Economic and Social Commission for Western Asia
Expert Consultative Meeting on Public Administration and Public Accounting
Development, with Stress on Electronic Tools
Jointly with
Meeting on the Innovation of Public Administration in the Euro-Mediterranean Region (UNDESA)
Beirut, 1-3 July 2003

DEVELOPMENT OF PUBLIC ADMINISTRATION
AND EVALUATION OF LEGAL FRAMEWORK:
THE EUROPEAN EXPERIENCE

Co-sponsoring agencies:

United Nations Department of Economic and Social Affairs (UNDESA)

Office of the Minister of State for Administrative Development in Lebanon (OMSAR)

Friedrich Ebert Stiftung (FES)

In cooperation with:

United Nations Development Programme (UNDP)

Professional Computer Association in Lebanon (PCA)

Association for the Development of Informatics and Law in Lebanon (ADIL)

Note: This document has been reproduced in the form in which it was received, without formal editing. The opinions expressed are those of the author and do not necessarily reflect the views of ESCWA.
In Europe like everywhere around the world, the development of public administration is mainly the consequence of the electronic tools evolution; the impact upon the legal framework is also important and can be examined in three directions:

1) Simplifying the regulatory environment;
2) Simplifying administrative forms;
3) Developing the legal framework on electronic administration

1) SIMPLIFYING THE REGULATORY ENVIRONMENT

In the European Union, the Institutions have reaffirmed the high priority which is attached to simplifying and improving the regulatory environment by appropriate actions at all stages of the legislative process as well as at national level; they emphasised the importance of European rules and national legislation being more accessible, simpler to understand and easier to apply for the benefit of citizens, consumer and businesses.

In France, the proliferation of rules and regulations needs to be brought under control. In its annual reports over the past ten years or so, the French Council of State has criticised the proliferation of rules and regulations which is seen as weakening the law and making for instability. It has emphasised the need for “legislation in moderation”, particularly since national rules must be compatible with the many other sources of law, be they international or local, professional or contractual.

In that respect, simplifying the regulatory environment means:

1.1) reducing the volume of legislation by consolidation, codification and redrafting;
1.2) maintaining high standards as regards the quality and efficiency throughout the entire legislative process;
1.3) facilitating public access to legislation.
1.1) Reducing the volume of legislation by consolidation, codification and redrafting.

It is estimated that nearly 9,000 Acts and 90,000 decrees are currently in force in France (plus the International legislation and European directives). Such proliferation generates a sense of legal uncertainty and the maxim "ignorance of the law is no excuse" becomes untenable. The body of Community law runs to over 80,000 pages.

On November 28, 2001, European institutions adopted the “Agreement on a more structured use of the recasting technique for legal acts” (Official Journal C077 28 March 2002): the aim of this agreement is to lay down procedural rules enabling a more structured use to be made of the recasting technique in the Community’s normal legislative process. Recasting consists in the adoption of a new legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act. The new legal act replaces and repeals the earlier act.

At the same time, a major codification program has been launched by the Commission in November 2001 and should make it possible to reduce the volume of Community law, making legislation easier to read and to apply. Codification means the adoption of a new legal instrument which brings together, in a single text, but without changing the substance, a previous instrument and its successive amendments, with the new instrument replacing the old one and repealing it. Consolidation is the third way of reducing and simplifying the volume of legislation: it means grouping together in a single non-binding text the current provisions of a given regulatory instrument which are spread among the first legal act and subsequent amending acts. Legislative acts which undergo codification and recasting must be submitted to the legislator for adoption as their structure or substance has been changed.

In France, the Parliament is currently adopting an act speeding up the codification process engaged since 1999 to facilitate access to legal rules and regulations and to improve their readability.
1.2) **Maintaining high standards as regards the quality and efficiency throughout the entire legislative process**

On December 22, 1998, the European institutions adopted an “Agreement on common guidelines for the quality of drafting of Community legislation” (Official Journal C073 17 March 1999), considering that “a clear, simple and precise drafting of Community legislative acts is essential if they are to be transparent and readily understandable by the public and economic operators. It is also a prerequisite for the proper implementation and uniform application of Community legislation in the Member States”.

For those reasons, "the drafting of acts shall take account of the persons to whom they are intended to apply, with a view to enabling them to identify their rights and obligations unambiguously, and of the persons responsible for putting the acts into effect". In the agreement, the institutions "shall encourage the development and improvement of information technology tools for assisting legal drafting".

1.3) **Facilitating public access to legislation.**

The free public access to European Parliament, Council and Commission documents has been adopted by the regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 (Official Journal L145 31 May 2001):"In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data, in all areas of Union activities”.

