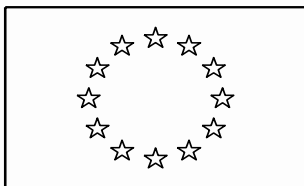


**BETTER REGULATION IN EUROPE:
AN ASSESSMENT OF REGULATORY CAPACITY
IN 15 MEMBER STATES OF THE EUROPEAN UNION**

Better Regulation in Portugal



EUROPEAN
COMMISSION



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FOREWORD

The OECD Review of Better Regulation in Portugal is one a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in 15 member states of the European Union (EU),¹ including trends in their development, and to identify gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process,² and to find out what has happened in respect of the recommendations made at the time.

The completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out perspectives for the next ten years of regulatory reform.

Regulation: what the term means for this project

The term “regulation” in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.³

Methodology

The starting point for the reviews is a “project baseline” which draws on the initiatives for Better Regulation promoted by both the OECD and the EU Commission over the last few years:

- The OECD's 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD's multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.
- The recently completed OECD/SIGMA regulatory management reviews in the 12 “new” EU member states.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasizes actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes National Reform Programmes to be carried out by member states.
- The European Commission's 2006 Better Regulation Strategy, and associated guidelines which puts special emphasis on businesses and especially SMEs, drawing attention to the need for a reduction in administrative burdens.

- The European Commission's follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.
- The European Commission's development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.
- The OECD's recent studies of specific aspects of regulatory management, notably on cutting red tape and e-government, including country reviews on these issues.

The current review of Portugal reflects contributions from the Portuguese government and discussions held in Lisbon by an OECD peer review team with Portuguese officials and external stakeholders on 28-30 April 2008 and 3-5 May 2008. Major initiatives and developments since these missions are referenced in the report, but have not been evaluated.

The OECD peer review team combined the OECD secretariat and two peer reviewers from other European countries:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Sophie Bismut, Policy Analyst, EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Michel Hainque, Head of Quality and Simplification Division, General Directorate for State Modernisation, Ministry of the Budget, Public Accounts and Civil Service, France.
- Mercedes Rubio, Deputy Director of Better Regulation, Ministry for Public Administration, Spain.

The team interviewed representatives of the following organisations:

Assembly of the Republic
 Associação Industrial Portuguesa (AIP)
 Bank of Portugal
 Energy Services Regulatory Authority (ERSE)
 Federação Nacional das Cooperativas de Consumidores (FENACOOOP)
 Law Faculty, New University of Lisbon
 Law Faculty, University of Lisbon
 Legal Centre (Centro Jurídico, CEJUR), Presidency of the Council of Ministers
 Ministry of Economy and Innovation
 Ministry of Environment, Regional Planning and Regional Development
 Ministry of Finance and Public Administration
 Ministry of Foreign Affairs
 Ministry of Justice
 Municipality of Lisbon
 Municipality of Odivelas
 National Authority for Communications, ANACOM
 Portuguese Securities Commission
 Secretary of State for Administrative Modernisation (SEMA)
 Secretary of State for the Presidency of the Council of Ministers (SEPCM)
 SME representative
 União Geral dos Trabalhadores (UGT)

The reviews are also based on material provided by the country in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-government and public governance.

Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- *Strategy and policies for Better Regulation.* This chapter first considers the drivers of Better Regulation policies and the country's public governance framework seeks to provide a "helicopter view" of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of ICT and e-government in support of Better Regulation.
- *Institutional capacities for Better Regulation.* This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies. It also examines training and capacity building within government.
- *Transparency through consultation and communication.* This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule-making and public communication on regulatory requirements.
- *The development of new regulations.* This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.
- *The management and rationalisation of existing regulations.* This chapter looks at regulatory policies focused on the management of the "stock" of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.
- *Compliance, enforcement, appeals.* This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.
- *The interface between the national level and the European Union.* This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.
- *The interface between subnational and national levels of government.* This chapter considers the rule-making and rule-enforcement activities of local/sub federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

Notes

1. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom.
2. Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews.
3. The term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).

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LIST OF ABBREVIATIONS

AIP	Associação Industrial Portuguesa – Portuguese Industrial Association
AMA	Agência para a Modernização Administrativa – Agency for the Modernisation of the Administration
ANACOM	Autoridade Nacional de Comunicações – National Regulatory Authority for Communications
APA	Agência Portuguesa do Ambiente – Portuguese Environmental Agency
CEJUR	Centro Jurídico da Presidência do Conselho de Ministros – Legal Center of the Presidency of the Council of Ministers
CIP	Confederação da Industria Portuguesa – Confederation of Portuguese Industries
CMVM	Comissão do Mercado de Valores Mobiliários – Portuguese Securities Market Commission
CSE	Conselho Económico e Social de Portugal – Economic and Social Council of Portugal
ERS	Entidade Reguladora da Saúde – Health Authority
ERSE	Entidade Reguladora dos Serviços Energéticos – Energy Services Regulatory Authority
ICT	Information and Communication Technologies
INA	Instituto Nacional de Administração – National Administration Institute
ISP	Instituto de Seguros de Portugal – Portugal Insurance and Pension Funds Supervisory Authority
NSRF	National Strategic Reference Framework
PNACE	Programa Nacional de Acção para o Crescimento e o Emprego 2005-08 – National Action Programme for Growth and Jobs
PRACE	Programa de Reestruturação da Administração Central do Estado – Programme for the Modernisation of the Public Administration
QREN	Quadro de Referência Estratégico Nacional – National Strategic Reference Framework
SCAN	Sistema de Controlo dos Actos Normativos – System for the Control of Normative Acts
SCEE	Sistema de Certificação Electrónica do Estado – Electronic Certification System of the State
SCM	Standard Cost Model
SEMA	Secretária de Estado da Modernização Administrativa – Secretary of State for Administrative Modernisation
SEPCM	Secretário de Estado da Presidência do Conselho de Ministros – Secretary of State for the Presidency of the Council of Ministries
UCMA	Unidade de Coordenação da Modernização Administrativa – Unit of Co-ordination of Administrative Modernisation
UMIC	Agência para a Sociedade do Conhecimento – Knowledge Society Agency

EXECUTIVE SUMMARY

Drivers of Better Regulation

The development of Better Regulation policies in Portugal over the past few years has been part of the government's reforms to modernise the economy and enhance growth, and to meet the goals of the European Union's Lisbon Agenda on economic growth and job creation. The need to address deep seated structural and economic problems has facilitated the emergence of a shared understanding among politicians and civil servants that in-depth changes are necessary. There is a widespread recognition that the public sector must become more cost-efficient and closer to public needs, which requires a transformation of the administrative culture. Another priority has been to make the business environment more dynamic and innovative to increase the competitiveness of the economy and its capacity to attract foreign direct investment. Portugal's relatively low ranking in various competitiveness benchmarks has been an important driver for the launch of the Simplex Programme for administrative simplification and e-government.

Public governance framework for Better Regulation

Portugal is a unitary state and a parliamentary republic ruled by the constitution of 1976, with a tradition of strongly centralised government. The development of Better Regulation has been closely associated with managing the transformation of the public sector. Reflecting the high political importance of this objective, responsibility for regulatory quality management and the development of Better Regulation policies has always been at the centre of government, close to the Prime Minister. Better Regulation is also closely associated with e-government policies to promote more effective public governance.

Developments in Better Regulation

The development of Better Regulation policies is relatively recent compared with some other OECD countries. The government's strategy for promoting Better Regulation in its first phase has been to focus on actions which could rapidly produce tangible and effective results, on which to build a foundation for further reforms. Through the Simplex Programme, the objective was to send clear signals on the direction that had to be taken and to raise expectations for further reform among citizens, companies and within the administration. The Legislar Melhor Programme for enhancing legal quality constitutes a further and broader development aimed at improving the overall quality of the regulatory system and includes the first steps toward ex ante impact assessment.

Regulatory management capacities continue to be developed and reinforced. The Portuguese government recently adopted a resolution to create a stronger institutional framework for monitoring the transposition of EU directives. It has also, building on successive reinforcements of the programme, taken steps to further strengthen the Simplex Programme for the reduction of administrative burdens, with plans to introduce quantified targets, extend the programme to full compliance costs, and cover citizens as well as business and burdens on the administration. It is also addressing public consultation via the establishment of a code of good practice.

Main findings of this review

Portugal has made impressive progress over a very short period (three years) in the development and implementation of policies for Better Regulation, which is now recognised as an important part of effective public governance. There is a need to sustain momentum and confidence, and to set out a clear overall strategy that links and further develops the different initiatives for Better Regulation. Defining stronger operational as well as strategic targets will help the reform programme to stay on course. As Portugal unrolls further initiatives for Better Regulation under the *Legislar Melhor* umbrella, it also needs to ensure that *ex post* evaluation is anticipated both for specific elements of the policy, and for Better Regulation strategy as a whole.

Portugal has institutional structures at the centre of government as well as a network of officials involved and interested in Better Regulation across the administration, who are ready to move forward. The implementation of the Simplex Programme has played a big role in raising interest across ministries, generating inter-ministerial co-operation. Portugal should focus on enhancing shared working across the government and ensuring adequate capacities for the future development of Better Regulation policies.

An important transition has taken place over the last couple of years regarding public consultation, from reliance on formal requirements to experiments with broader and more flexible approaches. However the quality and scope of consultation practices appears uneven and open consultation is not yet fully embedded. Portugal has made positive progress in enhancing access to the legislative stock and more generally to the administration, including through the development of e-government. Two issues that need sustained attention are the delays in the court system for appeals, and the need to strengthen the framework for management of EU affairs, both of which the government is addressing.

Significant steps have been taken towards enhancing regulatory quality and controlling regulatory production. Procedures and guidance for the development of new legislation have been put in place. The government has also introduced the Simplex Test, mainly to assess the administrative burdens which new regulation could impose on citizens and businesses. This embryonic form of impact assessment needs to be further developed in order to enhance regulatory quality and management.

The Simplex Programme has been impressive in scope and ambition, and has removed some important difficulties in the regulatory system. The government plans to introduce a variant of the standard cost methodology (SCM) and establish quantified targets for 2012. A sharper approach based on quantification will help to evaluate progress on sounder footing and encourage the further and full engagement of relevant ministries. The government is also now engaging the municipalities in the Simplex Programme with the Simplex Autárquico Programme, launched in August 2008.

INTRODUCTION

The development of Better Regulation policies in Portugal over the past few years has been part of the government's reforms to modernise the economy and enhance growth, and to meet the goals of the European Union's Lisbon Agenda on economic growth and job creation. Over the past two decades Portugal has undertaken a wide range of reforms to liberalise its economy and open it to foreign trade and investment. Through most of the 1990s the EU's convergence criteria for economic and monetary union spurred Portugal's economic policy. The reforms paid off in terms of GDP growth and Portugal managed a significant catch up towards the living standards of more affluent OECD economies until the early 2000s. However from 2000 growth stalled, unemployment increased and budget deficits widened. It was not until 2005 that economic growth picked again, thanks in part to renewed efforts at macroeconomic and structural reforms. Major issues remain to be tackled still, including the need to reduce barriers to competition, reform employment protection legislation, simplify the tax system, and continue public administration reform in support of fiscal consolidation (OECD, 2008a).

Box 1. Major reform programmes in Portugal since 2005

The **National Action Programme for Growth and Jobs (PNACE)** was launched in 2005 as Portugal's national reform plan for 2005-08 as part of EU's renewed Lisbon Strategy. The main strategic objectives of the Plan were to: *i)* strengthen budgetary balance, *ii)* promote economic growth, *iii)* increase competitiveness, and *iv)* reinforce social cohesion. Administrative simplification and reform of the public administration were key elements in the plan.

The **Restructuring Programme for the State's Central Administration (PRACE)** was launched in 2005 as part of PNACE. Its core action lines were adopted in 2006. The primary goals of PRACE were to reduce government spending and create an administration that is more open to citizens, user-oriented and more efficient.

The **Technological Plan** and **Connecting Portugal (Ligar Portugal)** were launched in 2005. The Technological Plan is an essential part of the growth strategy. It provides for 112 initiatives to promote knowledge, technology and innovation. Connecting Portugal includes measures to develop the knowledge society, reduce digital divide, increase the number of broadband connections in homes and schools, develop online public services, and promote electronic commerce (Ministério da Ciência, 2005).

Portugal adopted the **National Strategic Reference Framework (NSRF 2007-13)** in 2007 in response to the EU's Strategic Guidelines for Cohesion of 2006, which aimed at re-launching the Lisbon Strategy. The Portuguese NSRF defines five national strategic priorities: *i)* to improve the population's skills; *ii)* to promote sustainable growth; *iii)* to guarantee social cohesion; *iv)* to ensure the development of the territory and the cities; and *v)* to improve public governance efficiency. Portugal will implement these priorities through a set of operational programmes, some of which are thematic and others targeted at geographic areas (seven regional operational programmes, one for each region, including autonomous regions; two regional operational programmes; one for each autonomous region; and six territorial co-operation operational programmes (cross-border, transnational, interregional)). The preparation of these operational programmes has been made in close co-operation between all levels of government (Ministry of the Environment, 2007).

Source: Government of Portugal, www.portugal.gov.pt – OECD (2008), *OECD Territorial Reviews: Portugal*, OECD Publishing, Paris.

The need to address deep seated structural and economic problems and to catch up with other better functioning economies has facilitated the emergence of a shared understanding among politicians and civil servants that in-depth changes are unavoidable and necessary to achieve long-term and sustainable growth. There is a widespread recognition that the public sector must become more cost-efficient and closer to public needs, which requires a transformation of the administrative culture. The government's strategy to modernise the economy includes improving the overall performance of the public sector. Improving the efficiency of public governance is one of Portugal's priorities in its Strategic Reference Framework Programme for 2007-13, which is part of the Lisbon Strategy (Box 1).

A key policy priority of the last few years has been fiscal consolidation with a wide-ranging set of both short-term and in-depth measures to tackle the unsustainable growth of public expenditure. The fiscal consolidation programme, which was introduced in 2005 – has produced quick results with the reduction of the deficit from 6.1% in 2005 to 2.7% in 2007 and 2.6% in 2008 (OECD, 2009 and Ministry of Finance and Public Administration, 2009). A pillar of the fiscal consolidation programme has been an in-depth reform of the public administration (PNACE) to control spending and improve efficiency of the public sector. The number of services and civil servants has been reduced, and new mobility mechanisms have been defined. Labour-market rules for civil servants are being put closer to those of the private sector. A new system for career and remuneration management of civil servants has been established, which introduces performance-based salaries.

Another priority has been to make the business environment more dynamic and innovative to increase the competitiveness of the economy and its capacity to attract foreign direct investment. The relatively low ranking of Portugal in various competitiveness benchmarks, including on parameters about the regulatory framework, has been an important driver for the launch in 2006 of the Simplex Programme for administrative simplification and e-government (Presidency of Council of Ministers, 2006). The Simplex Programme catalogues specific and cross-cutting initiatives to reduce or eliminate the costs which administrative procedures impose on citizens and firms. Reducing administrative burdens on businesses, such as simplified licensing and online registrations, is expected to lower the costs that regulations impose on firms and thereby improve the environment for doing business in Portugal and reinforce the attractiveness of Portugal for foreign investors. The objective of government with respect to the Better Regulation agenda is also to enhance the quality and efficiency of public services at a time of strong budgetary constraints and a wide-ranging fiscal consolidation programme.

1. STRATEGY AND POLICIES FOR BETTER REGULATION

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole of government” policy to pursue high quality regulation. A key part of the OECD’s 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders’ perceptions of regulatory achievements (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance – “measuring the gap” between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels.

Assessment and recommendations

Development of Better Regulation strategy and policies

Portugal has made impressive progress in the development and implementation of policies for Better Regulation in a very short time frame. Over a period of less than three years, the government has launched programmes for enhancing legal quality (Legislar Melhor Programme or Better Law Making Programme) and for the reduction of administrative burdens (Simplex Programme). The Simplex Programme is now being extended to cover municipalities (Simplex Autárquico Programme), alongside a major programme for the development of e-government. A number of tangible results have been produced, including reduction of administrative burdens on citizens and companies for a number of administrative acts, easier access to regulations (websites of Official Gazette and the parliament), codification, and publication of rules of procedures for the preparation of regulation. Portugal also deserves credit for taking inspiration from the experiences of other countries, thereby reaping the benefits of a catch up effect, and more broadly for getting the measure of the efforts that were needed to start changing the culture of the administration, and the issues to be addressed.

These tangible achievements mean that Better Regulation is now recognized as an important part of effective public governance and is embedded in the policy agenda. The need for Better Regulation is now increasingly recognized and supported not only within much of the administration but also outside (business, trade unions, citizens). Reforms in this area no longer appear to depend on the politics of the moment. A momentum for reform has been created, and there is a climate of confidence as well as an expectation on the part of business and society that the government is taking reform seriously.

There is a need to sustain momentum and confidence, and to set out a clear overall strategy for Better Regulation that links and further develops the different initiatives. Whilst much has been achieved in the first phase of reform, a second phase is opening up, which needs further development if it is to provide effective ongoing support for Portugal's economic goals. The Legislar Melhor Programme is an important step in this direction, signalling that the government has understood that Better Regulation must be extended out from its origins in the Simplex Programme. This new programme outlines a broader and potentially deeper strategy for Better Regulation in Portugal. The risk is that Better Regulation reform gets stuck at some point in the next couple of years, if this strategic vision is not addressed. A strong central vision will also help to avoid a fragmentation of approaches across ministries, agencies, and beyond at the municipal level.

Recommendation: Portugal should set out its strategic vision for the further development of Better Regulation policies over the coming few years, based on the initiatives that have already been set in motion. A White Paper would be a good way of doing this.

Defining stronger operational as well as strategic targets will help the reform programme to stay on course. Defining operational and strategic targets, against which the government can report progress, would also act as an incentive for ministries and others to sustain and even strengthen their efforts. For this to work, current policies need to be given a sharper edge. This includes specific targets and measurements for the administrative burden reduction programme, and a stronger and fuller approach to *ex ante* impact assessment which goes beyond the assessment of administrative burdens. The government has taken steps with regard to the administrative burden reduction programme and now needs to take further action with regard to *ex ante* impact assessment.

Recommendation: The government should take steps to strengthen *ex ante* impact assessment (see Chapter 4).

Communication on Better Regulation strategy and policies

Better Regulation strategy needs to be clearly communicated to stakeholders within and outside the administration. The first phase of reform rested largely on a specific and highly visible policy (launching the Simplex Programme for the reduction of administrative burdens as a way to embed Better Regulation in the administration's agenda). This policy was well communicated. The current situation, however, is no longer so clear. Stakeholders need to be fully aware of what is planned as well as what the government has already put in place.

Recommendation: Alongside the development of a strategic vision, the government should establish a communication strategy for Better Regulation both inside the administration and for external stakeholders, which also underlines achievements to date.

Ex post evaluation of Better Regulation strategy and policies

Ex post evaluation is not at this stage embedded in the culture, although there are some useful initiatives. Measuring and evaluating progress is important to sustain the momentum for reform and to improve the reform programme. A useful specific initiative on *ex post* evaluation is the recently established monitoring panel for the Simplex Programme, which could constitute a step towards the establishment of a broader system for monitoring and evaluation policies. As Portugal unrolls further initiatives for Better Regulation under the Legislar Melhor umbrella, it needs to ensure that *ex post* evaluation is anticipated both for specific elements of the policy, and for the Better Regulation strategy as a whole.

Recommendation: Provision should be made for the *ex post* evaluation of Better Regulation strategy and specific initiatives, so that the insights obtained can be used to strengthen the policy over time. Consideration should be given to whether the Court of Auditors could play a role in this respect.

There is a need to strengthen understanding of the link between the Better Regulation agenda and impact on the economy in order to sustain support for Better Regulation over the long term. Portugal has set itself the goal of achieving a stronger economic performance and a reduction in the public deficit. How can/does Better Regulation (which itself requires resources) contribute to economic performance? This is difficult to show directly at the macroeconomic level. However it could be attempted for specific areas, for example making the link between simplification of processes for business start ups and the effect on new business formation. This can also be a “reality check” on the effectiveness of the reform programme.

Recommendation: Portugal should consider whether to commission studies that would help to highlight and quantify the link between its Better Regulation policies and improvements in the performance of the economy (especially micro effects such as new business formation).

E-government in support of Better Regulation

Better Regulation in Portugal is closely linked to and supported by e-government policies aimed at promoting more effective public governance and regulatory management. Portugal has for a number of years prioritised the development of the Portuguese Information Society and focused on putting public sector services online. This has resulted in a significant improvement relative to the European Union e-government benchmarks regarding accessibility of e-government. Drawing full benefits from simplification through e-government services however requires that the government also works to tackle the digital divide in Portugal.

Recommendation: Portugal should continue to make the roll out of e-government in support of Better Regulation a priority.

Background

Main developments in Portugal’s Better Regulation agenda

The strategy of the government for promoting Better Regulation in its first phase has been to focus on actions which could rapidly produce tangible and effective results, on which to build a foundation for further reforms. It thus selected the reduction of administrative burdens as a first step in Better Regulation policy and gave priority to the Simplex Programme. The objective was to send clear signals on the direction that had to be taken and to raise expectations for further reform among citizens, companies and within the administration. The Legislar Melhor policy constitutes a further and broader development aimed at improving the overall quality of the regulatory system.

