "cost / benefit" analysis the consequences of the regulations (Regulatory Impact Assessment), particularly their financial, social, and environment-related consequences (i.e. for competitiveness, the labour market, equality and social rights, the environment, and sustainable growth).
3. Weighting the alternative choices and comparable experiences
4. Ensuring the broadest possible social consent and participation (information, social dialogue and consultation, involvement and use of technologies).
5. Emphasising the role of the ESC, which according to the Constitution formulates a reasoned opinion on the bills referred to it. The expression of an opinion by the ESC is required by law before the passage of highly important formal laws related to industrial relations, social security, and tax measures, as well as to the overall socio-economic policy, and particularly on matters of regional development, investment, exports, consumer protection, and competition. The notion of these matters does not include the state budget.

Whereas the ex post processes that the PM's circular highlighted were:

1. Preparation of an "Impact Evaluation Study".
2. Report on the foreseeable administrative acts issued through legislative authorisations and on the reasons for non-authorisation.
3. Assessment by each Ministry of the effects of the regulations that fall within its field of competence ("Impact Evaluation Study"). Conclusions drawn and proposals for improvements are submitted particularly as regards any financial, social and environment-related matters.
4. Special report on the consequences of the regulations for small- and medium-sized enterprises ("Business Evaluation Study") in order to formulate relevant proposals.
5. Submission of the Ministries' reports to the Prime Minister, through the General Secretary of the Government, within the first quarter of each year.

Finally, each Ministry was requested to propose any new necessary legislative measures, and also codify any already existing ones, according to the rules of good regulation applicable to the preparation of codes.

The Operational Programme "Administrative Reform 2007-2013" offered Greece an opportunity, as well as the essential means, to systematise the better regulation policy. The Programme covered the whole of the Government, in an effort to facilitate the management and coordination of relationships and interactions between different actors and levels of

governance. The Programme reflected the Lisbon recommendations to modernise the Greek public administration by building up an effective regulatory, control and enforcement capacities, including through upgrading skills, in order to ensure effective use of Structural Funds.

In light of the Operational Programme, legislative initiatives were adopted that aimed at improving the effectiveness of regulatory instruments. Under the Operational Programme, every ministry was supposed to deliver annually a regulatory programme, which would include all regulatory initiatives to be undertaken in the following year, as well as the regulations to be amended in the next year[28]. The Operational Programme was also designed to incorporate projects that enhance the administrative capacity of the Greek public administration to use some important tools for improving regulation, like the regulatory impact assessment, the cost-benefit analysis and the standard cost model tools.

The General Secretariat of the Government was charged with the implementation and monitoring of progress of the 'better regulation' agenda.

In 2005, the Central Preparatory Legislative Committee[29], operating under the auspices of the General Secretariat of the Government, underwent a major restructuring[30].

The Committee consists of eighteen tactical members, appointed by the Prime Minister. The members can range from active or honorary judicial officials, legal counsels and associate judges of the State Council, University faculty members, to jurists-practitioners.

The Committee has the following competences:

> a) Processing of all bills and acts of legislative nature which have been referred to it, from a systematic and legal-technical respect, as well as ensuring a more accurate stipulation of their content;
> b) Processing of all drafts of regulatory decrees which are referred to it before their submission to the Council of State;

[28] It should be noted that most of the OECD and EU members implement some kind of regulatory programming.

[29] Κεντρική Νομοπαρασκευαστική Επιτροπή (ΚΕ.Ν.Ε).

[30] The Committee was established by Law 1299/1982 on the establishment and organisation of the Prime Minister's Office.

c) Broadening of constitutional legitimacy on the proposed amendments and their compliance with community and international law, especially with the rules of the European Convention for Human Rights and the European Court for Human Rights case law;
d) Supporting legislative good practices through the examination of the Regulations Impact Assessment Report, which accompany the draft laws, together with the competent officials, as well as highlighting of any repercussions that may arise from the proposed amendments[31] [32]';
e) Providing recommendations to the Administration on the need to take further legislative measures to set off any arising conflicts or on the transposition of legislation to the constitutional, community and international legal order;
f) Examining every issue forwarded to it by the Prime Minister.

The Committee is not a decision-making authority. It provides advisory services. Notwithstanding this, the Committee's new competence, following the Prime Minister's circular, of ensuring legislative good practices through examination of the Regulations Impact Assessment Report accompanying draft laws has acquired an increasingly practical importance. The Committee's functioning is part of policy on legislative good practices.