The accessibility and transparency of Community legislation, whether in preparation or already adopted, is improved by the European Commission, together with the other community institutions, by expanding public free access to the official legal website EUR-LEX (http://europa.eu.int/eur-lex/en/). This website, which acts as a single portal, should enable the citizens to access documents easily through the entire Community decision-making process.

In France, the texts published in the Journal Officiel (Acts, decrees, orders etc) are directly accessible in LEGIFRANCE, the French legal official website, with all the case law. (http://www.legifrance.gouv.fr)
2) SIMPLIFYING ADMINISTRATIVE FORMS

“There are too many forms, procedures are too complicated, you have to wait too long for a reply, there is no explanation of decisions, everything is too anonymous”… and so on: these are all criticisms traditionally levelled by the citizens at an administration seen as omnipotent, remote and obsessed with petty details. A series of legislative and regulatory measures have therefore been taken in the past few years to make the administration more user-friendly and help the public in their dealings with what should no longer be an administrative jungle.

These legislative and regulatory measures can be classified as follow:

2-1) Citizen’s rights strengthened;
2-2) Administrative procedures simplified for individuals and companies;
2-3) New payment methods;
2-4) Improvement of the quality of services to users.
2-5) Local services for users

2-1) Citizen’s rights strengthened

The French Act n° 2000-321 of 12 April 2000 “about citizens rights in their relations with the administrations » (French official journal 13 April 2000 page 5646) places certain duties on all ministries in their dealings with the public. Ministries are now required to acknowledge receipt of all communications. The time within which a reply must be sent is counted from the date of dispatch as attested by the postmark or any other recognized procedure, e.g. computer records. Officials must indicate their name and job title when dealing with the public. This recent legislation also facilitates public access to government documents: the French administration has its own portal SERVICE-PUBLIC (http://www.service-public.fr), which gives access to 2,600 national and local French sites, 2,000 European and national public sites, 11,000 agencies and 13,000 direct government contacts. It offers a great quantity of information and administrative services, including 2,500 documents concerning rights and procedures and 600 online forms.
2-2) Administrative procedures simplified for individuals and companies

A long-term undertaking in France, the simplification of administrative formalities is being actively pursued: one example is the “prior administrative authorizations” which individuals, local authorities and businesses had to apply for: every year, several hundred of some 4,000 existing regimes of prior authorizations are abolished or turned into simple permits.

Much has also been done to simplify procedures by doing away with forms like, for example, the abolition, from 1st January 2001, of the “civil status form” (essentially birth and marriage certificate) required for many everyday operations like application for family allowances, enrolment at educational establishments etc. (decree n° 2000-1277 of 26 December 2000 « about simplification of administrative forms and abolition of civil status form » (French official journal 28 December 2000 page 20747).

Assuming a rate of one form per inhabitant per year, this is a saving of almost 60 million forms.

Measures to simplify the formalities required of companies are already applied, including reduction of time taken to register companies or single declarations for social contributions and for new employees.

Furthermore, a decree of 2 December 1998 called upon every ministry to draw up an annual plan for the simplification of its formalities (decree n° 98-1083 of 02 December 1998 “about administrative simplifications, French official journal 03 December 1998 page 18214).

Last June 10, the French Parliament voted a new Act allowing the government to simplify law, mainly simplifying other administrative procedures.

2-3) New payment methods

Since the end of 1996, ministries, government agencies and public services have been gradually acquiring terminals for payments by bank card. This programme concerns the payment of duties and taxes for vehicle registration documents, driving licences, excise stamps etc. By the end of 1999, almost 9,000 sites were equipped with electronic payment terminals.

2- 4) Improvement of the quality of services to users

Ministries have set up “quality procedures” within directorates which are in contact with users, available on the website www.innovations-services-publics.gouv.fr
2-5) Local services for users

Extending the “one-stop shopping” experiments of the past few years, new “public service centres” will offer, in one place, services which come under different ministries. In these multi-purpose facilities, specially trained volunteers welcome members of the public and dispense information and advice. They initiate certain administrative procedures and help users formulate and communicate the particular of their case. The French Act n° 2000-321 of 12 April 2000 “about citizens rights in their relations with the administrations » (French official journal 13 April 2000 page 5646) gave official status to those “public service centres” which are now more than 350: it specified procedures for setting them up and spelled out their functions.
Other local facilities, the “justice and law centres”, established mainly in problem housing estate, deal with complaints concerning petty crime and provide advice and information.