Box 2. Milestones in the development of Better Regulation policies in Portugal

1998

- Law 74/98 establishes rules on the identification, drafting and publication of law.

2003

- The government presents an “Action Plan for the Information Society” with a separate action plan for the development of e-government action.

2005

- In October, the government approved its National Reform Programme, entitled Lisbon Strategy – Portugal Anew; the National Action Programme for Growth and Employment (PNACE 2005/2008). One of the four strategic goals is to increase the competitiveness of the Portuguese economy, including by modernising the public administration and improving the quality of public services.

2006

- In March, the government presents “Simplex 2006”, its first annual programme for the reduction of administrative burdens on citizens and businesses. It is followed by new annual programmes for simplification in 2007 and 2008.
- The government launches PRACE, a programme for the modernisation of the central state administration (Resolution of the Council of Ministers 39/2006 of 30 March 2006)
- With the Resolution of the Council of Ministers 63/2006 of 18 May 2006, the government adopts the first programme for law-making quality in Portugal, called Legislar Melhor.
- In the framework of the Legislar Melhor Programme, the government adopts rules of procedures on the law-making process (Resolution of the Council of Ministers 64/2006 of 18 May 2006). The rules provide a general framework for the dematerialization of the legislative process, the introduction of impact assessment with the “Simplex Test”, internal and external consultation. They also provide guidelines for drafting regulations. Access to legislation through the Official Gazette is made free and easier.

2007

- In January, the government presents the National Strategic Framework Programme for 2007-13. One of the 10 priorities is the modernisation of the administration and the reduction of administrative burdens on citizens and businesses.
- In January, UCMA presents the Simplex Programme for 2007, which consists of 235 measures of simplification procedures for citizens and businesses.
- The government reforms the regime of contracts, careers and salaries of civil servants.

2008

- In February, the Secretary of State for the Modernisation of the Administration presents the Simplex Programme for 2008, which consists of 189 measures to reduce or eliminate costs associated with administrative procedures on business, citizens, and to enhance the efficiency of the administration. SEMA has adopted a life-event approach to elaborate the programme.
- In July, the government launches Simplex Autárquico, a programme for the simplification of administrative procedures in municipalities.
- The government prepares a resolution to endorse the 25% target reduction of administrative burdens set by the European Commission.

Main Better Regulation policies

The Simplex Programme

The Simplex Programme (launched in 2005) is Portugal's programme for reducing administrative burdens on business as well as citizens. It has enjoyed strong political support at the highest level from the outset. It is under the direct responsibility of the Prime Minister. It is based on annual action plans which are refined from one year to the next (based so far on a qualitative rather than quantitative and target based approach), and has been integrated with the development of e-government. The main goals of Simplex are to (Presidency of the Council of Ministers, 2006):

- Provide prompt and effective responses to the needs of citizens and businesses.
- Increase people's trust in public services and servants.
- Enable businesses to quickly obtain permits and authorisations.
- Facilitate the rationalisation and efficiency of the public administration.
- Help Portugal become more competitive by reducing the cost of economic activities.

In 2008 the government launched a specific programme (Simplex Autárquico) to better integrate municipalities into the Simplex Programme and to promote co-operation and co-ordination across levels of government. This is seen as key to ensuring success of the Simplex initiatives, in particular with respect to the simplification of licensing procedures.

The Legislar Melhor Programme

The Council of Ministers approved the Legislar Melhor Programme (Better Law Making Programme) shortly after the launch of the first Simplex Programme in May 2006. Legislar Melhor is an umbrella programme, which covers a range of tools for improving the quality of the regulatory system. While previous initiatives had tackled specific issues of rule making, Legislar Melhor is the first integrated programme for Better Regulation in Portugal. The main objectives of Legislar Melhor are to:

- Ensure access of all to legislation;
- Introduce *ex ante* impact assessment into the rule-making process;
- Promote consultation in the rule-making process;
- Implement monitoring tools for transposition of EU rules;
- Simplify the existing stock of legislation through consolidation;
- Develop training of officials and use of ICT in support of all these aspects.

In the implementation of the Legislar Melhor Programme, initial efforts have concentrated on providing easier access to legislation through electronic publication of regulations and codification. Progress has also been made with the publication of detailed rules of procedure for the development of regulations. Current ongoing work, such as the publication of guidelines for law drafters, should produce additional progress. The first steps towards *ex ante* impact assessment have also been taken: the rules of

procedure now include the Simplex Test to assess the expected administrative costs of planned regulations. The need for a broader *ex ante* impact assessment system is being debated, both within the administration and also at the parliament (for more on impact assessment, see Chapter 4).

E-government in support of Better Regulation

A specificity of Portugal's strategy for Better Regulation is its close association with policies to develop the use of ICT and promote technological innovation. Portugal has developed an ambitious policy for the information society, which is outlined in the Technological Plan and the Connecting Portugal Programme. One of the objectives of the plans is to have all basic public services available online by 2010. Portugal has already achieved rapid progress and is among the countries with the highest level of development of e-government in Europe (Box 3 and Figure 1). However broadband access to the Internet remains a significant challenge to user take-up of e-government services in Portugal as access varies considerably according to geography and size of firms.

Box 3. Development of e-government in Portugal

In recent years Portuguese government agencies have increasingly put services online. The central government's e-government services can be accessed through two main portals: the Citizen's portal and the Business portal.

The Citizen's Portal is the main electronic contact point between government and citizens. It has 820 services from 130 entities and half a million regular visitors. The most popular services are information services, certification request services, tax return services, and address change services. Since 2005, SMS messaging and mobile portal services have been available as well.

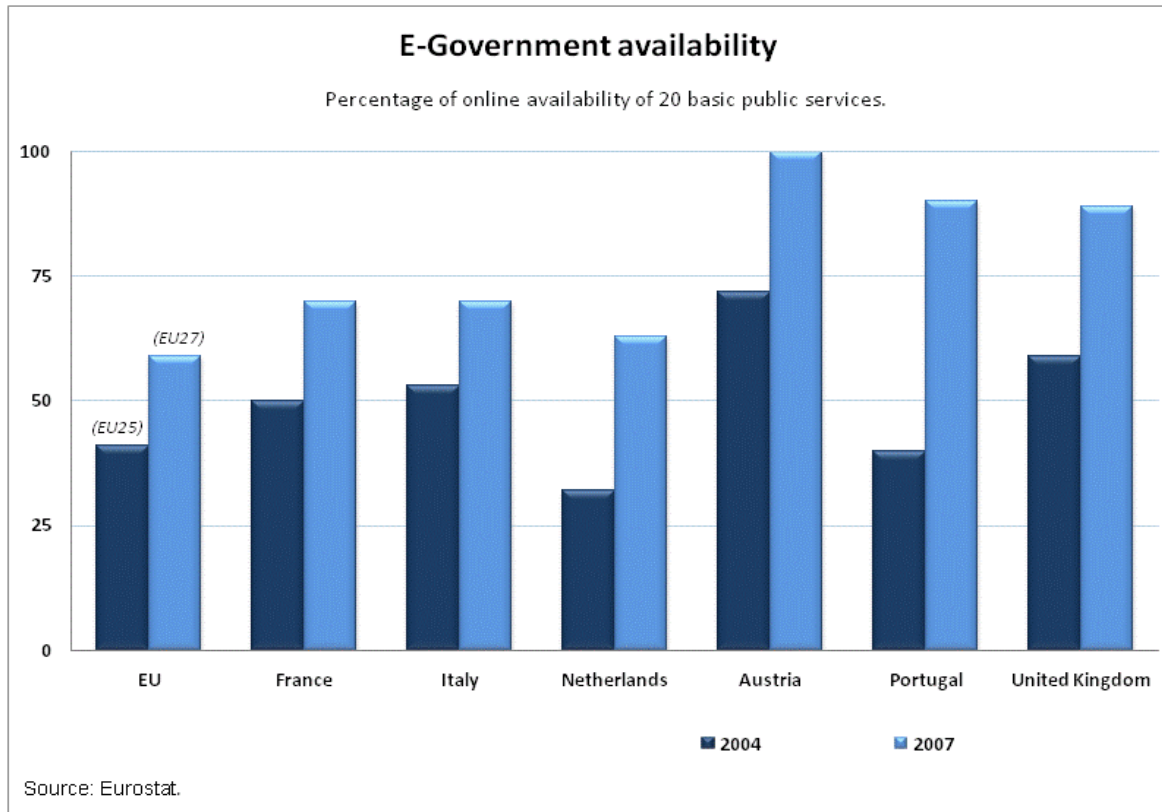
The Business Portal is organised on a "Business Life Cycle" concept with areas for creation, management, expansion and dissolution of a company. It brings together 480 company-oriented services and includes a "Reserved Area" where different types of certification, registration and declaration can be made.

For services requiring strict authentication of identity, such as the fully online creation of a company, advanced digital signature certificates are used for digital authentication: the Citizen's Card or alternative digital signature certificates recognized by the State such those carried by lawyers. Even though the Citizen's Card deployment was initiated in February 2007, lawyers can act as representatives of people wishing to create a company or of enterprises for operations requiring strong authentication of identity as they carry advanced digital signature certificates that has been recognized by the State for several years. A number of e-services can be accessed on individual agency Web sites, e.g. social security, civil service retirement, health and taxes online.

With respect to full online availability of basic e-services, Portugal ranks 3rd amongst European countries, after Austria and Malta (see European Commission, 2007 and Figure 1 regarding online availability in selected countries). According to the ranking, Portugal has 90% of its services fully online and comes close to its goal of 100% availability in 2010. This position represents a major leapfrog from 2004 when Portugal ranked 11th in EU15 and had 40% of its services fully online and it is well above the EU-average.

Source: OECD (2008), *Making Life Easy for Citizens and Businesses in Portugal: Administrative Simplification and e-Government*, OECD Publishing, Paris.

Figure 1. Percentage of e-services fully available online



Source: OECD (2008), *Making Life Easy for Citizens and Businesses in Portugal: Administrative Simplification and e-Government*, OECD Publishing, Paris, p. 152.

The Simplex Programme relies heavily on the use of information and communication technologies (ICT) to reduce the cost of administrative procedures. Many elements of the Legislar Melhor Programme also rely on the use of ICT, such as the dematerialisation of the legislative process and the electronic edition of the Official Gazette (which received full legal value in the framework of the Legislar Melhor Programme). The government has sought to exploit the positive synergy between Better Regulation policy and e-government policy. For example, in the field of administrative simplification, the effort to put registration procedures in the transport sector on line has highlighted the need to simply the registration requirements themselves.

In support of this policy, the government has begun to develop a security framework supporting increased use of ICT in the public sector and in Portuguese society. This framework consists of a certification authority,¹ a national Citizen's Card,² and an ICT security infrastructure supporting the use of the electronic identity card and digital signatures. These components form the foundation of a basic security system for the development of e-government services. However it is still unclear whether the individual components will be integrated into a common, coherent public sector framework ensuring a trusted e-government security framework.

Communication on the Better Regulation agenda

The government has given considerable publicity to the first phase of its Better Regulation agenda - the Simplex Programme. It has sought to meet the challenge of informing relevant stakeholders of the new services established through the programme, and to gain further support for this policy. Less attention has so far been paid to communicating the Legislar Melhor Programme, partly because it is relatively new and concrete results are not yet available. Different channels have been exploited:

- *Websites.* The website of SEMA provides detailed information about the Simplex Programme and can be accessed through the government's website as well as the Citizen Portal and the Business Portal.³ The Ministry of Justice has developed a specific website on administrative simplification, which provides information on simplification measures for citizens and companies within its field of competence (for example, company registration and fiscal, accounting, and statistical information, trademarks and patents).⁴
- *Media relations.* The launch of new services resulting from the Simplex Programme usually gives rise to a public presentation by SEMA, the Ministry of Justice or other parts of the government.
- *Documents.* SEMA and the Ministry of Justice have produced a number of documents (available online) which outline the overall objectives of the government's Better Regulation policy, in particular simplification. A recent example is a 5-language booklet "Portugal simplifies" published by the Ministry of Justice, which presents 14 key measures to simplify administrative procedures (Ministério da Justiça, 2008).

Ex post evaluation of Better Regulation policies, tools and processes

The government has established mechanisms for monitoring the Simplex Programme and evaluating its results. Progress reports are published every quarter on the Internet. In addition the government established a monitoring panel in 2007. Its mission is to monitor progress and bring forward suggestions for improvement, as well as bringing an external view on the programme. The panel has had two meetings so far and it is too early to assess its impact. The government plans an overall evaluation of the Simplex Programme at the end of its first four-year cycle (in 2009).

Notes

1. Sistema de Certificação Electrónica do Estado (Electronic Certification System of the State, SCEE) created by Decree Law 116-A/2006 of 16 June 2006. See *www.scee.gov.pt*
2. The Citizen's Card is an electronic identification card issued to Portuguese citizens as of March 2007 and replaces four identification cards (the civil identification card, the taxpayer card, the National Health card, the social security card) and will also replace the voter's card.
3. *www.portugal.gov.pt; www.portaldocidadao.pt; www.portaldaempresa.pt*
4. *www.cuttingredtape.mj.pt*

2. INSTITUTIONAL CAPACITIES FOR BETTER REGULATION

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the sub-national levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and sub-national levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customized, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognized as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

Assessment and recommendations

Considerable progress has been made in a short time, and foundations are being established for the further development of institutional capacities. Portugal now has institutional structures at the centre of government as well as a network of officials involved and interested in Better Regulation across the administration, who are ready to move forward. The implementation of the Simplex Programme has played a big role in raising interest across ministries, and has generated inter-ministerial co-operation for a major horizontal government programme for the first time without a formal legal requirement to do so. Two entities based within the Presidency of the Council of Ministers at the centre of government now play a major role in the development of Better Regulation in Portugal: CEJUR (the legal centre of the Presidency of Council of Ministers in charge of the Legislar Melhor Programme), and SEMA (Secretary of State for Administrative Modernisation) with the support of AMA (the Agency for Administrative Modernisation, in

charge of the Simplex Programme). Among ministries, the Ministry of Justice is a particularly active and effective player with respect to the Simplex Programme, partly as an extension of its own initiatives to remove congestion in the judicial system. The Ministry of Finance and Public Administration and the Ministry of Economy and Innovation have been other key players in the development of simplification programmes.

Despite progress, the institutional motor at the centre of government for Better Regulation has some weaknesses. One is the need to enhance shared working. There is goodwill and a certain level of co-operation between the main players in the Presidency of the Council of Ministers and key ministries, but much of their work appears to be carried out independently of each other, and may be over-dependent on the enthusiasm of the officials currently in place. This will matter increasingly as new processes are rolled out, for example to capture the administrative burdens of new regulations, which will need to be meshed with the more established Simplex Programme. The second major weak spot is capacities and competences. These are inadequate for the work ahead. For example CEJUR has been given an important role for the development of the Legislar Melhor Programme, but its capacity to perform these tasks will be limited by its resources and competences, which are focused on law quality. It could not for example, as matters currently stand, provide much effective support for the development of *ex ante* impact assessment. Policies on administrative simplification and on the quality of new regulations are related, and require strongly co-ordinated actions. They are currently conducted by AMA and CEJUR, which are under different Secretaries of State within the Presidency of the Council of Ministers.

Recommendation: Short of setting up a fully integrated unit, which may cut too much across current structures, Portugal should develop a more co-ordinated approach to Better Regulation within the Presidency of the Council of Ministers so that officials can work together and share experiences on linked issues. At the same time it should consider how resources and relevant competences can be strengthened for CEJUR, so that it can effectively meet its responsibilities for the Legislar Melhor Programme.

Across ministries and agencies, capacities and competences for tackling reform appear to be highly uneven and also need attention. There have been considerable efforts to develop training, and an important initiative to link performance assessment with results obtained on Better Regulation policies such as the Simplex Programme. Some entities (such as the Ministry of Justice and the financial regulators) appear to be fully equipped as well as enthusiastic for their role. Others, however, seem less at ease and not so well integrated.

Recommendation: Portugal should identify a high level committee to take responsibility for Better Regulation, supported by a secretariat in the Presidency of the Council of Ministers, to which ministries would report progress on a regular basis. Within individual ministries, a Better Regulation contact point should be established to liaise with the central structures, co-ordinate reporting, and promote best practice.

The more formal engagement of external stakeholders, many of whom are highly supportive of the government's Better Regulation policies, could also be usefully strengthened. Leaving aside the Ministry of Justice's De-formalisation Commission, which covers both government and external representatives, Portugal does not at present have a fully independent external advisory body of the kind that has been set up in a number of other OECD countries. Such bodies, provided that they are established with careful regard to their independence and balance of representatives, can provide powerful support for sustaining Better Regulation over the long run, advising the government on how Better Regulation programmes can be strengthened, and acting as an effective public communication channel for the government.

Recommendation: Portugal should consider establishing an independent external advisory body of business and other representatives to support the development of Better Regulation policies.

The government and the parliament have a shared interest in Better Regulation, which needs to be exploited. The Assembly of the Republic is considerably engaged in Better Regulation initiatives aimed at strengthening the quality of law making, including through early efforts at impact assessment. (This is a key area for sharing developments (of which more in Chapter 4). Sharing of databases on the regulatory stock could be another entry point for encouraging communication and co-operation.

Recommendation: Initiatives should be taken to strengthen the contact and co-operation between the Presidency of the Council of Ministers and the parliament over the development of Better Regulation tools and processes, in particular *ex ante* impact assessment of new legislation, and databases.

Background

General institutional context

Major developments in the institutional structure

The constitution approved in 1976, following the 1974 revolution, established Portugal as a mixed parliamentary and presidential system.¹ Portugal became a member of the European Union in 1986. The general institutional framework has remained stable over the last decade. Portugal remains highly centralised, although there are growing discussions about delegating responsibilities to the regional level. Box 4 provides an overview of the institutional framework for policy and law making in Portugal.

Box 4. Institutional framework for Portuguese policy and law making

Portugal is a parliamentary republic ruled by the constitution of 1976. The President of the Republic is head of state.

Portugal is a unitary state. It has long been characterised by a tradition of strongly centralised government. Local government essentially consists of the municipalities, which are strongly autonomous. Mainland Portugal is also divided into regions, which have no elected body and do not have the status of local governments. There are however two autonomous island regions- Azores and Madeira.

The executive

The President of the Republic is directly elected for a 5-year term and re-eligible once. The main powers of the President are the right to appoint the Prime Minister whose programme must win a vote of confidence in the parliament, and the right to call an election (or to appoint a new prime minister) should the government lose the support of the parliament. The President can send bills to the constitutional court for verification that they are in conformity with the constitution. The President is also commander-in-chief of the armed forces.

The President does not hold any executive power but may interfere in political actions, when necessary, by using some of the powers granted by the constitution. They include the power of veto over legislation, the power to dismiss the government and the power to dissolve the parliament.

Executive power is vested in the government (Council of Ministers, chaired by the Prime Minister), which is accountable to the legislature. As in most other OECD countries, policy decisions must be agreed collectively by the Council of Ministers, and are first debated in relevant committees. The Prime Minister is appointed by the President of the Republic. Members of the Council of Ministers are appointed by the President of the Republic upon recommendation of the Prime Minister.

Although the Assembly of the Republic is the most important source of legislative power, the government may enact legislation within the limits of subject areas authorised by the parliament under parliamentary framework laws. The government may also develop the basic principles set out by parliamentary laws, so long as they are not within the exclusive competence of the parliament. Lastly, the government can legislate over all matters that are not within the exclusive competence of the parliament.

The Presidency of the Council of Ministers is a central ministry which provides support for the work of the Council of Ministers. It supervises a number of institutes, such as the National Statistical Office, the High Commission for Immigration and Intercultural Dialogue (ACID), the Centre for the Management of the government IT network, the Agency for Administrative Modernisation, the Legal Centre (CEJUR).

Ministries (14 in the current government) are generally headed by a minister and subdivided into secretariats or Departments, which are headed by a secretary of state.

Civil servants are politically neutral and remain in place even if there is a change in government.

The legislature

The Assembly of the Republic (Assembleia da República) is Portugal's unicameral parliament. It is composed of 230 members, elected to a 4-year term of office under a proportional representation system (with the vote based on party lists in 20 multi-member constituencies). The parliament exercises the most important legislative powers, including that of amending the constitution. The parliament is entrusted with the power to legislate on all matters, except for those which are the exclusive responsibility of the government

The judiciary

The constitution provides for the Constitutional Court, the Supreme Court of Justice and the Supreme Administrative Court (the last two have subordinate courts) and a variety of special courts, including a military court system.

The Portuguese legal and judicial system is based on Roman civil law. It has a complete body of law that has all been transcribed into codes. Judges are essentially seen as civil servants who are the 'mouth of the law'. They must seek the appropriate law from the codes and apply it without any reservations, excesses, any interpretations.

Conselho de Estado (Council of State)

The Council of State is a body established by the constitution to advise the President of the Republic on the exercise of many of his reserve powers. The constitution states that it must be summoned by the President should he decide to dissolve the Assembly of the Republic, declare war or peace, or if a government steps down.²

Autonomous regions, municipalities and parishes

The public sector structure is also composed of autonomous regions and local self-government (municipalities and parishes, as decentralised structures), all of them having a high degree of political and administrative autonomy, defined by the constitution and by law.