Simplification of administrative procedures was also one of the central features of the Operational Programme. A methodology to measure administrative 'burdens', i.e. the burdens borne by businesses in their relations with the administration was developed in the frame of the Operational Programme. Greece had committed itself to reducing administrative burdens by 25%, yet it had no credible data about the actual impact and extent of administrative burdens on entrepreneurship (!) Hence, the first objective of the Programme was to identify and evaluate the impact of administrative burdens of the Greek system; the simplification of the procedures, so that certain of the unnecessary burdens could be lifted, would

[31] This provision was replaced by the Joint Decision of the Prime Minister and the Minister of Finance & Economics Y320/22-1-2008 (Government Gazette B 98). The initial provision held as following: "d) The advice on the particular repercussions that may arise from the proposed amendments at a economic and social level"

[32] The principles and procedures of the legislative good practices, especially through the examination and the mandate for the drafting of Regulations Impact Assessment Reports which accompany the draft laws are included in the Prime Minister's circular Y190/18-7-2006 addressed to the Ministers, Deputy Ministers, the Secretary General of the Government, the General Secretaries of the Ministries and the General Secretaries in charge of the Ministries' General Secretariats as well as to the General Secretaries of the Greek regions.

be the focal point of the Programme at a later stage. In addition, the Programme envisaged the establishment of a public consultation platform, and its institutionalisation.

c. Putting Principles in Practice: "Strategic Investments"

The recent global financial crisis has had a heavy impact for many European member states, and associate members. Its gravest, perhaps, manifestation has been a crisis in public finances. Faced with an imminent armaggedon scenario, a number of European countries resorted to international organisations for 'rescue' plans, quite reluctantly, especially because of the unavoidable involvement of the IMF.

Even before the creation of the facilitation mechanism at the EU level, and the formal request by the Greek government to resort to its protection, the government had adopted measures aiming at reducing public spending and reshaping the public sector architecture. To this end, it adopted Law 3833/2010[33].

In May 2010, after monthly deliberations, the Greek government resorted to the newly established facilitation mechanism and signed the MoUs and agreements[34] for the implementation of the financial assistance scheme[35] agreed with the 'troika' of creditors, the IMF, the ECB and the European Commission[36].

Central stage in the negotiations with the 'troika' of creditors has been the re-structuring of the public sector, not just in terms of re-organising its services and applying cost-cutting schemes, but also in terms of reviewing the quality

[33] "Protection of National Economy. Emergency Measures for Meeting the Fiscal Crisis".

[34] *Memorandum of Economic and Financial Policies*, *Memorandum of Understanding on Specific Economic Policy and Conditionality*, and *Technical Memorandum of Understanding*.

[35] Loan Facility Agreement between the Euro-zone member states and KfW, acting for the Federal Republic of Germany as lenders, and the Hellenic Republic as borrower; also *Stand-By Agreement* of the Hellenic Republic with the IMF. Note how the German government is the single one in the Euro-zone not signing the agreement, putting a state bank at its place instead.

[36] Acting on behalf of the Euro-zone member states.

of instruments, of regulations, with a view to simplifying procedures and, hence, improving efficiency and boosting competitiveness.

Several laws have already been passed that reflect these fundamental principles of the 'new' Greek public administration. The law on the simplification of procedures for establishing a business, by cutting down significantly on the red-tape and the delays and creating a 'one-stop-shop' procedure, is expected to bear fruits in the in the near future[37]. The law, however, that the present study focuses on, as a model example of improving regulation in practice is the most recent law, passed in October 2010, on 'Strategic Investments'.

In his explanatory note on what has now become Law 3894/2010, the State Minister emphasized the need for creating better regulatory frameworks for investments, especially foreign ones, and explained how the specific law contributes towards this direction.

Indeed, at periods of economic crisis and deep recession, such as the one Greece is experiencing at present, an investments regulatory framework that reflects efficiency, simplicity, flexibility and velocity becomes the essential tool for reversing the economic slowdown.

Among the main novelties introduced by the new law are the following:

- It determines, in objective terms and with a view to the impact on national economy, what constitutes a 'strategic investment';
- It establishes transparent qualitative and quantitative criteria for the entry of public and/or private investments to the mechanisms applicable for strategic investments;
- It introduces a new set of regulations for the implementation of strategic investments, reflecting the need for 'fast-track' procedures;
- Drawing inspiration from Law 3853/2010 that introduced a 'one-stop-shop' procedure for the establishment of business, the law on strategic investments drafts a complete new administrative structure for their co-ordination, monitoring and implementation. Central to this new structure are the creation of an inter-ministerial committee, for the issuing of all necessary ministerial decrees from the various competent Ministries simultaneously, and the establishment of 'one-stop-shop' services;

[37] Law 3853/2010 (Government Gazette A 90/17.06.2010).

- It sets transparent and fast procurement and licensing procedures;
- It shortens the time limits for judicial procedures, aiming at addressing one of the most fundamental disincentives for the flourishing of investments in Greece, that of long term, stagnant and quite often inefficient adjudication.

Law 3894/2010 on 'fast-track' procedures for strategic investments creates a complete new framework, with a view to creating incentives for business and funds to invest in Greece. This new framework, that reduces the volume, complexity, red-tape and opacity of regulations and procedures for investments has already been warmly welcomed by the markets. So much so, in fact, that the State Minister has already announced that a further 'fast-track' bill on investments will soon be ready for debate before the Parliament, one that would complement the existing one and open up the 'fast-track', efficient and transparent new regulatory model to even more investments, of lower significance and overall impact in the national economy.