3) DEVELOPING THE LEGAL FRAMEWORK ON ELECTRONIC ADMINISTRATION

The increasing use of electronic tools by the administration is not, in itself, a radical novelty that would be likely to confront lawyers with a particular gap in the law; however, the law has too often appeared to be an obstacle to developing on-line services, which makes a precise analysis of the legal issues of electronic administration important; quite frequently, the creation of an on-line service requires the texts governing the operation of the relevant administration to be adapted, especially the texts that were drawn up exclusively for paper procedures.
Beyond the issues of adapting the texts, which are different for each on-line service, the French Internet Rights Forum give the six recommendations that follow to provide responses to general legal questions posed by electronic administration:
(The French Internet Rights Forum is a private body, supported by the French government: all the actors of the internet, private companies, non-profit organisations, public authorities and users are called to discuss and suggest the uses and rules of online activities.)
First recommendation: It is the opportunity to inaugurate a genuine service to user approach:

Ø Setting up administrative services via the Internet should be incorporated into a complete overhaul of the administration’s interface with its users.

Ø The operational methods of on-line services should be very closely co-ordinated with counter services.

Ø The involvement of users in defining the service should be an absolute prerequisite to the implementation of on-line services and is an indispensable condition to their proper operation.

Ø Electronic administration should be a real factor for reducing the a priori constraints imposed on users, notably by replacing the obligation to produce documentary proof by a mechanism of sworn statements.

Ø There should be maximum interactivity in on-line transactions; paper forms should not merely be made available on-line.

Ø The range of on-line public information should be added to with an obligation to publish administrative decrees on-line.

Second recommendation: it is, in particular, by generalising best practices that the confidence of users will be ensured:

Ø Clear rules of validation and confirmation of transactions carried out on-line should be laid down, particularly by generalising the use of receipts sent by the administration.

Ø On-line rights of access and modification to information entered should be recognised.

Ø The ease of use of the service offered on-line should make filling in an electronic form as flexible as filling in a paper one (for example, users should be able to interrupt completing the form at any time).

Ø Public administrations should define and clearly display a benevolence policy in the event of technical hitches.
Third recommendation: it would be advisable to introduce proper electronic mail management for administration users:

Ø Administrations should be systematically provided with electronic mail addresses.

Ø Administrations should define and display policies relating to dealing with administrative mail sent to them.

Ø Electronic mail sent by an administration should include mention of the name of an official.

Ø Administrations should prepare to be able to receive electronic “registered letters” that are beginning to appear.

Fourth recommendation: it would be advisable to introduce the requirement of an electronic signature gradually and in a well thought out way:

Ø The use of electronic signatures should not be a systematic preliminary to the deployment of on-line services.

Ø The administrations should give careful consideration to the reasons for requiring an electronic signature.

Ø Administrations could possibly provide electronic signature tools to users.

Fifth recommendation: it should be possible to deal with incidents and administrative appeals and disputes on-line:

Ø Administrations permit complaints and administrative appeals to be made on-line;

Ø It should be possible to apply to independent administrative authorities on-line;

Ø On-line submissions for a legal settlement should be made possible by providing the Clerk’s Offices with electronic mail addresses and time and date registration services for messages received;

Ø The possibilities of on-line mediation in the event of incidents or disputes should be encouraged.
Sixth recommendation: it should be possible to satisfy new needs in terms of on-line public services:

a) The circulation of information between administrations should be organised in order to reduce formalities for users when a life event necessitates informing different administrations. With this bouquet of services approach, it is recommended this circulation of information between administrations be put in place for the following events:

- Change of address;
- Change in family situation (birth, marriage, death);
- Change in situation with regard to employment (loss of employment, new employment);

b) On-line services corresponding to the most commonplace needs of users should be developed. Four areas appear priority:

- Following progress on-line by the user of a request addressed to the administration;
- Requests for extracts from on-line public records;
- Declaration of loss or theft of identity papers;
- Setting up the possibility of on-line payment of parking fines.

It is recommended that the possibility of on-line payment by banker’s card be offered to users of public services.

c) To develop legal system services on-line that respond to the need for proximity and speed expressed by users, it is recommended:

- On-line services be created as a priority for direct relations between those involved in court proceedings and the courts, in particular for resolving financial disputes;
- Quasi-administrative services provided by the courts be offered on-line registration on electoral roll…
- Court procedures involving representatives of the law be possible via virtual means.
CONCLUSION:

In a context of strong political will in favour of e-administration and following the example of other European countries, France has decided that by 2005 its citizens will be able to carry out all their tasks relating to the administration online. There is a strong demand for this service; half of French people state they have already undertaken administrative transactions, or are prepared to do so, by Internet (poll Taylor Nelson SOFRES for the Internet Rights Forum– September 2002), the proportion rising to 81% for Internet users.