There are two autonomous regions, Azores and Madeira, which both have special administrative, political and legislative powers. They have large administrative powers in general matters regarding their specific local lives, economic and social development. Except for these overseas territories, the regions are not a relevant feature of the administrative structure.

The 308 municipalities are politically and administratively independent from state government and have the power to plan, govern and make investments in a range of areas. They play an important role in delivering services and goods to citizens and businesses in areas such as water supply, drainage network, urban waste disposal, parks and gardens, street repairs, social and cultural facilities, primary schools (apart from a teacher's pay) and municipal road network. They also have responsibilities concerning health, social protection, urban planning and environment. Municipalities' revenue come largely from grants from the central government and property taxes.

Municipalities also have responsibilities to licensing several activities connected to these issues, to verify the compliance of citizens and businesses with the rules governing these activities, and to give financial support to citizens and businesses in connection to them.

Developments in Better Regulation structures

Development of Better Regulation structures is relatively recent compared with some other OECD countries (the first structure was established in 2001), and has been closely associated with managing the transformation of the public sector. Reflecting the high political attention given by the Portuguese

government to the reform of the public sector and in particular to the Simplex Programme, responsibility for this transformation has always been at the centre of government, close to the Prime Minister's cabinet or the Presidency of the Council of Ministers. The different branches of the Presidency of the Council of Ministers have played an increasingly prominent role over time, first with the development of the Simplex Programme, and associated e-government initiatives, and more recently with the development of the Legislar Melhor Programme (Box 5).

Box 5. Milestones in the development of Better Regulation institutions in Portugal

2001

- The government sets up the Commission for Legislative Simplification (Resolution of the Council of Ministers 29/2001).

2003

- The government sets up a Technical Committee for the "Strategic Programme for the Quality and Efficiency of the Government's Rulemaking Acts".

2005

- The government establishes UCMA (Unidade de Coordenação da Modernização Administrativa – Unit of Co-ordination of Administrative Modernisation) to provide support and co-ordinate the government's action in the field of administrative modernization and simplification (Resolution of the Council of Ministers 90/2005 of 13 May 2005).

2006

- The Secretary of State for the Presidency of the Council of Ministers (SEPCM) is given overall responsibility for implementing the Legislar Melhor Programme initiated in 2006. CEJUR, the legal centre of the Presidency of the Council of Ministers, is given responsibility for overseeing the implementation of Better Regulation policies. The government also establishes AMA, the Agency for Administrative Modernisation, to provide technical support for the development and evaluation of activities related to administrative simplification and e-government, including the Simplex Programme (Decree Law 202/2006 of 27 October 2006). AMA is placed under the responsibility of the Secretary of State for Administrative Modernisation (SEMA), within the structure of the Presidency of the Council of Ministers.
- In June 2007, a Secretary of State for Administrative Modernisation is appointed by Decree Law 240/2007. This replaces UCMA.

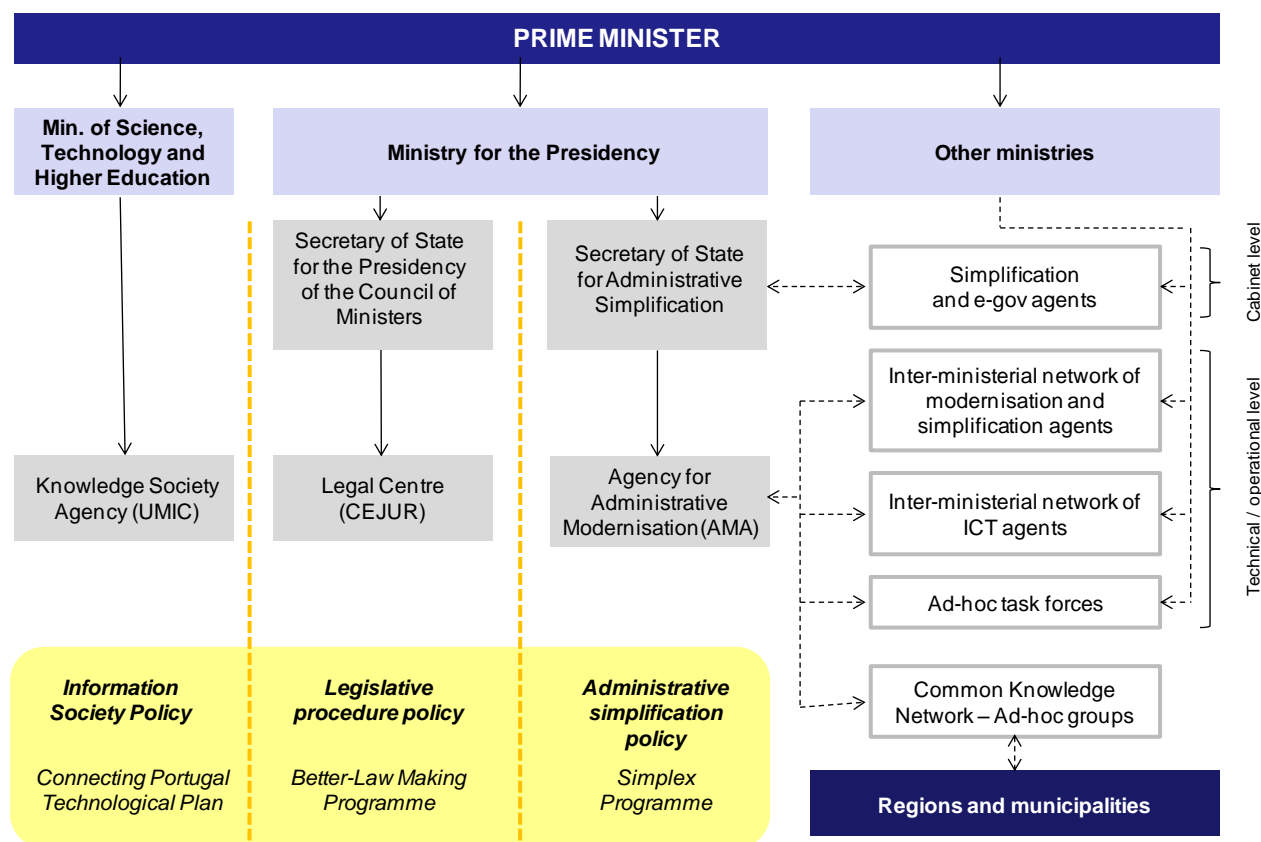
Key institutions for Better Regulation policy

The executive centre of government

The Presidency of the Council of Ministers

This is the key central Ministry (under the responsibility of the Prime Minister), which provides policy and technical/legal support for the Council of Ministers. Responsibility for the Better Regulation agenda currently lies with the Minister for the Presidency, with two Secretaries of State playing a leading role, the Secretary of State for Administrative Modernisation (SEMA) and the Secretary of State for the Presidency of the Council of Ministers (SEPCM).

Figure 2. Institutional framework for Better Regulation policies in Portugal



The Secretary of State for the Presidency of the Council of Ministers (SEPCM) is responsible for implementing the Legislar Melhor Programme initiated in 2006 and for co-ordinating the government’s rule-making process, acting as a mediator between ministries. The SEPCM collects all proposals for laws and the most important secondary regulations from ministries, and circulates them to other ministries for comment. It reviews the proposals with view to reaching an agreement between ministries, in particular with the Ministry of Finance and Public Administration, before the meeting of the Council of Ministers. However SEPCM has no decision power as only the Council of Ministers has the power to decide that a draft law be sent to the parliament, or to adopt a decree law.

The Secretary of State for Administrative Modernisation (SEMA) has responsibility for administrative simplification and e-government. It is in charge of co-ordinating and supervising initiatives for administrative modernisation with the operational support of the Agency for Administrative Modernisation (AMA).³ AMA develops and evaluates activities related to administrative simplification and e-government, which includes the implementation of the Simplex Programme. SEMA co-ordinates with other ministries on policy issues, while AMA operates at a technical or operational level with relevant technical ministry and agencies staff.

The legal centre of the Ministry for Presidency (CEJUR) has been given a key role in the implementation of the Legislar Melhor Programme. CEJUR was initially created as a legal source of expertise to the government. In 2007 the government extended its mission as part of the reform programme to modernize the administration. Its main missions include:

- Providing legal assistance to the government in the preparation of draft laws, upon request of a ministry or a secretariat of state;
- Simplifying legislation, both in terms of flows and stock, and managing *Digesto*, which is a cluster of databases on existing regulations;
- Implementing *ex ante* impact assessment in the development of new regulations;
- Providing legal assistance to ministries when a law is sent to the Constitutional Court for verification;
- Participating in international co-operation over Better Regulation.

Other key central government players

Other ministries play a specific role in the development and implementation of Better Regulation in Portugal, in particular through the implementation of Simplex Programme:

- The Ministry of Justice has been a key participant in the development of the Simplex Programme, with the implementation of a wide range measures for the de-formalisation, elimination and simplification of acts and procedures for companies and citizens in its field of competence (for example, elimination of compulsory public deeds which duplicated public registration, creation of one-stop-shop for the creation of a company, simplified marriage procedure).
- The Ministry of Finance and Public Administration has also been a leading ministry in the implementation of the Simplex Programme. It also plays a traditional role of scrutiny in the development of regulations which have an impact on the budget.
- The Ministry of Foreign Affairs has responsibility for overseeing transposition of EU regulations into the national legal system. When a text needs to be transposed, it delegates this responsibility to the relevant ministry, and then monitors the transposition process.
- The Ministry of Science, Technology and Higher Education has some responsibilities in the development of e-government through the Agency for the Information Society (Agência para a Sociedade do Conhecimento, referred to as UMIC). UMIC used to be responsible for e-government policy. E-government policy is now under the responsibility of SEMA, but UMIC still holds an important role as it is in charge of co-ordinating policies for the Information Society, including through major programmes such as the Technological Plan and the Connecting Portugal Programme.

Co-ordination across central government

Networks for the Simplex Programme

The Simplex Programme has encouraged co-operation between ministries and led to new experiences of collaboration for civil servants in Portugal. This is the first horizontal programme of the government to be implemented throughout all ministries, without any laws requiring ministries to participate. This constitutes a breakthrough in the Portuguese administration, in which ministries traditionally work in a very autonomous way. The progressive implementation of projects, with pilot projects, has helped secure participation of ministries. SEMA reports directly to the Prime Minister and regularly to the Council of Ministers about progress in the implementation of Simplex, which seems to have had a strong disciplinary effect, preventing delays, and to have fostered competition among ministries in implementing the programme.

AMA draws on two inter-ministerial networks with representatives from all ministries, one network for modernisation and simplification, and another one for ICT. Thanks to these networks as well as to various *ad hoc* inter-ministerial task forces or working groups, information flows more easily between ministries than it used to be. The adoption of a life-event approach for defining Simplex 2008, which leads to an increased number of cross-ministerial initiatives, has also reinforced the need to co-operate between ministries to ensure coherence of the projects. As initiatives are defined around clusters, involving participation of several ministries in some cases, this can contribute to breaking down organisational silos and gradually promoting a more collaborative culture within the public administration.

The Ministry of Justice has set up a De-formalisation Commission to help it identify areas for the reduction of administrative burdens and bottlenecks in the judicial system. This commission is now considered as a major player in the administrative simplification initiative. It is noteworthy for the fact that it covers stakeholders both from within and outside government (business associations, regional chambers of commerce, professional representatives, trade unions, consumers).

Other networks

Informal regular co-operation between ministries also takes place, not only for the implementation of the Simplex Programme but more generally for issues relating to Better Regulation. The various programmes related to public sector reform have been addressed through separate networks and committees. This has been partly compensated by informal co-operation between the Ministry of Justice, the Ministry of Finance and Public Administration, and the Presidency of the Council of Ministers.

Regulatory agencies

As in other OECD countries Portugal has established a range of agencies with varied tasks and responsibilities. There are two broad categories. The first comprises seven independent regulators which cover the financial and insurance sectors, competition policy, communications, energy, and health care (see Box 6). The organisation, functions, and powers of each agency are defined by the specific laws which set them up, but they share some common features relating to their powers and responsibilities. They:

- Elaborate and adopt secondary regulations in cases specified by law and when shown to be indispensable for the exercise of their responsibilities; collaborate with the Assembly of the Republic and with the government in the formulation of the policies and the law relative to their sector;
- Monitor the development of activities of the entities under their oversight; disseminate information, publish studies;
- Monitor compliance with the law and applicable regulations in the sector; give orders and formulate recommendations, initiate and accompany cases to punish infractions; impose sanctions.

These regulatory agencies are independent public institutions. They have administrative and financial autonomy, but are accountable to the relevant parent ministry for the sector. The parent ministry must approve their annual forward-looking activity plan and budget and they must submit an annual activity report and accounts for the previous year. Some agencies (in the financial sector for example) have developed their own Better Regulation initiatives. It is important that these initiatives remain inspired by the general framework defined by the government. Otherwise the multiplicity of programmes could lead to confusion for businesses and citizens.

Box 6. Independent regulatory authorities in Portugal

Portugal has seven independent regulatory agencies.

- **The Bank of Portugal** (Banco de Portugal) is responsible for the prudential supervision of credit institutions and financial companies, and for the supervision of their conduct in the retail market.
- The **Portuguese Securities Market Commission** (CMVM – Comissão do Mercado de Valores Mobiliários), which was established in 1991, is charged with supervising and regulating securities and other financial instrument markets, as well as the activity of all those who operate within these markets.
- The **Portuguese Insurance and Pension Funds Supervisory Authority** (ISP – Instituto de Seguros de Portugal) is responsible for the regulation, inspection and supervision in the markets of insurance, reinsurance, insurance intermediaries and pension funds, as well as connected or complementary activities. It is subject to the authority of the Ministry of Finance.
- **The National Regulatory Authority for Communications** (ANACOM – Autoridade Nacional de Comunicações) is the regulatory body for electronic communications and postal services. Its framework was initially defined by Decree-Law 309/2001. It was modified by Law 5/2004 as a result of the transposition of the 2002 EU directives on electronic communications.
- The **Energy Services Regulatory Authority** (ERSE – Entidade Reguladora dos Serviços Energéticos) is Portugal's regulatory authority for the electricity and natural gas sector. It was created by Decree Law 187/95 as the Regulatory Entity of the Electric Sector, and started its operations at the beginning of 1997. Its scope of activity was extended to the regulation of natural gas by Decree Law 97/2002, within the context of the 1998 EU Directive on the natural gas market,
- The **Competition Authority** (Autoridade da Concorrência) was created in 2003. It has regulatory powers on competition over all sectors of the economy, including the regulated sectors. In this case the Competition Authority co-operates with the regulatory authority of the relevant sector
- The **Health Authority** (ERS – Entidade Reguladora da Saúde) is responsible for the regulation and supervision of the activities of health care providers. This includes ensuring right of universal and equitable access to public health care, ensuring competition among health care providers (in collaboration with the Competition Authority), monitoring quality of care.

The administration in Portugal also has a number of other agencies and institutes, responsible for monitoring, assessing and regulating activities in a given area (including inspections). In most cases these entities are endowed with administrative autonomy but remain within the hierarchical control of their parent ministry. Examples are the National Authority of Medicines and Health Products (Infarmed – Autoridade Nacional do Medicamento e Produtos de Saúde), which is accountable to the Health Ministry, and the Portuguese Environmental Agency (APA – Agência Portuguesa do Ambiente) which is accountable to the Ministry of the Environment.

The legislature

As is the case in most other OECD countries, the parliament has a structured system for the review of draft laws for enactment. It uses public hearings, and seeks views from a range of stakeholders including the unions, independent experts, and specialised bodies. The Assembly of the Republic has also taken initiatives in the field of Better Regulation. This has focused on promoting transparency and access to the law making process through the use of ICT tools. The website of the parliament provides an impressive amount of up-to-date information on the preparation of laws (discussion in committees, rapporteurs' reports, etc.) and allows citizens to interact directly with the parliament. Another focus is with respect to quality processes for the development of draft laws for enactment by the parliament, including *ex ante* impact assessment (see Chapter 4). These initiatives are mostly driven by the 1st Committee (Constitutional Affairs, Rights and Liberties) and the 11th Committee (Labour, Social Security and Public Administration).

Judiciary

The judiciary has not played so far a significant role in the development of Better Regulation policies. However the need to reduce lengthy delays in court has led the government to take regulatory measures in that area (see Chapter 6).

Local levels of government

Municipalities are the main level of local government in Portugal. The country is one of the most centralised countries in the OECD, with local governments accounting for less than 15% of government revenues and spending. There is also a regional level, but the mainland regions have no elected body and no formal powers. The islands of Azores and Madeira are the exception, and have been endowed with the status of autonomous regions since 1976. Better Regulation policies are beginning to reach out to the regional and local levels. Azores and Madeira have their own programmes. The Simplex Programme is beginning to draw in the mainland municipalities, and some of the bigger cities have started their own initiatives too. (For more see Chapter 8).

Court of Auditors

The Court of Auditors (Tribunal de Contas) is the senior body with authority to scrutinise the legality of public expenditure and judge public accounts. It is endowed with independence by the constitution, which includes it on the list of courts, qualifying it as a sovereign body. It performs *a priori*, concomitant or *a posteriori* financial control on public entities, on request of the Assembly of the Republic as well as the government.

Resources and training

The number of public officials directly involved in Better Regulation is estimated overall at 57. SEMA and AMA employ 7 persons on the Simplex Programme. CEJUR has a staff of 40 people (12 of whom are lawyers and 12 working on the Digesto, the online legal database). Its capacity to fully develop its responsibility for Better Regulation policies (such as the development of *ex ante* impact assessment) seems limited given resource constraints (its core activity remains the provision of legal assistance to the government) and by the lack of relevant competencies (notably economists). SEPCM has a staff of 10 people.

Portugal has specialised training centres for public servants. The most important training centre is the National Institute for Administration (INA – Instituto Nacional de Administração), which is responsible for the development of training courses, formal certification courses, and academically-oriented courses on the Portuguese public administration, as well as an annual course on law making. Universities also provide training to meet increasing demand for ICT expertise.

Efforts to train civil servants have increased over the past few years. INA's annual course on lawmaking has been opened to civil servants and the staff of Ministers and Secretaries of State as well as parliamentary staff. The Faculty of Law of the New University of Lisbon, which has established a monitoring centre on Better Lawmaking, also organizes regular training programmes, often tailored to adjust to the needs of individual ministries. The Faculty of Law of the University of Lisbon has a post-graduation course on lawmaking and the legislative process.⁴ Some ministries have organised their own training programmes for staff. One example is the Ministry of Justice, which has trained almost 10 000 employees in relation to the initiatives on deeds and notaries. A number of training programmes have also been conducted in the tax administration. Training of civil servants of municipalities appears more limited, although ICT training has taken place for example as part of the Digital Cities and Regions projects (OECD, 2008c).

Development of Better Regulation policies has also involved changes in administrative culture. Adapting skills and resources was reported to the OECD team as a serious challenge to the effective implementation of the Simplex Programme and the Legislar Melhor Programme. There are however encouraging signs that these programmes have resulted in a shift of the regulatory culture, towards less regulatory interference in the economy. This is a two-way process as changes in the regulatory culture also support the development of Better Regulation policies.

These changes come in the context of an in-depth reform of public administration, which includes control of admissions and recruitment, and a reform of careers and remunerations. The system in place had close to 1 470 different professional careers, with almost automatic career progression and seniority-based pay rise mechanisms, independent of professional performance. Following the adoption by the parliament of a law in July 2007,⁵ the government has started to put in place elements of a performance-based management system in 2008. As an example, for civil servants involved in the Legislar Melhor Programme and the Simplex Programme, performance can be assessed based on results obtained in the implementation of these programmes.

Notes

1. Portugal was a monarchy between the 12th century and 1910 when the first republic was established. It was overthrown in 1926 and Portugal experienced a period of authoritarian dictatorship until 1974. In this period the state managed the political and economic activities of the country. Decision-making power was highly centralised in a small state apparatus.
2. Its members are: the President of the Republic, the President of the Assembly of the Republic, the Prime Minister, the President of the Constitutional Court, the Presidents of the Regional Governments of Azores and Madeiras, former elected Presidents of the Republic, 5 members designated by the President of the Republic, 5 members designated by the President of the Assembly of Republic, the Secretary of the Council of State.
3. Until 2007 the entity in charge of public sector reform was the Office of Public Services Reform – Unidade de Coordenação da Modernização Administrativa (UCMA) – which was under the responsibility of the Minister of State and Internal Affairs.
4. Since its creation in 2004 the course has been attended by approximately 400 people, many of whom civil servants.
5. Law 66-B/2007 of 28 December 2007.

3. TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates can make it easier for business to digest regulatory requirements. The contribution of e-government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text – for example appeals are considered in Chapter 6).

Assessment and recommendations

Public consultation on regulations

Consultation processes are well established, both through formal rules and in practice, and have been evolving. Although public consultation is not required for all regulations, in practice most regulatory projects are subject to some form of consultation. There is a well-established practice of formal consultation of specific stakeholders stemming from constitutional requirements. An important transition has taken place over the last couple of years, from reliance on formal requirements to experiments with broader and more flexible forms consultation, often based on the Internet, carried out by different ministries and agencies. In particular, the implementation of the Simplex Programme has provided the opportunity to develop new forms of consultation with external stakeholders, which can be considered as a successful experience.