IV. Concluding Remarks

Regulation is key to meeting the challenges posed by globalisation. In the era of globalisation, regulation is produced on a multiplicity of levels: the international, the supranational, the national, the regional, the local. The problems of regulation, however, to a greater or lesser degree, depending on the source of regulation, are the same: inefficiency, red-tape, complexity, inapplicability. Further, ill-conceived regulation may in many instances prove to be worse than no regulation at all: too much regulation, overlapping regulation, easily and quickly outdated regulation, overly prescriptive regulation, but also too general regulation may have the reverse effect from their objective: to formulate policies that meet citizens' needs and aspirations, to set standards for the protection of the weakest, to raise barriers to the uncontrollable exploitation of the strongest, to ensure social coherence and justice, as well as economic development.

The EU guiding principles of better regulation may be summed up in the following: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity. The EU better regulation basic objectives aim at promoting good governance principles and concepts, at pursuing sustainable development goals and at boosting growth, competitiveness and job-creation, in line with the 'Lisbon objectives'.

The benefits expected to arise from the implementation of better regulation principles and practices of the EU are both economic and political; economic, in terms of reducing the costs for businesses and hence increasing investments, innovation and productivity; political, in the sense that such principles and practices will increase confidence of entrepreneurs and citizens towards lawmakers.

Better regulation strategies and initiatives should not be confused with deregulation exercises. They are a comprehensive package that addresses ex post and ex ante aspects of regulatory management. The ex post elements can be summarised in the following: screening of pending proposals, simplifying

and modernising existing laws, consolidating, codifying and recasting, reducing the administrative burdens (red-tape phenomena), and monitoring the enforcement of EU laws. The main ex ante components are: impact assessment, stakeholders' consultation, inter-institutional agreements, international regulatory cooperation dialogues, and the monitoring of the transposition of EU laws.

Screening essentially entails the withdrawal of screened and pending proposals that are inconsistent with the Lisbon objectives or are not in line with the standards of better regulation of the EU. Simplifying/modernising involves repealing, codifying, recasting or reviewing pieces of legislation. Further, on the issue of reducing administrative burdens, the EU has, through its 2007 Action Programme, set the target of reducing by 25% the burdens on businesses and enterprises from transposing EU legislation into the domestic legal framework by the year 2012, and similar commitments have been adopted by member states for domestic legislation.

To turn to ex ante components, impact assessment involves studying the likely economic, environmental and social impacts of all proposals, and identifying trade offs involved in pursuing different policy goals. Impact assessment, compulsory by now for all major legislative and policy proposals, offers, since 2007, a reinforced quality control through the Impact Assessment Board, a consultative body that publicises its opinions on the quality of legislation put forwards and on further impact assessments that have to be carried out by specific Directorate Generals. The setting of minimum standards for consultation is an integral part of the impact assessment mechanisms, and necessitates at least sufficient time for participation/consultation, but also, and even more importantly, the appropriate settings and environment for an effective, fair, open consultation process, where all participating members will not only have the time to express their views, but the guarantees that their views will actually be heard and considered, and be on an equal footing with those of other participating agents, who may have different views.

It is of outmost importance to determine an efficient and effective institutional setting that would not only make the laws but also assess the extent to which such laws are in compliance with principles of good administration and law-making. Regulatory governance indeed runs the risk of being overpowered by lobbyists. It requires institutional safeguards and effective inter-institutional coordination and cooperation. The risk, very real in modern, open, globalised economies, is that of the "capture": "*…pressure groups exercising excessive and effective influence on the formulation of regulatory decisions in such a way and to such an extent that the final decisions or behaviour of the regulatory institutions that affect them are in line with their interests, even if in direct contrast to and conflict with public interests…*"[38]. Capture may be exercised either ex-post or ex-ante the regulatory intervention. Regulatory capture is a danger that has universal applications and affects all systems: it is present not only in less developed and sophisticated regulatory contexts and political systems, but in even the most highly developed ones.

The Greek case could provide a prime experimentation setting for scholars and researchers to study the impact that exercises for improving the quality of regulations and regulatory frameworks may have on the whole of the economy, as well as on judicial review, and on the quality of democracy and the political system in general.

It may be that Greece is forced to advance a number of reforms, in a sometimes hasty and even chaotic manner. It is also a fact that many of the reforms are implemented in a rather reluctant way, and by unwilling agents. If, however, the present economic crisis that has hit Greece is to have a positive effect, surely that should be a groundbreaking reform of its whole administration. New institutional structures and organisational models should be put in pace, new rules of procedure, and qualitative regulatory standards should be introduced, to revitalise the system and offer a hope for better days to come.

[38] E. N. Iliadou, ibid.