The new legal framework for consultation together with the planned Code of Good Practice are positive steps towards promoting more effective, open and user friendly consultation across all ministries, not just the best performers. The quality and scope of consultation practices appear to vary across ministries, and open consultation is not yet fully embedded. The government is now preparing a new legal framework and a Code of Good Practice, which should help to promote good practices. There is a particular need to promote more user friendly deadlines, and provide more systematic feedback on the results of consultation, so as not to discourage those who are putting big efforts in the provision of comments. Public consultation usually takes place within short deadlines and at a late stage in the development of regulations, which does not allow stakeholders sufficient time to contribute and reflect on how they could be affected. Nor does it encourage public ownership of the policy under development. Feedback on the use made of comments also appears to be poor.

Recommendation: Portugal should ensure that the new legal framework and Code of Good Practice under development includes clear instructions to consult early in the process of developing regulations and to provide feedback.

Public communication on regulations

Portugal has also made positive progress in enhancing access to the legislative stock and more generally to the administration, making a strong use of ICT in doing so. The Digesto initiative, and other initiatives to enhance transparency of the rule making process (Official Gazette on line, website of the Assembly of the Republic and individual ministries) show that Portugal has understood the need for a more transparent approach tailored to the needs of business and citizens without a legal background or support. The launch of comprehensive portals for citizens and business has also transformed access channel to public services and administrative procedures. Business might welcome increased simplicity through the adoption of common commencement dates as it can avoid the need to be on a regular lookout for new or revised regulations.

Recommendation: As well as current initiatives under the Legislar Melhor Programme, consideration should be given to establishing common commencement dates for the introduction of new regulations.

Background

Public consultation on regulations

Consultation required by the constitution or by law

Public consultation during the development of new regulations in Portugal has traditionally been a somewhat formal process. It has been largely driven by legal requirements, many of them stemming from the constitution of 1976, which ensured that consultation was given a considerable role in lawmaking. The introduction of formal requirements for external consultation in the constitution constituted a breakthrough in the development of regulations in Portugal and was part of the democratization process. The constitution defines the domains in which consultations are inescapable and institutionalised. For example, consultations are enshrined in labour market negotiations. For matters not listed in the constitution, consultation of specific stakeholders can also be mandated by specific laws.¹ In addition, the Rules of Procedure of the Council of Ministers² determine the bodies responsible for holding the consultation and the identity of stakeholders to be consulted. They also provide for the possibility of open consultations on the government's official website.³ The Rules of Procedure of the Assembly of the Republic define what type of consultation is to take place and when, which mostly deal with the phases of the parliamentary legislative procedure when consultation is to take place.

General management of public consultation

There is no overall oversight on consultation procedures, and few specific rules governing the way that the process of consultation is carried out. Each ministry is responsible for making consultations, except when the draft regulation has an impact on the autonomous regions. In this case the Presidency of Council of Ministers co-ordinates the process. This means that the people and organisations consulted may vary widely according to the ministry undertaking the process. Nevertheless, some trends can be observed.

- Open public consultations tend to take place at a rather late stage of law making, once the government has finalised the draft.
- Consultation has been mainly developed for draft primary regulations, and seems more limited when it comes to secondary regulations.

- Reporting results is up to individual ministries. In many cases results of the consultation do not give rise to specific reports and stakeholders participating in the consultation process can only deduct results from the ensuing legislation published in the Official Gazette. They may not be told about the entities consulted and the concerns raised in the consultation process. This can limit the capacity of stakeholders to provide inputs to consultation processes, and jeopardize their interest in participating in consultation. There are however notable exceptions. The government has prepared reports on consultation on the Simplex Programme and published them on the Internet.
- As regards deadlines, the Code of Administrative Procedures,⁴ which regulates the management of secondary regulations, provides for a minimum of 10 days when specific stakeholders are consulted in writing. The 10-day deadline seems also to prevail in case of restricted consultations on draft primary regulations. In case of large open consultation processes the consultation can take several weeks. In the case of the Simplex 2007 and Simplex 2008 the consultation period extended over 3 weeks.

Consultation of the social partners

The Portuguese government also consults social partners and civil society through the Economic and Social Council (CSE, Conselho Económico e Social), which was created in 1991 based on a constitutional requirement. CSE's mission is to advise the government, promote the involvement of economic and social players in the government's decision-making process, and provide a forum for dialogue between social partners and other civil society organisations. In the course of this work the CSE draws up opinions on draft legislation and economic policy programmes submitted to it by the government or on its own initiative. Members include representatives of the government, workers' and employers' organizations, the autonomous regions and municipalities, as well as representatives of civil society (such as professionals, researchers and universities, consumer and environment associations, universities).

Development of new forms of public consultation

In the last decade the Portuguese government has extended the scope of consultation to new fields and new stakeholders, thereby going beyond constitutional requirements and established representative bodies. The initiative for open consultation has relied on individual ministries, and varied across ministries. Several ministries have led open consultations, using the Internet and in some cases creating dedicated websites for consultation. The Ministry of Environment has for example a well-established practice of open consultation. At this stage there is however no common framework in the government for publicizing consultation notices and comments in a systematic way. The parliament has also made specific efforts to develop consultation, along with the publication of draft laws and related documents on its website.

Open consultation is also usually more established in independent regulatory agencies, which have a more recent administrative culture and work in specialized areas where stakeholders can be more easily identified. The energy regulator, ERSE, is often referred to as a best practice in this respect. ERSE has two permanent consultative bodies, the consultative council and the tariff council, which it consults when preparing secondary regulations. These bodies are made up of consumer and business representatives. Comments of the bodies are made public, as well as the consultation papers. ERSE has to answer all comments and publicise its answers. It also conducts open public consultation through its Internet website.

The elaboration of the Simplex Programme has led to experiences in open consultation procedures across all ministries. In 2007 the government introduced public consultation in the preparation of the programme and publicised the draft programme for comments. It also held consultation for the preparation of Simplex 2008.⁵ The process of consultation involved all ministries. AMA co-ordinated the process and compiled results, but comments were dispatched to relevant ministries. Overall the government received numerous comments, demonstrating support and demand for reform in that area. A significant number of measures in Simplex 2007 and Simplex 2008 (around a quarter according to SEMA) were identified out of these comments and suggestions (see Box 7).

Box 7. Consultation for the preparation of Simplex 2008

SEMA conducted a public consultation procedure for the elaboration of Simplex 2007 and Simplex 2008.

Consultation on Simplex 2008 took place over a three-week period, from December 21, 2007 to January 15, 2008. SEMA published a call for comments on its website and the government's portals. The process was fully open, with no requirement of membership in representative organisations.

The consultation was based on a document spelling out measures envisaged by each ministry to simplify administrative procedures for businesses and citizens during 2008. Participants were invited to comment on measures included in the document, but also to suggest new measures. SEMA sent the comments to the relevant ministries, which had an obligation to reply to comments and suggestions, as well as elaborate and publicize a final report with analysis of the results of the consultation. SEMA published a synthesis report on the consultation process on its website (Presidency of the Council of Ministers, 2008a).

The objective of the consultation was to inform citizens on the government's programme, receive comments and suggestions on planned initiatives, use this input to integrate new initiatives, and redraft or eliminate some measures. The underlying objective was also to promote a more open and transparent relationship between the government and citizens and businesses.

Ministries received 515 suggestions, out of which 65 were integrated in the final version of Simplex 2008 (7 as new measures, 54 as amendments on planned measures, and 4 as amendments to existing measures). This accounts for 34% of the measures in the final Simplex 2008. 54 suggestions were also considered for future Simplex programmes. Most of the remaining suggestions were disregarded because they were not simplification measures (such as questions or claims). Others were not considered either because they were already in Simplex 2006 or Simplex 2007, or because they were not feasible.

An example of new measures integrated in Simplex 2008 following the consultation process is the simplification of communication between businesses and central government (allowing electronic transmission of information for registration to the tax administration and social security administration, update of commercial register, ensuring valid amendment to these updates).

The Ministry of Justice, which is a leading institution in the implementation of the Simplex Programme, has established a specific consultation process for this. In July 2005 it set up the Commission for the Simplification of Registry and Notary Acts, also known as the De-formalisation Commission, to help it identify areas for reduction of administrative burdens and bottlenecks in the judicial system. This Commission is now considered a major player in the administrative simplification initiative. It comprises 28 organisations, which cover a broad scope of stakeholders (ministries and regulatory agencies, business associations, regional chambers of commerce, professional representatives, trade unions, consumers). Over the past three years the De-formalisation Commission has met on a monthly basis and suggested initiatives to simplify administrative procedures to the Ministry of Justice. This experience could be extended to other fields as SEMA plans to set up regular panels to consult on the Simplex Programme.

Current initiatives to promote public consultation

The Legislar Melhor Programme takes account of the increasing importance of the involvement of stakeholders and the public in the policy-making process, and foresees the development of new procedures of open consultation, using the Internet. It provides for the elaboration of a new legal framework on public consultation in the development of new regulations, and the production of a code of practice on regulations. Both the new legal framework and the code of practice are currently under preparation.

The objective of the planned new legal framework is to promote the participation of stakeholders in the development of regulations by giving more certainty in the consultation process and making it more fluid and easy to administer. The government plans to establish formal open or direct consultation procedures for organisations and individuals, either public or private, in the elaboration of laws without prejudicing informal consultations. For examples, it will define rules regarding relevant information to be added to the project when launching consultation, publication of draft regulations, deadlines, format of responses.

The planned Code of Good Practice is intended to be a reference tool for both civil servants and stakeholders, and will not have a binding character. It sets out to create an integrated approach to consultation, encouraging officials to publicize the process and launch it as soon as possible to maximise the benefits it can bring. The Code is to provide guidelines on both formal and informal consultation, considering the latter as a complement to formal consultations to be used from the start of the making process of regulations and throughout the consultation process. Through the Code, the government also aims at better managing relationships with stakeholders and increasing the transparency of the consultation process, by encouraging officials to provide reports on the consultation and feedbacks on how comments are taken into account.

Public communication on regulations

Publication of regulations

As required by article 119 of the constitution, all regulatory acts are published in the Official Gazette (Diário da República). This includes laws enacted by the Assembly of Republic and the Legislative assemblies of the autonomous regions, executive laws and regulatory orders and other decrees issued by the government, rules of procedures of the Assembly of the Republic, the Council of State and the regional assemblies, as well as decisions of the superior administrative court. Unless otherwise specified in the text, the new regulations enter into force five days after publication in the Official Gazette.⁶ In addition to this formal requirement, in some cases, individual ministries send information directly to affected parties in the framework of regular institutional contacts. There is no systematic approach to such communication of information, and practice can consequently vary across ministries.

In 2006 the government undertook to reform the Official Gazette, as part of the Legislar Melhor Programme. The online version of the Official Gazette, which had been developed since the 1990s, was given full legal value in July 2006. As of 1 January 2007, paper was eliminated both for the publication of the journal itself and for the transmission of official texts for publication in the Official Gazette. The online version of the Official Gazette is free of charge, with search, storage and printing capabilities.⁷ The transition from paper to electronic publication first required to give full binding legal force to the online version of the Official Gazette.⁸ The government estimated that transition to electronic transmission would save EUR 4 million related to publication and distribution costs.

Central registry of regulations

The launch of the electronic version of the Official Gazette has been closely associated with the development of an online central registry of regulations. The government created a comprehensive legal database, “Digesto”, at the end of 1992 to facilitate access to existing regulations. The Digesto offers several degrees and types of information.⁹ The online version of the Digesto database was integrated in the Official Gazette’s website in September 2006. Consultation of this database is free of charge. A subscription service is available for more advanced research capabilities and information. The Presidency of the Council of Ministers plans to create further dynamic hyperlinks to other legal databases (such as those of the Assembly of the Republic, Constitutional Court, and independent administrative bodies) and to set up a specific database for the consolidation of legislation.

Online registries of regulations also exist at the level of ministries and specialized bodies, such as independent regulators or other administrative bodies. In some cases, these databases are extremely comprehensive. For example, the registry of the Environment Ministry includes EU primary and secondary regulations, as well as jurisprudence and administrative decisions.¹⁰ Other examples include the databases of the Ministry of Justice, which were recently renewed with a thematic organization,¹¹ the Ministry of Agriculture,¹² the Ministry of Economy and Innovation,¹³ and the Ministry of Education.¹⁴ Regulatory agencies also publicize information on regulations in their specific area of activity on their websites.

Portals

As part of its programme for e-government, Portugal has launched comprehensive portals for citizens and business, which aim at facilitating relationships with the administration and providing a privileged access channel to public services and administrative procedures. The Citizens Portal and the Business Portal provide a single point of access to a wide range of 100 public organisations and entities, and gives the possibility to find information and obtain a number of certificates. The range of online services for citizens should be expanded with the development of the Citizens Card. The Card is an electronic identification document, which can be used for electronic authentication when accessing public electronic services. The Citizens Portal and the Business Portal are managed by AMA.

Notes

1. Some individual laws provide for mandatory consultation of specific stakeholders when the planned regulation affect them, such as the National Association of Municipal Authorities, environmental organisations, public professional associations such as the Portuguese Bar Association, the Portuguese Chamber of Solicitors, or the Portuguese Association of Medical Doctors.
2. Established by Resolution of the Council of Ministers 64/2006.
3. www.portugal.gov.pt.
4. Decree Law 442/91 of 15 November 1991, “Code of Administrative Procedures”.
5. In the initial stage of the programme in 2006, the government did not hold formal consultation although some simplification measures, which required adoption of a new law, were submitted to consultation.
6. Law 74/98 of 11 November 1998, relating to the publication, identification and form of laws, amended by Law 2/2005 of 11 November 2005, Law 26/2006 of 30 June 2006, and Law 42/2007 of 29 August 2007.
7. www.dre.pt.
8. Decree Law 116-C/2006 of 16 June 2006 established that the Official Gazette will be published by electronic means and made available as a public service with free and universal access. Legal value of the electronic edition of the Official Gazette resulted from Law 26/2006 of 30 June 2006, which amended Law 74/98 relative to the publication, identification and formulation of laws.
9. The Digesto includes detailed information on the legal and regulatory acts published in the official gazette (through the PCMLEX database), information on collective labour agreements (REGTRAB database, compiled by the Ministry of Labour), administrative and budgetary opinions of the Directorate-General for Public Administration (DGAP OPINIO) and the Directorate-General of the Budget (DGO DOUT).
10. SIDDAMB Integrated System for Environmental Information at www.siddamb.apambiente.pt.
11. www.dgpj.mj.pt/sections/leis-da-justica.
12. portal.min-agricultura.pt/portal/page/portal/MADRP/PT/servicos/guias_uteis/legislaca.
13. www.legislacao.min-economia.pt.
14. www.min-edu.pt/np3/133.

4. THE DEVELOPMENT OF NEW REGULATIONS

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true- impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have- or should have- a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardization, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.

Assessment and recommendations

Procedures for making new regulations

There has been good progress to strengthen the procedures and guidance for the development of new legislation. Very little was in place until recently. A practical guide to help law drafters is under preparation to complement the 2006 Rules of Procedures of the Council of Ministers, which have established common rules for the preparation of regulations. This has been a major achievement of CEJUR and should feed through into better quality drafting and planning for new regulations.

1. **Recommendation:** It is important that the practical guide encompasses all aspects of rule making, including legal quality, consultation and impact assessment. Putting the guide online would facilitate its use by all law drafters.

Ex ante impact assessment of new regulations

An embryonic policy for effective ex ante impact assessment of regulations is apparent, especially with the Simplex Test. A form of impact assessment has been formally introduced, both in the rules of procedures of the executive and of the parliament. The government has also introduced the Simplex Test for new draft regulation, mainly to assess the administrative burdens which the regulation could impose on citizens and businesses. The Simplex Test is now well known within ministries, and the practice of making *ex ante* impact assessment (even if focused on administrative burdens) and considering alternatives to regulation is making its way in the administrative culture. The first benefit of the Simplex Test is that it has made officials in central government aware that good regulation requires preparatory work, including questioning expected consequences. There are limits to the Test, but with this recent new tool, Portugal has made a significant step towards enhancing regulatory quality and controlling regulatory production. Throughout the OECD study mission, interviewees underlined the progress.

While the initiatives so far fall short of a fully effective ex ante impact assessment policy, they are a useful starting point for strengthening the current approach. The current review of the Test following its pilot phase is an important opportunity to take stock of the following issues and how they might be best addressed in the Portuguese context:

There is a need to move from a static to a dynamic approach. The Simplex Test is currently a static exercise – a snapshot of regulatory proposals at an early stage in their development. Effective *ex ante* impact assessment implies a dynamic process over time. Updating assessment as the draft progresses can help authorities to assess the regulation as it develops. It will also allow a more authoritative reference to an assessment which has been done on the final version of the text, and not on an early version which will have been modified significantly.

Recommendation: The government should refine the Simplex Test procedure to ensure that assessments are updated as a draft progresses.

There is a need to broaden the scope of assessments, taking account of the proportionality principle. The analysis underlying the Simplex Test (which is essentially based on a long questionnaire) and explanatory note is very limited. The Simplex Test does include some elements of a broader assessment, but focuses mainly on administrative burdens, not the full-fledged broader range of policy effects and potential costs and benefits. It can be legitimate to have different levels of impact assessments, proportionate to the subjects and their complexity. The overall aim should be to get the right balance as the current version of the Simplex Test is both too long and complex, and at the same time offers an inadequate basis for capturing effectively the full consequences of a proposed regulation.

Recommendation: The government should put in place a system for assessing the impact of new regulation to capture the full consequences (benefits as well as costs) of draft regulations, beyond what is already done with respect to administrative burdens in the Simplex Test, and taking account of the need to secure a proportional approach.

Publishing results of impact assessment and using public communication are important for transparency of public choices and medium term efficiency. The results of the Simplex Test currently remain confidential, even within the government. The confidentiality can be justified in the early phase of launch and implementation of the new policy. It is however now necessary to set when and how the Simplex Test can be communicated to interested parties and parliament. One argument for not making impact assessment publicly available is that this is preparatory work aimed at providing insights to the government. This is indeed the case, but the study can be made public once choices have been made and the draft is to be published or in the case of draft laws when the draft is communicated to the parliament. Another element of transparency to be improved is public consultation. There is currently no specific link made between public consultation processes and ex ante impact assessment. The development of the Simplex Test should involve effective public consultation of stakeholders in order to identify prospective issues.

Recommendation: The government should take steps to publish impact assessments, at least when the draft is communicated to the parliament, and engage external stakeholders systematically in the impact assessment procedures, in order to support a more effective and systematic assessment of potential impacts.

The institutional support needs to be strengthened. CEJUR, via its responsibility for the Legislar Melhor Programme, has the formal responsibility for overseeing impact assessment. However, as a legal centre for the quality of drafting it does not have the necessary economic competences or resources for overseeing a more robust impact assessment process. Strengthening the institutional framework also requires a change of culture across the administration, notably a willingness to engage in more systematic and open exchanges on the development of new policies and associated regulations.

Recommendation: The government should consider how CEJUR can be strengthened, in order to support and if necessary challenge ministries in the development of impact assessments.

The parliament needs to be part of the process of strengthening impact assessment. The role of the parliament in the development of legislation is strong in the Portuguese system. The parliament has already taken a number of initiatives of its own to strengthen procedures for the evaluation of draft regulations, including not least the requirement for a wide ranging technical note to be attached to drafts which it will enact. The parliament also has its own rules for ensuring transparency of the law-making process through public consultation including via its website, and the collection of data from external experts (see Chapter 4). It has recently engaged a reflection on the development of a more formalised impact assessment procedure. It makes sense for parliamentary initiatives to be worked up in co-operation with the government, in relation to draft regulations (whether initiated by the government or the parliament) which are to be enacted by the parliament.

Recommendation: The government and the parliament should exchange views and ideas on the further development of impact assessment relating to draft bills that will be enacted by the parliament.

Alternatives to regulation

Steps are being taken to promote alternatives to “command and control” regulations. The Simplex Test for new regulations raises the issue of alternatives. The Simplex Programme for the reduction of administrative burdens also increasingly highlights the use of alternatives. This progress needs to be consolidated.

Recommendation: The government should consider how to further raise awareness and embed the use of alternatives in the regulatory culture, including setting up specific guidance for officials. This guidance could be a part of the practical guide mentioned above.

Background

General context

The structure of regulations and the law making process in Portugal

It is important to note that in the Portuguese system, primary laws may be enacted by the Assembly of the Republic, by the government, and by the regional legislative assemblies of the Azores and Madeira. This means, as will be seen, that procedures for assuring legal quality and impact assessment may vary according to the entity responsible for enactment. There are, very broadly speaking, two main sources of primary legislation (see Box 8):¹

- Legislation that is initiated by the government or the parliament, and enacted by the parliament (laws). The number of proposals, that result in a law, which are initiated by members of parliament is in comparable terms with those initiated by the government.²
- Legislation that is initiated by the government, and enacted by the government (decree laws).

Box 8. The structure of Portuguese regulations

Primary regulations

There are three main types of primary law:

- Constitutional laws. Amendments to the constitution, which can only be enacted by the parliament.
- Other laws enacted by the parliament.
- Decree laws (*decreto-lei*) enacted by the government under the framework authority of the parliament.

Secondary regulations

Secondary regulations are issued by the government and can be classified into the following categories:

- Regulations approved by the Council of Ministers. They include *decretos regulamentares* (regulatory decrees), *decretos* (simple decrees) and *resoluções* (resolutions). They are subject to the same legal and technical quality requirements as primary regulations initiated by the executive.
- Regulations approved individually or collectively by members of government (Prime Minister, ministers, secretaries of state). They include *portarias* (regulations) and *despachos normativos* (regulatory orders).
- Regulations issued by directorate generals (heads of public services) or regulatory agencies, under the authority of their parent ministries.
- Regulations issued by local municipalities.

Regional regulations

The autonomous regions of Azores and Madeira are mandated to issue regional decree laws (approved by their parliaments) and regional regulatory decrees (approved by their governments). These are limited to matters of regional scope and address matters set out in their Political and Administrative Statutes.

The parliament is the source of the most important legislative powers, including that of amending the constitution. It is entrusted with the power to enact legislation on all matters, except for those which are the exclusive responsibility of the government. The parliament's legislative powers are based on three types of competence:

- Exclusive competence, laid down in article 164 of the constitution, reserved for matters which can only be legislated by the Assembly of the Republic.
- Partial exclusive competence, as laid down in article 165, regarding matters that can also be delegated to the government by means of a law of legislative authorisation (the government then approves a decree law, which must respect the subject, purpose, extent and duration of the authorisation. The constitution grants equal value to laws and decree laws.
- Shared competence, in all matters not covered by the previously mentioned provisions, where both the parliament and the government may enact legislation.

The government has exclusive legislative power over matters that concern its own organisation and proceedings.³ When the parliament has enacted a law of legislative authorisation, the government may enact further legislation within the limits of the subject area authorised by the parliament. The government may also develop the basic principles set out by parliamentary laws, so long as they are not within the exclusive competence of the parliament. Lastly, the government can legislate over all matters that are not within the exclusive competence of the parliament.

Box 9. The Portuguese law making process

Primary regulation (legislative acts) may be enacted by the Assembly of the Republic, by the government and by the Regional Legislative Assemblies of the Azores and Madeira. The procedures for the development of new regulations thus vary according to the body responsible for its enactment.

Enactment of primary regulation by the Assembly of the Republic (laws)

The parliament's legislative powers are based on three types of legislative competence: (i) exclusive competence, laid down in article 164 of the constitution, reserved for matters which can only be legislated by the parliament; (ii) partial exclusive competence, laid down in article 165, regarding matters that can also be delegated to the government by means of a law of legislative authorisation (the government then approves a decree law, which must respect the subject, purpose, extent and duration of the authorisation; (iii) shared competences, in all matters not covered by the previously mentioned provisions, where both the parliament and the government may enact legislation.

The power to initiate legislation lies with members of parliament, parliamentary groups and the government, and with the parliaments of the two autonomous regions. Subject to the terms and conditions laid down by law, groups of a minimum registered electors may also initiate legislation (presently a minimum of 35 000, under Law 17/2003).

All legislative proposals submitted by members of parliament or parliamentary groups are preceded by a short justification or exposé of the grounds for the bill.

In the case of bills proposed by the government, the justification or exposé of the grounds for the bill has to include a description of the social, economic, financial and political situations to which the bill applies, information on the benefits and consequences of its application, and a digest of the current legislation on the matter in question.

Proposals are submitted to the office of the President of the Assembly, who has the power to accept the drafts or to reject them on the grounds of manifest unconstitutionality (a decision which may be subject to an appeal to the plenary of the Assembly).

Following its admission, proposals are subject to a first, preliminary, reading by the specialised committee, which then produces a first recommendation to the plenary – this intervention represents the first step in assessing the quality and impact of the proposal. Sometimes, when a bill's importance or specialist subject matter so justifies, the parliament may form an *ad hoc* committee to consider it.

A first reading by the plenary then follows: the proposal is presented by the initiative's proposer, followed by a summary of the recommendation prepared in committee and its main conclusions by the committee's rapporteur. At this stage the discussions and vote focus only on the overall objectives and scope and the general principles of each bill.

After the first vote by the plenary, the proposal is sent back to the specialised committee for a detailed debate over the impact and quality of the proposal, and vote. After a vote by the committee, the proposal is once again subject to a final vote in the plenary. Once a bill has been passed, its final text shall be the responsibility of the competent committee. The committee may not modify the content of the proposal legislation and shall restrict itself to perfecting the text and systematising the act. All modifications shall be subject to a unanimous vote. The final text shall be drafted within a default five days time limit or other time limit if set by the parliament or by the parliament's president.

Following the approval of draft legislation by the parliament (proposals become Decrees of the Assembly at this point), they are sent to the President of the Republic for promulgation. The President may, at this moment, choose to submit the decree to the Constitutional Court for preventive review of constitutionality. In case the Constitutional Court issues a judgment of unconstitutionality, the President must, under the terms of the Portuguese constitution, veto the decree and submit it once again to the Assembly of the Republic, which then must expurgate the detected unconstitutionality before resubmitting it to the President.

If no issues of constitutionality arise, the President has the power to veto the proposal on its merits (in which case the Assembly of the Republic may still confirm it by a qualified majority) or to promulgate it. If the latter occurs, the Prime Minister must then sign the decree, which is then published in the Official Gazette (Diário da República).

Enactment of primary regulation by the government (decree laws)

The government has exclusive legislative power over matters that concern its own organisation and proceedings. Additionally, when the Assembly of the Republic has enacted a law of legislative authorisation the government may legislate within the limits of the subject area authorised by parliament. The government may also develop the basic principles set out by parliamentary laws, as long as they are not within the exclusive competence of the parliament. Lastly, the government can legislate over all matters that are not within the exclusive competence of the parliament.

In contrast to the parliamentary procedure, where the initiative may come from members of parliament, parliamentary groups, government, groups of citizens or regional parliaments, in the governmental legislative procedure the only source of initiatives are the members of government themselves.

All legislation enacted by the government is subject to a discussion and vote by the Council of Ministers, in terms regulated by the Rules of Procedure of the Council of Ministers (Resolution of the Council of Ministers 64/2006). Legislative proposals are accompanied by an explanatory note and the Simplex Test.

The explanatory note includes information on the legal framework of the matter being regulated, cost benefit analysis, gender mainstreaming assessment, consultations that have taken place. The Simplex Test is aimed at providing information on administrative burdens, using an adaptation of the Standard Cost Model (SCM), as well as identifying the compatibility of the proposal with e-government tools, the degree of consolidation represented by the proposal and the use of alternatives to regulation (self-regulation and co-regulation).

Each legislative initiative must be in accordance with the detailed drafting guidelines established in the appendix to the Rules of Procedures of the Council of Ministers (currently approved by Resolution of the Council of Ministers 64/2006), and with the legislation on the identification, drafting and publication of legislation (Law 74/98).

Once a proposal has been admitted by the Secretary of State of the Presidency of the Council of Ministers' office, it is included in the weekly legal drafts list which is distributed by electronic means to the other government departments every Friday. Until the legal draft is scheduled for discussion at the meeting of secretaries of state, the other government departments may send their questions, comments or suggestions, as well as amendments proposals, to the Department that has introduced the legislative initiative.

Prior to discussion in the Council of Ministers, the proposal shall be first debated in the meeting of secretaries of state, chaired by the Minister of the Presidency of the Council of Ministers, and composed of one secretary of state representing each government department, as well as the Secretary of State of the Presidency of the Council of Ministers. Once the meeting of secretaries of state has approved the initiative, it is presented for discussion in the Council of Ministers for final approval.

The legal act (decree law) is then signed by the Prime Minister and the relevant ministers taking into account the subject matter. The President who promulgates the act may call upon the Constitutional Court to analyse the constitutionality of the proposal (in identical terms to the procedure regarding acts passed by parliament) and/or exercise his power of veto. Once promulgated by the President, the proposal is subject to the Prime Minister's signature and sent to the Official Printing Office for publication in the Official Gazette.

Development of secondary regulations

Secondary regulation (administrative regulations) may be enacted by the government and the public services under its direction and supervision, the regional legislative assemblies and the regional governments of the Azores and Madeira, local authorities and independent administrative authorities (mostly regulators).

Regarding the development of secondary regulations by the government, a distinction must be made between acts that must be approved by the Council of Ministers and those that are passed by the members of government themselves (individually or collectively).

Regarding the first category, which includes regulatory decrees (*decretos regulamentares*), simple decrees (*decretos*) and resolutions (*resoluções*), the procedure for the adoption of decree laws is fully applicable.

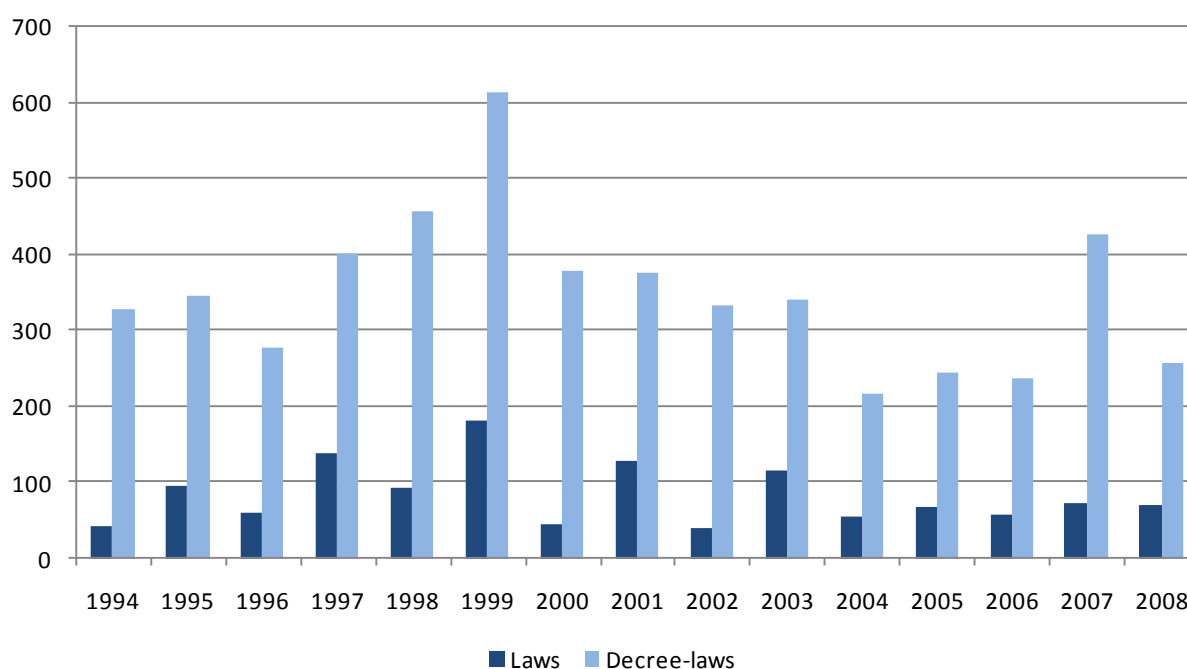
The second category of secondary regulations, passed by the members of government (individually or collectively), includes two main types of administrative regulations, regulation (*portarias*) and regulatory orders (*despachos normativos*). The procedure for each of these types varies considerably according to the subject of the regulations and to the individual ministries concerned, but the main characteristics of the regulatory procedure of the Council of Ministers are present in the few existing rules of procedure that are laid down in the Code of Administrative Procedure: a mandatory explanatory note with a summarized assessment of impact (article 116 of the Code), consultation with stakeholders (article 117), in some cases with prior publication of the draft regulation in the official gazette (Article 118), quality control by the legal services of the ministry or by the member of government's staff and drafting control prior to the publication in the Official Gazette. However the degree of implementation of all the items referred and laid down in the Code is not known, and estimates indicate some difficulty in enforcing the rules of the Code of Administrative Procedure in the overall scope of the public administration.

A third category of regulations under the auspices of the national government is made up of administrative regulations passed by public services (directorate generals or public institutes) under the dependency of individual members of government. Although the degree of innovation of these regulations is considerably inferior to that of the *portarias* and *despachos normativos*, it represents a portion of secondary regulations passed by the public administration. Procedurally, the rules of the Code of Administrative Procedure described in the previous section are applicable to these regulations as well and the difficulty in implementing them is similar.

Trends in the production of new regulations

There is no clear trend in the number of new regulations enacted annually over recent years. The number of new laws has largely depended on the political cycle. The executive is by far the largest contributor in terms of number of enacted regulations (Figure 3). This needs to be balanced with the fact that the laws adopted by the parliament are often framework laws addressing broad policy issues which will be fleshed out in more detailed regulations.

Figure 3. Annual production of laws and decree laws in Portugal, 1994-2008



Source: Government of Portugal.

Procedures for making new regulations

Forward planning

Planning for government rule-making is first laid down in the government programme at the beginning of the government's term. Furthermore, the government usually publishes an action plan for broad-scope reforms, which sets a calendar for the approval of regulations (*e.g.* Reform of the Judicial System, Reform of the Public Administration, Budgetary and Fiscal Reform associated with the control of the public deficit, the Legislar Melhor Programme, to name a few). The Council of Ministers usually adopts a resolution to approve these programmes, in some cases following informal consultation of some stakeholders, which is published in the Official Gazette and on the government's official website.

More detailed planning of the government's rule making activities is done on a monthly basis through the agenda setting procedure for the Council of Ministers. The objective is to co-ordinate the government's internal activity, and in this case planning is not publicised outside government. Within parliament, rule making is also planned on a monthly basis through the Parliamentary Leaders Conference, which comprises representatives from each parliamentary group, the Minister for Parliamentary Affairs, and the Bureau of the Assembly. As regards the preparation of secondary regulations, the government has set up an electronic monitoring system to notify relevant Departments of the need to issue secondary administrative regulations or measures required by enacted regulations.

Administrative procedures for preparing new regulations

The main procedural sources for the preparation of new regulations are the 2007 Rules of Procedure of the Assembly of the Republic (for primary legislation enacted by Parliament),⁴ the 2006 Rules of Procedure of the Council of Ministers (for primary legislation enacted by the government and some secondary regulations, as well as primary legislation initiated by the government and enacted by parliament),⁵ the 1991 Code of Administrative Procedure (for remaining secondary regulations),⁶ and the 1998 Law on the Publication, Identification and Formulation of Law.⁷ A large part of these rules have been established or revised over the past two years as part of the *Legislar Melhor* programme. The government has undertaken to complement them with guidelines on consultations and on the drafting process, which are currently under preparation, to support ministries and regulators in the development of new regulations.

Regulations initiated by the government and enacted by the parliament or the government

The Rules of Procedure of the Council of Ministers and the Code of Administrative Procedures provide for common rules in the development of new regulations, but practice can vary depending on the ministries and the subject at stake. The formal procedure requires that draft regulations are accompanied by an explanatory note and the Simplex Test (see below). However the degree of implementation of all the items referred to and laid down in the Rules of Procedure and the Code of Administrative Procedure can vary across ministries, and there seems to be some difficulty in enforcing the rules across the whole administration.

The government is currently preparing a “practical guide for people and institutions involved in legal drafting”. The guide, which will develop the content of the Rules of Procedure, is intended to be a reference tool for any person involved in the drafting of primary or secondary regulations and is meant to improve compliance through higher quality drafting. It should also provide support in ensuring the use of plain language in legal drafting, as specified in the Rules of Procedure of the Council of Ministers. The publication of this guide comes alongside increased efforts to train officials in legal drafting. The government is co-operating with Parliament in this area, as it plans to ensure harmonization in legal drafting through workshops on best practices and use of common guidelines and standards.

The parliament’s own rules of procedure (see below) are also intended to apply to government initiated legislation, and parliament expects the government to produce a technical note similar to the one it imposes on its own bills. The parliament, however, underlines that the government is not making such notes available.

Regulations initiated by the parliament and enacted by the parliament

The 2007 Rules of Procedure of the Assembly of the Republic apply. A formal requirement has been introduced for parliamentary services to prepare a “highly demanding” technical note to accompany draft bills. This note should include an analysis of compliance with requirements in formal and constitutional terms, under the Rules of Procedure, and with the law governing the form of bills. It should also include the national, EU and international framework for the issue, a list of other relevant pending Portuguese and EU initiatives, and a summarised historical outline of the issues raised. It should also describe the social, economic, financial and political background, outline the expected benefits and consequences of the regulation in terms of financial, gender and environmental impact, and expected costs of implementation. In many cases the note extends to a large document. The note is annexed to the formal opinion of the Parliamentary committee reviewing a draft bill, and accompanies the draft throughout the legislative process.

Legal quality

The Presidency of the Council of Ministers is responsible for controlling the legal quality of primary and secondary regulations initiated by the government. These are initially prepared by staff within ministries. Within the Presidency of the Council of Ministers, the Office of the Secretary of State of the Presidency analyses the text and proposes adjustments, in co-operation with the relevant ministries, before the text is sent to the Council of Ministers. Consultants of CEJUR often participate in this process, when they are requested to conduct specific analysis on the conformity of the proposals with respect to the constitution, EU law and other higher level regulations.⁸ Legislation enacted by the government is subject to a discussion and vote by the Council of Ministers, in terms regulated by the Rules of Procedure of the Council of Ministers (Resolution of the Council of Ministers 64/2006). Legal quality control of secondary regulations is carried out by the legal services of the relevant ministry. The main challenge faced by ministries is to cope with the flow of new regulations generated by policy reforms in a large number of areas, while sustaining the quality of the texts.

Quality control of draft bills initiated by the parliament is mainly carried out through specialised parliamentary committees, which are in charge of examining proposed texts and making recommendations to the plenary. These committees are composed of a number of members of parliament, legal advisers to the parliamentary groups, and officials of the Assembly of the Republic. In some cases, when bills concern particularly important subjects or involves a high level of expertise, the parliament sets up an *ad hoc* committee to examine the bill. Committees may propose to the President that bills be put to public discussion.

Plain language drafting

The Rules of Procedures of the Council of Ministers include an annex, which spells out requirements concerning drafting of regulations. This provides law drafters with rules on the structure and presentation of regulations, and on formal drafting requirements. In addition to a number of style rules (such as use of abbreviations, foreign language, acronyms, etc.), the text requires “clarity of language”. It recommends writing “short, clear and concise sentences”, using a plain language level, and avoiding vague expressions. Furthermore, in the framework of the Legislar Melhor Programme, the Presidency of Council of Ministers has undertaken the preparation of a practical guide for people and institutions involved in legal drafting. The guide, which is at a very early stage of preparation, will be an online database, with interactive tools, hyperlinks, model examples of draft legislation, specific guidelines.

The role of the parliament

The parliament, as explained above, has taken a pro active stance in the measures to strengthen the process of developing effective new regulations. The Office of the President of the Assembly of the Republic has the power to accept draft bills or to reject them on the grounds of manifest unconstitutionality (a decision which may be subject to an appeal to the plenary of the Assembly). Proposals are then subject to reading by specialised parliamentary committees as seen above.

Ex ante assessment of the impact of new regulations

As the previous sections indicate, both the government and the parliament have been active in developing new and strengthened approaches to the development of regulations, including as regards *ex ante* impact assessment.

Government initiatives on ex ante impact assessment

The Legislar Melhor Programme includes measures to strengthen *ex ante* impact assessment in the development of regulations. The Rules of Procedure of the Council of Ministers, adopted in 2006, stipulate that draft regulations (primary or secondary), which are presented to the Council of Ministers, should be accompanied by an explanatory note and subject to an *ex ante* impact assessment. The purpose of the explanatory note is to provide complementary information on the legal draft, allowing other ministries to grasp what the draft sets out to achieve and place its effect in context. It includes information on the legal framework of the matter being regulated, cost benefit analysis, gender mainstreaming assessment, and consultations that have taken place. A key development is the establishment of the Simplex Test to assess expected administrative burdens of new regulations.

The Simplex Test

The Simplex Test, launched in 2006 as a pilot project and now confirmed as a standard procedure, aims to provide information on administrative burdens, using an adaptation of the Standard Cost Model (SCM), as well as identifying the compatibility of the proposal with e-government tools, the degree of consolidation represented by the proposal and the use of alternatives to regulation (self-regulation and co-regulation). The Simplex Test is a particularly important new development as it is Portugal's first step towards effective *ex ante* impact assessment. The test has been partly inspired from Belgium's Kafka Test. Its purpose is to create a tool of self-discipline for law makers. The Rules of Procedure provide for an exception – which has to be justified by the relevant ministry – in case of “obvious simplicity” or urgency. The Simplex Test is required for all draft regulations (primary or secondary) going to the Council of Ministers, to assess the administrative burdens which the regulation would impose on citizens and businesses. The test is carried out by the responsible ministry. CEJUR is formally charged with evaluating its quality.

The Simplex Test mostly contains questions to assess expected administrative burdens. A large part of the test includes multiple-choice questions to describe and quantify administrative burdens, which the draft regulation would impose and to identify ways to reduce them (such as use of electronic forms). However part of the test also addresses some basic principles of Better Regulation (see Box 10). This structure stems from the government's use of the Simplex Test as a pedagogical instrument for developing a more rigorous approach to law making in the absence of any institutionalised tradition of impact assessment. The test has a section focused on the foreseen use of ICT tools and on the possibility for consolidation of existing regulation as well as opportunities to resort to alternatives to regulations. It also includes questions on the provision for future *ex post* impact assessment and compliance evaluation.

Box 10. Structure of the Simplex Test

The Portuguese government introduced the Simplex Test in 2006. This is a technical instrument to help law makers preventively assess the «administrative burdens» imposed by legal rules. The first part of the test was inspired by Belgium's Kafka Test. Portugal was also inspired by the system for impact assessment used in the United Kingdom as well as the European Commission's "Impact Assessment Guidelines". The preparation of the Simplex Test drew on the conclusions and recommendations set out in the final reports issued by the EU's High Level Group for Legislative Quality (Mandelkern Group) as well as groups set up in Portugal (namely the Commission for Legislative Simplification, which was created by a 2001 Council of Ministers Resolution, and the Technical Committee of the Strategic Programme for the Quality and Efficiency of the Government's Rulemaking Acts, which was created by a 2003 order of the Minister of the Presidency).

The current version of the Simplex Test is structured in four parts:

1. Identification of administrative burdens – assesses whether or not new burdens are going to exist, what sort they are, and any alternative solutions;
2. Cost assessment – quantifies the costs those burdens are going to impose on their target groups, using a formula inspired by the Standard Cost Model;
3. Evaluation of e-government practices – assesses the new measure in accordance with the priorities and good practices of electronic administration (dematerialising procedures and forms, sharing information);
4. Evaluation of consolidation practices – aims to promote legislative consolidation by precluding the creation of the labyrinth that can arise from a very intense legislative process that does not take the trouble to systematise and rationalise its output.

The Simplex Test is still in the implementation phase, and is currently under review following the first two years of implementation.

Next steps: Revision of the Simplex Test

Following the two year pilot phase, the Simplex Test is currently under review, which will result in a revised version. The new version should lead to streamlining the test (thereby addressing criticism of its complexity) and focus it on *i*) the quantitative measurement of burdens on citizens and firms, *ii*) the consideration of alternatives to regulations and measures to facilitate compliance in order to reduce administrative burdens.

Implementation of the Simplex Test so far

There is evidence that the Simplex Test has quickly become widely used for the preparation of new regulations and has helped to improve the rule making process. In 2006, 90% of the 333 drafts presented to the Council of Ministers had a Simplex Test attached. Initial figures for 2007 indicate a higher ratio. It is difficult to measure the extent to which the performance of the test has led to tangible changes in regulations. However interviews conducted by the OECD team confirmed that the Simplex Test is now well known across all ministries, and has been a decisive step towards establishing a framework for Better Regulation. It has helped make officials across ministries aware that good regulations require thorough consideration of impact in the preparation phase.

Interviews also revealed some –apparently– contradictory and critical views on the Simplex Test. The test is often considered too complex and long (12 pages).⁹ In practice this has resulted in an uneven implementation across ministries as the test can be dismissed as an over simple check (just another administrative requirement to get rid of). The test is, however, considered by others as insufficient to provide for a proper impact assessment. Impact assessment is still a new concept in the Portuguese administration, and we heard many concerns about the cost of performing impact assessment when preparing draft laws. The issues with the current approach may be summarised thus:

- The Simplex Test is carried out at a very early stage in the development of regulations. Replies to the questionnaire are not updated as discussions on draft regulations progress.
- The Simplex Test and the explanatory note remain confidential documents, both regarding their preparation and their results. There is no explicit link with public consultation in their preparation. The Rules for Procedure of the Council of Ministers consider them as internal documents of the government. They are not made publicly available, unless otherwise decided by the Council of Ministers. The Simplex Test is considered to be confidential to the government: it is not sent with the draft regulation when it goes to parliament.
- There is an absence of proportionality in the approach to the Test, which is a “one size fits all”, when the reality is that regulations vary in their scope and importance. For the simpler forms of regulation the Simplex Test may be adequate, but for the more complex forms it needs to be strengthened.
- The Simplex Test only applies to regulations which go to the Council of Ministers, which underlines the need, in the Portuguese context (legislation can also be both initiated and enacted directly by parliament), of ensuring that parallel efforts are made to strengthen assessments of parliamentary legislation.

Parliament initiatives on ex ante impact assessment

The technical note explained in the section on procedures is intended to accompany draft bills initiated either by the government or parliament. Although it is not an impact assessment per se, the note can be considered as an important step in the direction of an impact assessment. Over the past year, a debate has developed over the implementation of this requirement. How should drafts undergoing impact assessments be selected? Should parliament use outsourcing? To support this discussion, parliamentary officials have sent a questionnaire to other European parliaments to collect information and experiences regarding impact assessment. Parliamentary officials plan to organise a seminar in 2009 on the issue to share good practices in this field with other parliaments. The Budgetary Technical Support Unit of the parliament has also conducted a study of budgetary impact assessment.

Alternatives to regulation

The use of alternatives to regulation is not yet a usual practice in the regulatory culture of Portugal, which is dominated by “command-and-control” regulations. There are a few examples of alternatives. Self-regulation has been promoted in the field of advertisement in the television media. Experiences in co-regulation exist in the banking and securities sector where a code of conduct has been implemented by the Portuguese Association of Banks and the Securities Market Commission.

As part of the reforms to simplify administrative procedures, officials have given increased consideration to alternatives to regulation over recent years. In the presentation of the Simplex 2006 Programme, the government committed to develop a culture of trust between the administration and firms and citizens, and reduce unnecessary detailed regulations and multiple controls. It argued that many activities regulated by law could become self-regulated, co-regulated, or regulated by codes of conduct or technical rules and standards. The government is also considering the development of a standard to assess risk in the elaboration of regulations.

The possibility of using alternatives to regulations has also been included in the process for making new regulations. The Simplex Test and the explanatory note, which are attached to draft regulations sent to the Council of Ministers, include a section on the use of alternatives to regulation. When completing the Simplex Test officials have to examine the possibility of alternatives to regulation, namely self-regulation, co-regulation, the approval of codes of conduct or the adoption of contractual mechanisms to enforce the policies at hand. There has been however little guidance material made available on this subject.

Notes

1. Legislation is also enacted by the autonomous regions, which is not covered in detail in this report.
2. Initiatives from the government, members of parliament and parliamentary groups can end up into a single final proposal. Statistics for the X Legislature are as follows. During the first legislative session (10 March 2005 – 14 September 2006), there was a total of 137 proposals which resulted into 88 laws (72 proposals initiated by the parliament, 63 by the government, and 2 by autonomous regions). During the second legislative session (15 September 2006 – 14 September 2007), there was a total of 95 proposals which resulted into 72 laws (38 proposals initiated by the parliament, and 57 by the government). During the third legislative session (15 September 2007 – 18 July 2008), there was a total of 57 proposals leading to 46 laws (23 proposals initiated by the parliament, and 34 by the government). These statistics are available on the website of the Assembly of the Republic, at: www.parlamento.pt/ActividadeParlamentar/Paginas/RelatoriosEstatisticas.aspx
3. Meaning that the government enacts such legislation as well as initiating it, and that it is not submitted to parliament at any stage in the process. This power is relatively unusual in the OECD context.
4. Regimento da Assembleia da República 1/2007, published in the Official Gazette of 20 August 2007.
5. Resolution of the Council of Ministers 64/2006 of 18 May 2006.
6. Decree Law 442/91 of 15 November 1991.
7. Law 74/98 of 11 November 1998 on the Publication, Identification and Formulation of Laws, amended by Law 2/2005 of 11 November 2005, Law 26/2006 of 30 June 2006, and Law 42/2007 of 29 August 2007.
8. These are national legislative acts which cannot be derogated by regular legislation (*i.e.* laws establishing the basis of a legal regulation must be respected by the decree law that develops it).
9. One interlocutor summarised the situation in terms of the need to “simplify the Simplex Test”.

5. THE MANAGEMENT AND RATIONALISATION OF EXISTING REGULATIONS

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, *ad hoc* reviews of the regulations covering specific sectors, and sun setting mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially small and medium-sized enterprises. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the Standard Cost Model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.¹

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

Assessment and recommendations

Simplification of regulations

Portugal has developed some important initiatives for the consolidation of the regulatory stock, which support legal clarity and transparency for citizens and enterprises. Consolidation of existing regulations is part of the government's agenda for Better Regulation. In 2006 checks on legal consolidation were made part of the law making process, and the Simplex Test also draws attention to this aspect. The Simplex Programme also contains some important initiatives for consolidation of areas of the law. However consolidation has lost visibility in the formulation of the programme since 2006, and along with it may have lost some momentum. There is also a new– but still limited– use of sunset clauses or revision clauses in regulations.

Recommendation: Spring cleaning of the regulatory stock is important. Ongoing initiatives to consolidate the regulatory stock should continue to be pursued systematically. Consideration should be given to the more systematic introduction of sunset or revision clauses in new regulations.

Administrative burden reduction

Portugal has made good progress in simplifying administrative procedures on citizens and businesses over the last three years. The Simplex Programme, and in particular measures by the Ministry of Justice, have been successful at removing some “dark” points in the regulatory system. A flagship measure has been the simplification of procedures for establishing a business, which used to be particularly burdensome and were often cited as a brake to the competitiveness of the economy. This is only one example, and the Simplex Programme has been impressive in scope and ambition, resulting in tangible results for companies and citizens. This progress is well recognised both within and outside the administration in Portugal, including the main business associations. Simplifying licences (which is one of the priorities of Simplex 2008) is also considered as key to creating a more competitive environment in Portugal.

Box 11. OECD peer review of administrative simplification and e-government in Portugal (2008)

In June 2008, the OECD released a new report, *Making Life Easy for Citizens and Businesses in Portugal: Administrative Simplification and e-Government*. The report, which was financed by the Portuguese government, was the first study undertaken by the OECD to analyse the successes and challenges of administrative simplification and e-government in a national context. The report was prepared with the participation of peer reviewers from the governments of France, Italy, and the Netherlands.

Making Life Easy for Citizens and Businesses in Portugal – Administrative Simplification and E-Government analyses Portugal’s simplification programme, known as the Simplex initiative, and finds that it has come far in a short time with the transformation of its public sector and its service delivery. By targeted use of e-government, Portugal is in the process of making citizens’ and businesses’ everyday life easier through administrative simplification supported by an increasing number of coherent and integrated services accessible online.

Achieving a simpler public sector more responsive to demands from citizens and businesses requires strong political commitment and drive for achieving administrative simplification and e-government goals.

Among Portugal’s achievements, the report says that the time taken to register a company, for example, has been reduced from 54 days to less than 48 minutes.

Building on this success, the report argues that Portugal should consider:

- Continuing its strong effort to make public service delivery more efficient and effective by focusing on user needs: A prerequisite for this is to ensure that services can be delivered coherently. This requires a fully integrated back-office with special focus on sharing resources such as business processes and data, and the availability of skilled staff.
- Keeping a prioritisation and focus on simplification initiatives: The Simplex programmes – while impressive in its scope, ambition, and results so far – could benefit the public sector and its constituents more by doing this.
- Increasing systematic collaboration and co-operation across all levels of the public sector: Central government is limited in its possibilities for collaboration and co-ordination with regional and local governments. Moving towards a common framework for collaboration and co-operation between stakeholders in the public sector will significantly improve the integration of e-government policies, strategies and their implementation. Extending the systematic use of good monitoring and evaluation practices in the public sector: Portugal will further improve the impact of the Simplex programme by systematically tracking how they are being implemented.
- Extending the systematic use of good monitoring and evaluation practices in the public sector: Portugal will further improve the impact of the Simplex programme by systematically tracking how they are being implemented.

Good foundations have been laid for further development of the administrative burden reduction programme. The government recognises this, with its plans to introduce a variant of the SCM methodology and establish quantified targets for 2012. A sharper approach based on quantification will help in a number of ways. It will introduce greater rigour into the programme, ensuring that the most important issues are being tackled. It will enable the government to evaluate progress on sounder footing. Finally, it will encourage the further and full engagement of relevant ministries, who will need to show specific progress against a baseline measurement. The next stage of the programme is ambitious, as it aims to cover full compliance costs, and to cover citizens as well as businesses and burdens on the administration.

Good institutional foundations have also been established for the effective promotion and monitoring of the programme. Portugal already has in place an entity at the centre of government –SEMA– to pilot the programme, which it has done very effectively over the last three years. This now needs to be complemented by the development of capacities and resources within each relevant ministry, charged with providing technical support, encouragement and the monitoring of progress. This would also help to anchor ownership of the programme across the ministries.

Recommendation: To provide an effective institutional framework for the next stage of the Simplex Programme, each relevant ministry should be equipped with a contact point or a small central unit to provide support to ministry officials carrying out the measurements and implementing the measures identified.

Background

Simplification of regulations

Rules on law-making, introduced in 2006, include requirements to consider consolidation.² The explanatory note, which has to be prepared to accompany a draft regulation, must identify existing legislation which needs to be changed, cancelled or complemented. The Simplex Test, which also needs to be carried out when preparing a regulation, requires assessing the level of diversity of legal texts relating to the material in the draft regulation. If there are more than four laws, and the ministry does not consolidate, it must justify this decision. The issue has been mostly addressed through the Simplex Programme for the simplification of administrative burdens.

A number of legislative acts have been consolidated since 2006. One of the headlines of Simplex 2006 was the harmonisation and consolidation of sets of legal rules to improve access to legislation and make it easier to understand. The programme included 14 initiatives focusing on consolidation of specific areas of law within the competence of several ministries. Some initiatives were completed in 2006, but a large number had to be pursued in 2007. Simplex 2007 and Simplex 2008 have also included some consolidation, but not as a result of a specific focus on this tool.

Portugal has recently started to use revision or sunset clauses in new regulations. For example, the industrial facilities licensing regime³ and the licensing regime relating to livestock related activities⁴ (both established in 2008) include revision clauses.

Administrative burden reduction

Policy on administrative burden reduction

Overview of the Simplex Programme

The Simplex Programme aims to reduce administrative burdens for both citizens and businesses. It also includes some initiatives to reduce administrative burdens within the administration and as from 2008, includes a specific programme to integrate the municipalities into the process (see Chapter 8). The programme has given rise to a large number of cross cutting initiatives. Some of these initiatives transform the infrastructure for exchanging information. Others have a more limited reach, marginally altering regulations which affect a limited number of citizens or businesses. In each phase of the programme, the government has selected some initiatives (30 in 2006, 20 in 2007, and 14 in 2008) as “emblematic initiatives”, which correspond to the most important measures of each ministry. Annex 2 presents the list of those flagship measures.

Many initiatives have dealt with the harmonization of regulations, information sharing between authorities (to remove the obligation to provide information already available at one public Department to another), the simplification of procedures (such as the system for issuing building permits), and the reduction or elimination of obligations based on a proportionate approach to risk. The government has established one-stop-shops for a number of procedures (creation of company, of association). A large number of measures have made use of ICT to enable easier, faster and cheaper process of administrative procedures (*e.g.* online incorporation of companies, registration of vehicles, and procedure for obtaining a trademark).

The government has broadly endorsed the European Commission’s target of a reduction by 25% of administrative burdens on businesses, and has been moving towards a more quantitative approach. In November 2008, the Council of Ministers adopted a resolution⁵ in which it integrated a quantitative commitment in the Simplex Programme and the Legislar Melhor Programme. The objective is to reduce administrative burdens on businesses by 25% by 2012. The commitment applies to all laws, decree laws and decrees of national origin, which have an impact on the life cycle of businesses (creation, management, expansion, closure). It is based on an adapted version of the SCM methodology, and its selective application to key legislative and administrative simplification measures. The adjusted SCM includes full compliance costs and also covers burdens for citizens. It focuses on information obligations and integrates delays and waiting times to capture the effects of e-government initiatives. The new approach was launched at the end of 2008.

Methodology and process

The Simplex Programme is based on annual action plans. The approach was originally qualitative. The government put significant effort into this approach, which was adjusted and refined annually. The programmes do not seek to cover the whole field of potential administrative burdens, but instead, have identified the most important areas for action.

- In the initial programme of 2006, the government gave priority to removing bottlenecks, by eliminating or reducing the most burdensome and complicated procedures for businesses and citizens. A priority at this stage was to involve ministries and their staff in the process, and provide them with methodological support. In 2006 the programme included 333 initiatives, which were selected out of more than 600 suggestions from officials inside the public administration. The initiatives were divided into six key areas, based on the instruments used for simplification such as dematerialization, elimination of certificates).

- In 2007 SEMA no longer divided initiatives based on instruments but by target groups (149 initiatives for citizens and 86 for businesses) and introduced public consultation. Measures were presented with reference to the needs of citizens and companies. SEMA used a bottom-up approach for the selection of initiatives, which stemmed from the propositions of various stakeholders within and outside the government. Apart from the main strategic measures related to the development of e-government back-office, there was limited top-down steering of the contents of the 2007 programme.
- In 2008 SEMA further refined its approach and improved the prioritisation of initiatives. It identified 189 initiatives, based on a life-event approach, by which measures of simplification are defined by considering the procedures required for specific events of a company (such as starting a business) or a citizen (such as buying a house, losing a wallet). The adoption of this new approach was motivated by the concern that the reform should not be reduced to an add-on of isolated initiatives, and should reflect better the actual experience of citizens and companies with procedures. For each cluster associated with a life-event, SEMA identified priority areas for simplification and assessment, using both a bottom-up and a top-down approach. Another major change has been the development of measures involving local governments (as seen below).
- SEMA published its latest action plan in February 2009 (Presidency of the Council of Ministers, 2009). With this action plan, the government has moved towards a more quantitative approach, whilst continuing to use the life-event approach as for Simplex 2008. The new approach is based on the results of a pilot phase in 2007 to test an adapted version of the SCM methodology.⁶ The government considers that this adapted version has a larger scope than the “traditional” SCM, as (see above) it aims to cover full compliance costs as well as burdens on citizens, as well as taking account of the effects of ICT.

Institutional framework, guidance and support

The Simplex Programme is under the direct political responsibility of the Prime Minister. SEMA is responsible for the programme policy and development, with the operational support of the Agency for Administrative Modernisation (AMA). SEMA monitors and co-ordinates the contributions of the 15 ministries involved in the programme, as well as providing them with guidance (for example guidance on defining priorities for each area, identifying simplification opportunities, promoting support for the implementation of more complex and transversal measures such as the new industrial facilities licensing regime). It is currently preparing a practical guide on the use of the SCM methodology to support ministries in the next phase of the programme.

SEMA sends quarterly reports to the Prime Minister on the implementation of the Simplex programme. This has generated political pressure on ministries to move forward with the programme. The current report on each initiative includes a timeline for its implementation as well as the expected impact (in terms of number of companies and/or businesses the initiative will affect and in some cases an estimate of the saving in time and money). SEMA’s reports are made publicly available on a Simplex-dedicated website.⁷ The government now plans an overall evaluation of the Simplex programme at the end of the first four-year cycle.

Simplification of licences

In Portugal licensing, which involves all levels of government, remains burdensome across the board as nearly all economic activities require some kind of licence or prior authorisation. In some cases the delivery of a licence involves different bodies (local administration or/and one or several regional administrative entities), and the process for delivery can vary from one municipality to another.

Simplification of licences is one of the government's priorities within the Simplex Programme. Simplex 2006 and 2007 already included some simplification measures in that field. In Simplex 2008 the simplification of a licensing process has not been considered only in its own right, but more generally as part of an effort to simplify the process for establishing a company. Simplification measures relating to licences have included elimination of mandatory visits and duplicated licensing requirements, dematerialisation of procedures, simplification of payment procedures, and development of monitoring tools (Box 12). In some cases prior licensing requirements have been transformed into prior declaration (for example for opening a restaurant).

Box 12. Example of Simplex initiatives to simplify licensing requirements

List of initiatives to simplify and reduce administrative burdens involved in issuing licences, credentials and authorisations.

In Simplex 2008:

- Online industrial licensing
- Online licensing of tourist developments
- Licensing of tourist entertainment companies
- Licensing of car rental companies
- Licensing of renewable energy production points
- Licensing of Enterprise Location Areas (ALEs)
- Uploading of the catalogue of prior licenses and authorisations
- Licensing of engines
- On-the-spot applications for construction company licenses
- On-the-spot Certificates of Professional Capacity (CAPs) issued at the place of examination
- Taxi drivers' Certificate of Professional Capacity (CAP)
- Issuing credentials for recreational watersport training bodies
- Applications for temporary radio-electric licences
- Licensing of school centre premises
- Licensing of private and co-operative education facilities
- Licensing of healthcare units
- Licensing of pharmacies and points of sale for non-prescription medicines
- Explosives – Simplification of procedures and control format
- Private security – Online system
- Licensing of sports facilities
- Prior formal opinions issues by Regional Co-ordination and Development Commissions (CCDRs) in licensing processes
- Payment of licences issued by the Ministry of the Environment, Planning and Regional Development

In Simplex 2009:

- Fast-track licensing scheme for SMEs
- Dedicated space for PIN (Potencial Interesse Nacional) projects (projects with high potential and national importance) in the Business Portal
- Simplification of licensing procedure of quarries
- Simplification of environmental licensing procedures
- Simplification of licensing procedures relating to waste management

A key measure has been the creation of a centralised register of all licences, prior authorisations and similar administrative requirements. An online catalogue, which compiles up-to-date information about licences, is now available on the Citizens Portal⁸ and is under construction in the Business Portal.⁹ This work has continued in 2008. In the first half of 2008 the Ministry of Economy and Innovation completed the inventory of all licensing and prior authorisations falling under its competence, and has undertaken to proceed with dematerialisation of licensing procedures, with the aim of having at least 10% of procedures available online. The creation of a single catalogue is also seen as a way to promote harmonisation across municipalities in handling licensing procedures.

Ministry of Justice initiatives

The Ministry of Justice has played an especially important role in the work so far to reduce administrative burdens. It has transformed the legal framework for the creation, management and dissolution of businesses, through exploitation of new means of communication and technology. Examples of key measures:¹⁰

- Public deeds and registration. The government has eliminated the obligation to have public deeds (notary act) relating to the lives of companies, which duplicated the obligation of registration in the commercial registry. Since 30 January 2006 the only mandatory requirement is to register deeds relating to the establishment of a commercial company, change in statutes or increase in capital stock in the commercial registry.
- On the Spot Firm. Since July 2006 one-man and limited liability companies can be created in a one-stop-shop, irrespective of the location of the firm. The articles of association are registered and published immediately on the website of the Ministry of Justice. This initiative has reduced the time to set up a company from 54 days to 42 minutes in March 2008. The OECD team received confirmation from stakeholders that the measure has made a huge change for the establishment of companies.
- Fast-Track Home Buying Scheme (“Casa Pronta”). The process for buying a house in Portugal could consist of over 15 steps and required dealing with numerous public authorities (civil, building and commercial registries, public notaries, local councils, tax offices) including through countless visits. A single specific service point has been created and the process restructured, thereby simplifying the process for both citizens and the administration.
- Online Trademark Service and Online patents. Registration of a trademark, logo or establishment can be done online as well as application for protection for inventions and designs.¹¹

Other initiatives

All ministries have been involved in initiatives with significant impact on reducing administrative burdens for businesses. Examples of key measures:

- Company On-line. A simplified and fully dematerialised procedure for incorporating companies has been made available on the Business Portal. Lawyers, solicitors, notaries as well as any person who holds a qualified digital signature, can use the system and complete the processes without leaving their own offices.
- Financial statements and statistics. The delivery of periodical information to different public bodies in different forms and periods of the year has been dematerialised. This obligation can now be complied in one single online interaction.

- Simplification of building permits issued by local authorities. In certain circumstances this new regime will eliminate the obligation for assessing and licensing architectural design, or for prior notification of works inside buildings.¹²
- Online industrial facilities licensing. The initiative aims at dematerialising the procedure for the licensing of industrial facilities. This online tool will allow companies to simulate steps expected to be followed and assess the time to be spent in each phase, submit their request for license (including payment), and follow-up the process.¹³

Simplification and e-government

A high proportion of initiatives – and especially of initiatives with a broad reach – has relied on e-government tools. Of the 50 “emblematic initiatives” in the first two years of the Simplex Programme, around 30 relied on the use or increased use of ICT and can be described as e-government initiatives. In its third year (Simplex 2008) the programme showed the same pattern. Many initiatives have focused on front-office oriented processes with direct impact on citizens or businesses. The implementation of these initiatives has largely depended on the establishment of an integrated and coherent e-government back office. The Knowledge Society Agency (UMIC) has developed an interoperability platform for the public sector, which has been managed by AMA since May 2007. When fully developed, the platform will provide the public sector with the capacity of interconnecting independent systems and making multi-channel electronic services available (OECD, 2008c). The adapted version of the SCM which underpins the 2009 action plan for administrative burden reduction aims to take full account of the effects of ICT.

Achievements so far

The Simplex Programme has so far resulted in a large number of initiatives covering most ministries and agencies,¹⁴ as well as a broad range of administrative procedures affecting citizens and/or companies. Since the launch of first programme in 2006, the government has presented a total of 957 individual initiatives (333 in Simplex 2006, 235 in Simplex 2007, 189 in Simplex 2008, and 200 in Simplex 2009), which target citizens, businesses, or the administration.

The achievements of the programme seem to be well known and recognised across the country, in particular by businesses. The simplification of procedures is recognized as a major progress, in the first place with respect to the establishment of a company. In their report on the evaluation of the Lisbon Strategy, the two largest business associations of Portugal stated: “the evaluation of the progress recorded in terms of legal and administrative environment is positive, mainly in result of the satisfactory improvement in the areas of simplification of existing legislation and e-government.” “... It is worth stressing important simplification initiatives in the context of justice and taxation, industrial licensing, commercial registration, and also in the creation of the Simplified Business Information” (AIP, 2007).

However as in other EU countries engaged in administrative simplification, there can be a gap between achievements and their perception by businesses. Several reasons can explain this gap.

- Time needed to change the culture (for example complexity and numbers of procedures are often associated with security)
- Coherence with the administrative organisation of companies (procedures are usually part of a broader set of a procedures so cannot easily and quickly be disentangled from these other procedures)
- Some initiatives can give significant results at the level of a sector or the country, but are not significant at the level of an individual firm.

Administrative burden reduction for the administration

The Simplex Programme includes some initiatives to reduce administrative burdens within the administration. Simplex 2008 includes 26 measures aimed at improving the efficiency of public offices and reducing operating costs. The number of administration-related measures amount to 40 in Simplex 2009. These measures are closely linked to the development of electronic government and the use of ICT. The programme includes measures to improve the procedures and work within specific administrations, and also measures to promote collaboration and exchanges between public offices. Their main objectives are:

- Development of collaborative platforms in support of the modernisation of the administration, to encourage knowledge sharing and partnership working;
- Simplification and modernisation of internal management procedures of a number of administrations, dematerialisation of files and internal processes mostly in the Ministry of Economy and Innovation, the Ministry of Justice, the Ministry of Environment and the Ministry of Defence, and in agencies under their control;
- Implementation of tools for monitoring quality of some public offices;
- Development of information sharing between public offices through the use of ICT, for example between the Inspectorate-General of Local Administration and local authorities.

Notes

1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification through consolidation. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, that is taking account of the impact of new regulations in meeting target reductions.
2. Resolution of the Council of Ministers 64/2006.
3. Decree Law 209/2008.
4. Decree Law 214/2008.
5. Resolution of the Council of Ministers 196/2008 of 30 December 2008.
6. SEMA co-ordinated the pilot measurements with the operational support of AMA and in close co-operation, both at a strategic and operational level, with a national SCM network comprising staff from the eight ministries involved in the measurements. The pilot measurements showed that SCM, even in the customized version that was tested, does not deal efficiently with de-materialisation and the use of ICT.
7. www.simplex.pt
8. www.portaldocidadao.pt/PORTAL/pt/servicos/catalogo_licencas?ResultsPerPage=5&CurrentPage=1
9. www.portaldaempresa.pt/CVE/Services/CatalogoLicencas/Catalogo.aspx.
10. For a detailed presentation of all measures, see www.simplex.pt. The Ministry of Justice has also published a 5-language booklet on key simplification measures (www.cuttingredtape.mj.pt).
11. www.inpi.pt (website of Instituto Nacional da Propriedade Industrial – National Institute of Intellectual Property).
12. The law has been adopted (Law 60/2007) and is under implementation.
13. The legal framework was set by Decree Law 209/2008.
14. Some regulatory agencies have engaged in simplification programmes. For example, a national council covering regulatory agencies for the financial sector (Central Bank, Securities Commission, and Insurance Commission) has a project for Better Regulation covering the financial system. A first report was submitted to the Ministry of Finance, which identified areas for priority actions. A programme for 2008/2009 has been established based on this report.

6. COMPLIANCE, ENFORCEMENT, APPEALS

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in chapter 9).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes,¹ and the adoption of rules to promote responsiveness, such as “silence is consent”.² Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

Assessment and recommendations

Portugal retains a largely traditional approach to enforcement (based on inspections), although there is a wind of change through the Simplex Programme. Structures, competences and capacities at the local level remain geared to a traditional approach. However the implementation of the Simplex Programme has entailed some important strategic policy changes to encourage a more proportionate approach to enforcement. It could be time to refer to the experience of other countries to promote this approach, both in central government bodies (including at the level of local services) and in municipalities.

Recommendation: Portugal should review the practical experience of some other OECD countries in the deployment of a risk-based approach to enforcement and inspections, with a view to developing a policy adapted to its situation.

Delays in the court system are a real issue, which the Ministry of Justice is tackling to good effect through the Decongestion Action Plan. This is also another good example of a vigorous approach by parts of the institutional structure to identify and tackle problems.

Recommendation: The Ministry of Justice should be strongly supported in its ongoing efforts to deal with congested courts.

Background

Compliance and enforcement

Compliance monitoring

Portugal has no specific instrument for monitoring compliance with regulations. The only available data is the number of sanctions imposed by general inspectors and law enforcement services, but there does not seem to be specific monitoring of these data.

Responsibilities for enforcement

Enforcement of regulations is usually under the responsibility of ministries (directorate generals or institutes/agencies with administrative autonomy but attached to a ministry), which have local services in charge of inspections and verifications. For example, in the field of metrological control (gas and electricity meters, petrol pumps, etc.), the Portuguese Quality Institute (Instituto Português da Qualidade), which is part of the Ministry of the Economy and Innovation, is responsible for type approvals, verification and inspections of metering instruments. It carries out inspections through 5 regional directorates and 125 municipal metrology services. Another example is the Authority for Food and Economic Safety (Autoridade de Segurança e Económica), also under the Ministry of Economy and Innovation, which carries out inspections through five regional directorates.

Municipalities also play an important role in compliance and enforcement of regulations through their responsibility for allocating licences. In the environmental area, for example, through the licensing of civil works, they can obtain information needed to ensure that the law is being complied with.

Policy on enforcement

The approach to enforcement in Portugal has traditionally privileged numerous controls and inspection on citizens and companies. Interviews conducted by the OECD team suggest that this approach is still well entrenched, and that moving towards a risk-based approach in enforcement is still a long shot for most ministries and would require a deep change in administrative culture.

Some change is, however, taking place: with the elimination of prior licences, permits and authorisations, Portugal's administrative simplification programme has entailed a shift in strategic regulatory policy towards accepting a basic level of risk and less regulatory interference in the economy. Increased attention is now being given to the actual degree of risk of non-compliance. The Simplex 2006 programme has opened a door to this option by indicating that a risk-based approach can help reduce compliance costs for low-risk business. It states that an obligation, which is disproportionately burdensome to citizens or businesses when compared to the protection it delivers, should be removed. It also considers that unnecessary inspections or data requirements on less risky businesses may be disproportionate. Some measures of the Simplex Programme have been based on this principle (Box 18).

Some bodies are moving faster than others. Independent regulatory agencies seem to be the most advanced. The Bank of Portugal has implemented a methodology to assess risk ("Modelo de Avaliação de Riscos"), which is currently being implemented by the units responsible for the ongoing monitoring of the supervised institutions.³ The CMVM and sectoral regulators also base their regular on-site and off-site supervision, through selection in terms of risk.

Box 13. Risk-based approach: examples of Simplex measures

Measures implemented as part of the Simplex Programme have entailed the adoption of a risk-based approach. For example:

- The new regime for licensing of building and construction, where compliance obligations have been reduced whenever a low-risk activity is concerned, have already been approved by the Council of Ministers, modifying Decree Law 555/99 of 16 December 1999: small low risk building constructing are not submitted to prior licensing anymore.
- Decree Law 259/2007 of 17 July 2007, on licensing of commercial buildings, replaces a prior licensing procedure – required for the installation and modification of commercial establishments or product store – by a prior declaration.
- Decree Law 234/2007 of 19 June 2007, replaces a prior licensing procedure – required for restaurants and liquor shops installation and modification – by a mere declaration.
- The new security regulation against fire in buildings (in final phase of approval).

Appeals

Appeals against administrative decisions

Portugal has administrative courts to appeal decisions of central and local governments. The Supreme Court of Administration is the highest level. One of its sections deals with administrative disputes (with 16 courts of first instance and 2 courts of second instance below it), and another section deals with tax disputes (again with two level of courts below it). (For an overview of Portugal's judicial system, see Annex 4)

Action Plan for the Decongestion of Courts

The efficiency of Portugal's judicial system (civil courts and administrative courts) has long been seriously undermined by lengthy procedures, which amounted to 25 months in 2005 according to the Ministry of Justice. In May 2005 the government approved the Action Plan for the Decongestion of Courts (Plano de Acção para o Descongestionamento dos Tribunais). This plan had been designed following a co-operative work organized by the Ministry of Justice with other ministries as well as external stakeholders through the De-formalisation Commission (see also Chapter 3). The Action Plan for the Decongestion of Courts includes:

- Changes in some regulations to remove the need to go to court in a number of cases (such as setting a higher cap for resorting to injunctions);
- Introduction of the mediation system in 2006 (to be made available across all Portugal by the end of 2008);
- Creation of an arbitration centre for specific issues, such as intellectual property and domain names (to be started soon);
- Creation of “small claim courts” to address civil issues at the citizen's level;
- Creation of a fast-track system in 2006.

These measures have had a positive impact, and in 2008 the number of pending files in Portuguese courts diminished for the second year in a row, following 15 years of nonstop increase. There are however significant differences across issues, and payment orders, which make up 40% of litigation cases are still subject to very long procedures.

Ombudsman

The Portuguese ombudsman, called *Provedor de Justiça*, was originally created in 1975⁴ and established afterwards at constitutional level in the Portuguese constitution of 1976 (article 23) Its statute is specified in a 1991 law.⁵ The Ombudsman is nominated by the Assembly of the Republic. The institution follows, in general, the Scandinavian ombudsman model, in terms of tasks, guarantees and scope of action: control of the administrative activity, parliamentary legitimacy, independence in the performance of his duties, powers to make recommendations to the public authorities for prevention and remedy of illegalities or injustices and the corresponding duty of co-operation that public bodies and services are subject to. Additionally, the Ombudsman has important powers of initiative with respect to constitutional issues (he may request the Constitutional Court to make rulings on issues of unconstitutionality or illegality of any legal provision as well as unconstitutionality omission, whenever the adoption of the legislative measures that are necessary for purposes of the enforceability of the constitutional provisions has failed).

Any person may complain directly to the Ombudsman, including foreigners, Portuguese citizens living abroad, stateless people, legal persons such as private corporate entities, private companies, unions, etc, as well as public bodies, provided that the complaint is against an illegal behaviour of a public authority. The Ombudsman may also act on his own initiative, irrespective of the administrative and judicial remedies provided for in the constitution and in the law. The public bodies that receive a recommendation from the Ombudsman have the duty to respond within a period of 60 days, describing the implementation of the proposals referred to in the recommendation or, in case of non-compliance with the said proposals, stating the reasons why they cannot be implemented.

Notes

1. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
2. Some of these aspects are covered elsewhere in the report.
3. The Bank of Portugal is responsible for ensuring compliance by the regulated entities under its supervision (with regard to legislative and regulatory acts). It has specific units entrusted with the ongoing monitoring of regulated entities (“*áreas de supervisão directa*”), responsible for the off-site monitoring and on-site examinations, and with the sanctioning of those which are failing compliance (“*núcleo de processos e averiguações*”). The legal framework lays down a broad set of corrective procedures to which the Bank of Portugal may resort.
4. Decree Law 212/75 of 21 April 1975.
5. Law 9/91 of 9 April 1991, as amended by Law 30/96 of 14 August 1996 and Law 52-A/2005 of 10 October 2005.

7. THE INTERFACE BETWEEN THE NATIONAL LEVEL AND THE EUROPEAN UNION

An increasing proportion of national regulations originate at EU level. Whilst EU regulations¹ have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EU law are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market, avoid “gold plating” and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EU regulations. The view from “below” on the effectiveness of these policies may be a valuable input to improving them further.

Assessment and recommendations

The current approach to the negotiation and transposition of EU regulations does not deliver effective results. Portugal’s transposition record is below the EU average. Portugal needs to be encouraged to develop a more formal approach including guidelines, to help ministries address EU issues in a more structured way (both at the stage of preparing and negotiating EU regulations, and at the stage of transposing EU regulations). The UK’s EU Guidelines may provide some ideas. Denmark also offers an interesting case of how efforts at the negotiation, through a thorough process involving all stakeholders, can promote a smoother transposition process. There is also likely to be an issue of capacity-building in ministries, and if so this too will need to be addressed.

Recommendation: Portugal should elaborate a stronger policy and guidance for its approach to the negotiation and transposition of EU regulations, after consulting with stakeholders within and outside the administration. This is now being taken forward. Since the OECD review in spring 2008, the government of Portugal has adopted a resolution to create a stronger institutional framework for monitoring the transposition of EU directives, which constitutes a positive step in that direction.

Background

General context

The share of national legislation originating in EU rules is roughly estimated at 50% (an estimate similar to that of other EU countries). This can be higher in some areas, such as the environment.

Negotiating EU regulations

Individual ministries co-operate with the Portuguese Permanent Representation in the Council to negotiate EU regulations. Officials seem however less aware of the Brussels machinery compared to other EU countries. The OECD team heard several calls for increased guidance and stronger involvement at an early stage of EU policy making. The situation is different in the areas covered by independent regulatory authorities (such as financial services), which have more adequate resources and expertise to engage in EU negotiations and can be involved by ministries in the negotiation process, beyond consultation.

Transposing EU regulations

The Ministry of Foreign Affairs co-ordinates the transposition of EU regulations, which is under the responsibility of individual ministries. The Department for European Affairs of the Ministry of Foreign Affairs allocates responsibility for transposition to the relevant ministry. During the drafting stage, it monitors the process and tracks deadlines. It provides a monthly note on the transposition process, which is circulated to ministries and outlines difficulties. It can also provide some guidance to the ministries on an *ad hoc* basis. At the time of the OECD review in spring 2008, there was no standard guidance material available to ministries.

Transposition can be done by law, decree law, or regional law when autonomous regions are concerned. Each ministry has an international cabinet, which supervises this process. A working group is usually set up to prepare a draft. It is often made up of the experts who were involved in the negotiation process. This can be followed by a consultation of external stakeholders, which has become common practice in some ministries, such as the Ministry of Environment. The working group or technical unit responsible for preparing the text also performs the Simplex Test at this stage. This has been the case of the ongoing transposition of the Services Directive for example.

Portugal has reduced the backlog of EU directives that needs to be incorporated into national law, from 80 directives in May 2005 to 41 in June 2008. It records the lowest transposition rate among EU countries, with a rate of 98.62% against an EU average of 99.36% (Box 14). According to government officials, the delays are due to the length of the political process for enacting primary laws through parliament, rather than delays in the preparation of draft laws.

At the end of 2008, the government adopted a resolution² to reinforce the institutional framework for the transposition of directives. The resolution provides for the establishment of “Sistema de Controlo dos Actos Normativos” (SCAN, System for Control of Normative Acts) to monitor deadlines with respect to transposition of directives and adoption of secondary regulations. CEJUR is to co-ordinate SCAN (with the support of the Department for European Affairs of the Ministry of Foreign Affairs with respect to EU directives). A network of contact points will be set up throughout ministries and co-ordinated by CEJUR. Regular reports will be presented both on the production of secondary regulations and transposition of EU directives.

Box 14. Portugal's performance in the transposition of EU directives

Internal Market directives

Portugal complies at a comparatively weak level. In the scoreboard of August 2008, it is ranked last of the 15 member states of the EU reviewed in this project with a transposition deficit of 1.9%. However, there has been progress since July 2007 where the deficit again amounted to 4.4%.

All directives

Portugal also performs at a comparatively weak level. With a deficit of 1.3% in August 2008, it is towards the end of the EU-15 ranking. Only Luxembourg and Greece have a worse performance.

Its lowest transposition rates can be found within the sectors of energy and transport, the Internal Market and employment and social affairs.

Portugal's performance at a glance

Transposition deficit as % in terms of Internal Market Directives

Nov-97	May-98	Nov-98	May-99	Nov-99	May-00	Nov-00	May-01	Nov-01	May-02
5.9	5.9	5.6	5.7	4.9	6	4.4	2.7	2.5	2.1
Nov-02	May-03	Jul-04	Jul-05	Dec-05	Jul-06	Nov-06	Jul-07	Nov-07	Jul-08
3.1	3.7	1.9	3.4	3.1	3.7	3	4.4	2.3	1.9

Source: European Commission

Directives for which no national measures (implementing all adopted directives) have been notified as %

Aug-00	Mar-01	Oct-01	May-02	Oct-02	Apr-03	Oct-03	Apr-04	Nov-04	May-05	Nov-05
12.3	5.6	4.05	3.97	3.96	4.15	2.15	1.5	2.36	2.16	2.24
May-06	Nov-06	Mar-07	May-07	Jul-07	Oct-07	Nov-07	Feb-08	Apr-08	Jun-08	Aug-08
2.4	2.07	2.91	2.54	1.79	1.51	1.25	1.27	1.46	1.38	1.33

Source: European Commission.

Notes

1. Not to be confused with the generic use of the term "regulation" for this project.
2. Resolution of the Council of Ministers 197/2008 of 30 December 2008.

8. THE INTERFACE BETWEEN SUBNATIONAL AND NATIONAL LEVELS OF GOVERNMENT

Multilevel regulatory governance- that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level- is another core element of effective regulatory management. The OECD's 2005 Guiding Principles for Regulatory Quality and Performance "encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government". It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- the allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or sub-national regulations; or responsibilities for service delivery);
- the capacities of these different levels to produce quality regulation;
- the co-ordination mechanisms between the different levels, and across the same levels.

Assessment and recommendations

Engaging the municipalities in the Simplex Programme is an important new initiative, alongside the direct efforts of some municipalities in this field. In July 2008 the Portuguese government launched the Simplex Autárquico Programme (Simplex for municipalities), an initiative to integrate municipalities in the Simplex Programme. Some of these measures imply close co-operation between central government and local governments, as well as between local governments themselves. Engaging the municipalities is critical to ensuring the success of the programme in key areas, in the first place simplification of licensing procedures, as municipalities play a very important role in that field. The government aims at involving 50% of municipalities by 2012 (with nine municipalities taking place at its launch). Some of the larger municipalities have also started their own efforts at Better Regulation. Involvement of more municipalities is necessary as differences across municipalities in the implementation of regulations create difficulties for both citizens and businesses.

Promoting best practices and providing support to local governments need further effort. Efforts to implement Better Regulation policies vary a lot across municipalities. It is important to find ways to encourage municipalities to adopt best practices. The Simplex Autárquico Programme includes interesting measures in that respect. Harmonisation of municipalities' approach to enforcement appears to require further effort.

Recommendation: Portugal should sustain its efforts to promote Better Regulation across municipalities via the Simplex Autárquico Programme. Further effort should be made to promote best practice and coherence in the enforcement of regulations across the country (beyond the reduction of administrative burdens) and provide support to local governments, drawing on the experiences of other OECD countries.

Background

Structure, responsibilities and funding of local governments

Structure of local governments

Portugal has 308 municipalities (*município*), which are the main level of local government. They are politically and administratively independent from central government. They have a municipal assembly (*assembleia municipal*), a mayor (*presidente da Câmara municipal*) and an executive council (*Câmara municipal*) elected for a four-year term. Municipalities are divided into parishes (*freguesias*), which are in charge of minor administrative tasks.

Portugal has no formal regional level, except for two autonomous regions covering the islands of Azores and Madeira. Mainland Portugal is divided into five regions, which have no elected body and do not have the status of local governments. The Programme of Central Administration Restructuring (PRACE) foresees deconcentration of national policies and government bodies, by setting up arms of central government in these five regions.

Azores and Madeira have been endowed with the status of autonomous regions (*regiões autónomas*) due to their specific geographic, economic, social and cultural characteristics. Since 1976 they have had their own regional legislative assembly, their own regional government presidents (*Presidente do Governo Regional*) and their own regional secretaries (*Secretários Regionais*).

Responsibilities of local governments

Municipalities have only minor secondary rule making powers, but play a very important role in licensing, as well as supervising and enforcing national regulations. They also play an important role in the delivery of public services to citizens and businesses in areas such as water supply, drainage network, urban waste disposal, parks and gardens, street repairs, social and cultural facilities, primary schools (apart from teacher's pay) and the municipal road network. Municipalities produce secondary regulations to implement national rules in their territory with respect to urban and rural spatial planning, transport, rural and urban equipment, energy, communications, education, health, housing, social affairs, and environment. Such regulation is exclusively under their competence.¹ Municipalities are responsible for delivering licences in areas connected to these issues and for checking compliance of citizens and businesses with the rules governing these activities.

Funding of local governments

Municipalities have little fiscal autonomy. They rely heavily on grants from central government. Local taxes and fees represent about one third of local government revenue in mainland Portugal, and municipalities have very little discretion in the setting of tax rates. The reform of the Local Finance Act in January 2007 introduced measures to expand municipal competencies and increase their revenues. The reform created a specific grant called the Municipal Social Fund (FSM), which is an earmarked grant to finance specific expenditures in education, health and social policy that will be transferred from central government to municipalities. It also made it possible for municipalities to receive up to 5% of the national income tax levied in their constituency (OECD, 2008b).

Better Regulation policies deployed at local level

Local initiatives

A number of municipalities – especially the larger cities – have taken some initiatives for Better Regulation. Lisbon and Oporto, for example, have their own simplification programme aimed at improving service delivery. Odivelas in the suburbs of Lisbon is another good example of a municipality which actively participates in the simplification and e-government initiatives of central government. However efforts vary across municipalities, reflecting differences in resources as well as in awareness of Better Regulation policies.

Azores and Madeira have launched their own policy programme in the area of Better Regulation and administrative simplification in particular. Given their autonomous status, the Simplex Programme and other initiatives taken by the central government do not directly apply to them. However their programmes for administrative simplification are along the lines of the Simplex Programme, and have been closely associated with the development of e-government.² The initiatives taken by these two regional governments have aimed at:³

- promoting and developing portals with an integrated platform of services;
- eliminating duplicated procedures;
- improving human resource qualifications, especially in the field of ICT.

Simplex Autárquico Programme

Given the autonomy granted to municipalities by the constitution, central government cannot impose any measures on them. It can only create incentives to encourage municipalities to adopt policies for Better Regulation. Municipalities are not formally part of the Simplex Programme, and have not been involved systematically in its preparation. However the implementation of the programme has had a significant indirect impact at the local level. By changing some regulations and processes and in some cases by consulting municipalities, the Simplex Programme has driven a momentum for modernisation and cultural change at the municipal level. The Simplis Programme, launched by the municipality of Lisbon in 2008, shows this impact. Its structure and content draw on the experience of Simplex and it integrates aspects of the Legislar Melhor Programme too (see Annex 3 for a presentation of Simplis). Central government has also promoted simplification at the municipal level by publicising best practices of municipalities in this area.

In July 2008 the government launched the Simplex Autárquico Programme (Simplex for Municipalities) to involve municipalities in the Simplex policy in areas where both the central government and municipalities are involved (licences, certificates, and inspections). In keeping with their autonomous status, the Simplex Autárquico Programme is based on a voluntary participation of municipalities. The objective is that 50% of municipalities participate in this initiative by 2012. At the launch of the programme, nine municipalities had engaged in it, including Lisbon and Porto, the two largest cities in Portugal.⁴

Box 15. Examples of Simplex Autárquico measures

Licences, prior authorisations and other similar administrative procedures (inter-sectoral measure)

This measure includes three objectives, which are to be reached by July 2009 for the current participant municipalities and by 2012 for at least 25% of Portuguese municipalities:

- Gradually integrate into a single nationwide catalogue all licences and prior authorizations which affect the activities of citizens and companies and require interaction with municipalities. The catalogue will identify the types of licences, the procedures, the time and cost for obtaining the licence. It will provide a single point of access to all licensing procedures.
- Prepare technical guides and create a common set of indicators for monitoring the impact on municipalities of new licensing requirements in the field of urban planning and construction, industrial, commercial and touristic activities (such as the number of requests by type or procedure, response times)
- Dematerialise the procedures for obtaining licences and permits and allow for interaction with municipalities.

Consolidation of municipal regulations through exchanges of best practices (inter-municipal measure)

This measure was proposed and is co-ordinated by the municipality of Porto. There are six other participating municipalities (Águeda, Lisboa, Pombal, Portalegre, Redondo and Seixal). The objectives are:

- To disseminate experience of participating municipalities in the area of consolidation of municipal regulations (rules and methods);
- To implement legal techniques and tools to allow for permanent updating of regulations and make it available online.

Other examples (municipal measures)

- Online SIG
- Creation of municipal one-stop-shop
- Online information on requests for urban construction permit
- Simplification of licenses (e.g. cranes, private parking on public ground)

Source: Presidency of the Council of Ministers (2008b), *Simplex for Municipalities*, www.simplex.pt/downloads/SimplexAutarquicoEng.pdf

The Simplex Autárquico Programme, which is co-ordinated by SEMA, lists a number of measures and the objectives to be reached by the end of 2009 and by the end of 2012. Measures are classified into three modules (for examples, see Box 15).

- Inter-sectoral initiatives, which imply co-operation between central government and municipalities. These measures relate to initiatives triggered by central government, but whose implementation largely depends on co-operation and commitment of the local administration, as is the case of measures relating to licensing and inspections. Inter-sectoral initiatives can also be “pilot initiatives” as central government wants to experiment an initiative before launching it on a large scale.
- Inter-municipal measures, which require co-operation between several participating municipalities. They aim at promoting diffusion of best practices developed in one municipality to others, resource sharing in the development of joint projects, and adoption of similar procedures in the provision of public services.
- Municipal measures, which are initiated specifically by participating municipalities. Integration of local initiatives in the Simplex Autárquico Programme is seen as a way of giving them more visibility and promoting adoption in other municipalities.

Co-ordination mechanisms

Co-ordination between central government and municipalities

Municipalities and central government interact through three main channels:

- The Association of Municipalities, which takes part in the formal consultation procedures established by the constitution or by law. The government is required by law to consult representatives of local governments when preparing laws which have an effect on municipalities.⁵ The Association of Municipalities is also consulted by the government on an ad hoc basis, in some cases informally before the formal consultation procedures, and is informed on developments of central government policy.
- The Committee for the Regions, which acts as an adviser to the government for EU-related issues;
- *Ad hoc* consultation carried out by the government among selected municipalities when preparing regulations or policy programmes (such as in the preparation of the Programme of Stability and Growth, and of the state budget).

With respect to enforcement of regulations, the government usually defines the general framework, and municipalities define more detailed rules. In some cases, central agencies of the government check the compliance levels of rules at the local level. This is the case of the Agency for Planning, which is part of the Secretariat of State for Local Development. However there do not yet seem to be specific mechanisms in place to ensure harmonisation in the enforcement of laws across municipalities. This is one of the issues that Simplex Autárquico tries to address.

Co-ordination between municipalities

Under laws enacted in 2003 municipalities may collaborate formally through the creation of metropolitan areas and inter-municipal associations. The experience of inter-municipal associations has been uneven and heterogeneous across the country (OECD, 2008b). The 2003 laws are now under revision, as the government wants to promote increased collaboration, in particular to rationalise public infrastructure projects for proximity services.

In some cases municipalities have joined up or merged to reach the critical size required to obtain funding from the EU structural funds. A good example is “Digital Cities and Digital Regions”, funded by EU structural funds through central government. It consists of over 32 projects, covering nearly all Portugal. It aims at establishing e-government solutions for local governments to reinforce the competitiveness of small and medium size companies and to develop citizen-oriented services in the area of health, education, social support, culture, and safety. (For an example, see Box 22)

Box 16. Évora Digital Region

Évora Digital Region is an example of one of the 32 Digital Regions and Cities established in Portugal.

With a total investment of EUR 6.1 million over September 2004 to March 2007, the Évora Digital Region was established with the participation of 14 municipalities and the Municipal Association of the District of Évora (AMDE).

The larger initiatives in Évora Digital Region consist of:

- the creation of websites with information on topics concerning the region, tourism, geography, business, innovation and research;
- supplying broadband to local governments and creating websites with on-line services from the municipalities;
- a website for e-shopping to foster e-commerce and the creation of Wi-Fi service spots in public spaces;
- establishment of the Digital Technology Centre of Évora which is a data centre infrastructure to support technological projects.

Source: www.evoradistritodigital.pt

Interaction between levels of government through the Simplex Autárquico Programme

The development of the Simplex Autárquico Programme has led to an increasing awareness of the need to involve municipalities and increase co-ordination between the different levels of government. Given the role of municipalities in the implementation and enforcement of regulations simplification of administrative procedures launched by central government cannot be fully achieved without their commitment and active participation. A good example of this (and a key priority in the current programme) is the simplification of licensing procedures. Some of the Simplex measures have already resulted in integrating municipalities in the programme.⁶

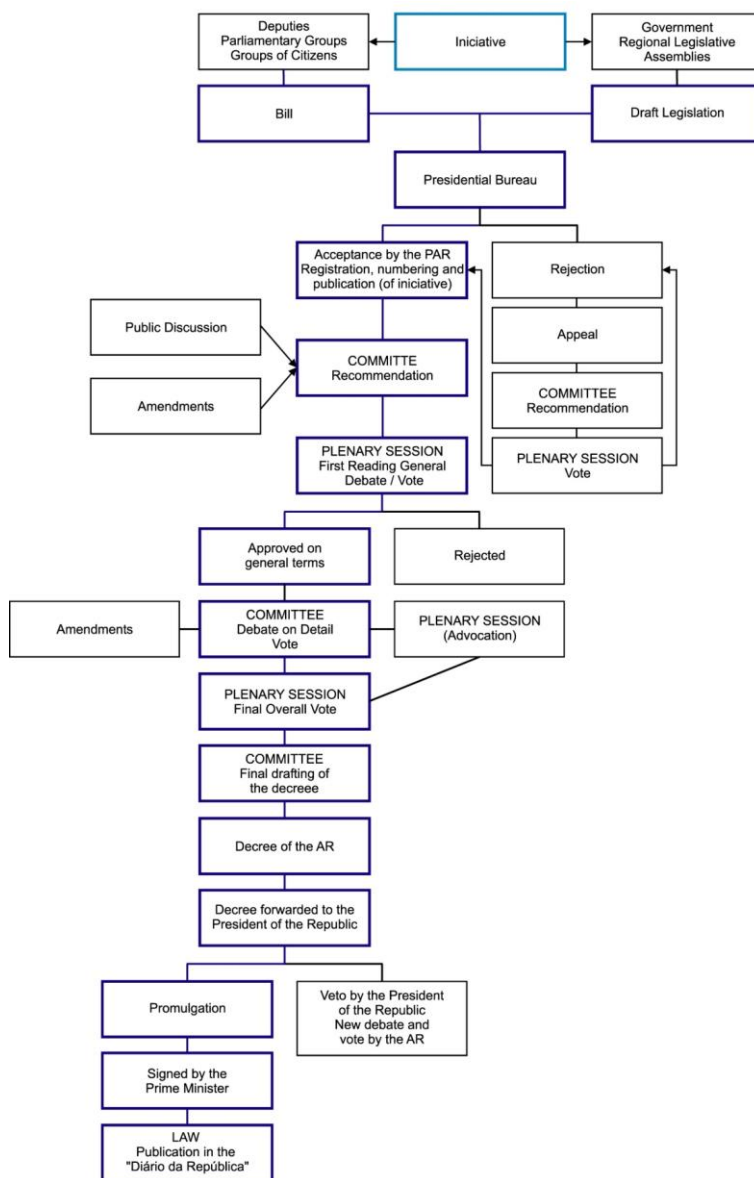
As seen above, the Portuguese government is now taking a more focused approach to promoting such co-operation. It is developing a set of measures, with defined objectives, deadlines and co-ordination mechanisms, with volunteer municipalities which have taken part in their definition. Some measures are based on either co-ordination between central government and municipalities, or between municipalities. The programme as a whole provide for new forms of co-ordination, including a forum for discussion and exchange of experiences, public consultation, application of common indicators for monitoring and evaluating the impact of the measures.

Notes

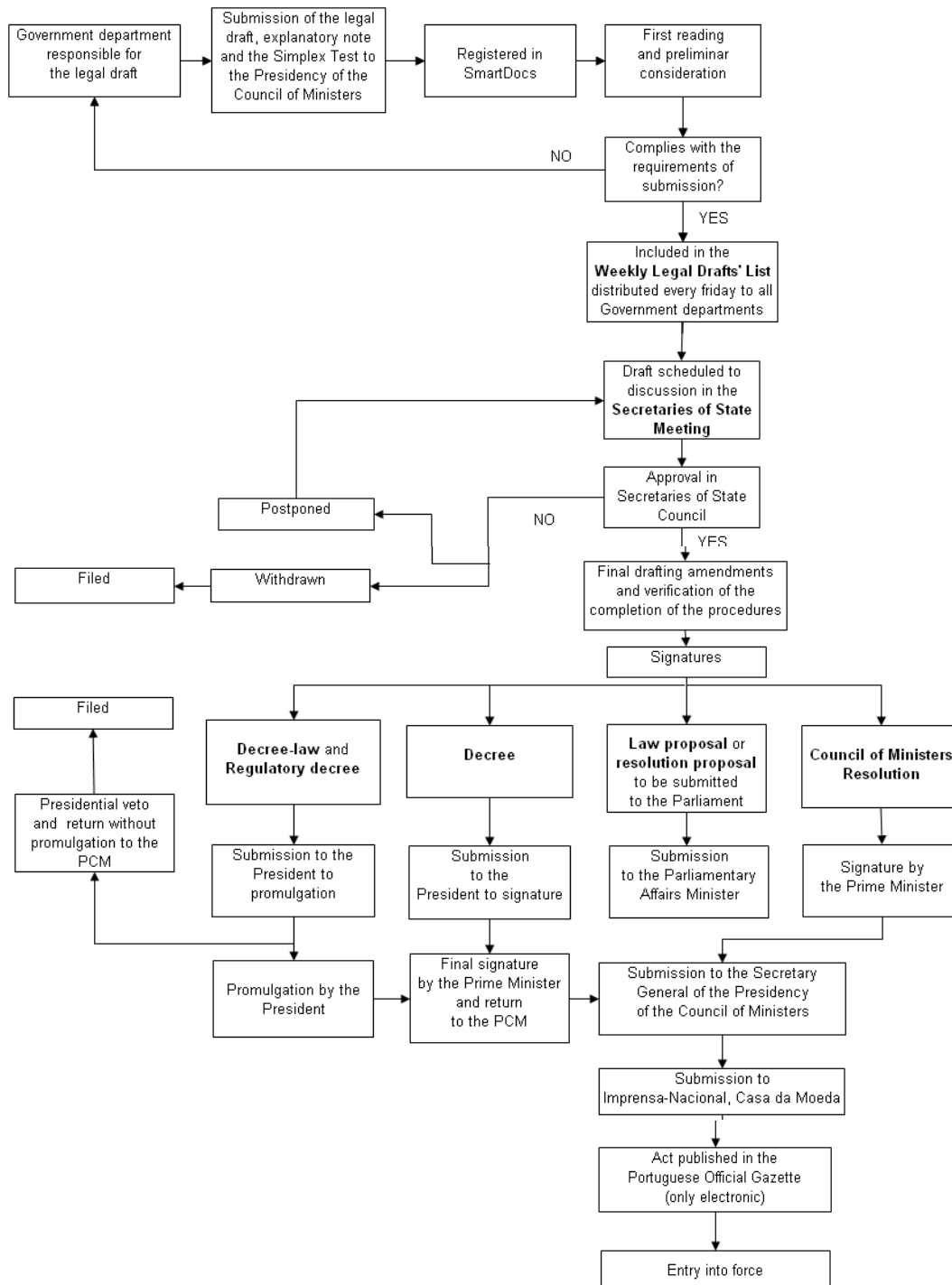
1. According to the Constitution, the allocation of responsibilities among levels of government is based on the subsidiarity principle, which states that whatever the tasks are, if they can be efficiently run by the local governments, they ought to do it. This has led to growing decentralisation of tasks to municipalities. There cannot be overlap of responsibilities as municipalities will have an exclusive competence with regard to decentralised tasks. The subsidiarity principle also applies to Azores and Madeira, but in this case there can be overlap. If so, regulation enacted by the autonomous regions in their field of competence prevails over national regulation.
2. The Azores have launched their own programme for simplification, “ProSIMA”, which includes 210 initiatives, some of which have been designed by the Azores regional administration and others adapted from Simplex.
3. For more see OECD (2008c).
4. Águeda, Cascais, Guimarães, Lisboa, Pombal, Portalegre, Porto, Redondo, and Seixal.
5. Law 54/98 of 18 August 1998.
6. For example, the 2006 law on tenancy (Law 6/2006 of 27 February) has implied the interaction of central government bodies (Directorate General for Taxation), Financial Services, Social Assistance Institute, Financial and Social Services across the country), municipalities, several professional associations. It creates an Electronic Management Platform available on the Internet where all those stakeholders can communicate and which enable dematerialisation of processes. The portal provides online information, management systems for landlords and tenants, integrated services between the different government services.

ANNEX 1. PROCEDURES FOR THE DEVELOPMENT OF REGULATIONS IN PORTUGAL

Procedures in parliament



Government procedures



ANNEX 2. FLAGSHIP MEASURES IN SIMPLEX PROGRAMMES (2006-08)

In the Simplex programmes of 2006, 2007 and 2008, the government has highlighted a number of initiatives as the most important. These are:¹

Simplex 2006:

1. Electronic version of the Official Gazette (*Diario da Republica*)
2. On the spot company
3. Once-and-for-all registration for basic and secondary education
4. Electronic applications for higher education and electronic registrations
5. Electronic booking of hospital appointments (Appointments when you need them)
6. Single contact point for job offers and requests
7. Simplified municipal building permits
8. Electronic complaints to the Inspectorate General of Planning (IGAT)
9. Pre-filled electronic income tax declaration
10. Simpler tax complaint system
11. Electronic application for benefits and pensions
12. Virtual consulate for citizens living abroad (Portugal Online)
13. Streamlining of residence and work permit system (related to immigrants)
14. Creation of a reception centre for immigrants (multi-channel, multi-language)
15. Equivalences for foreign academic qualifications (transfer of responsibility from Ministry of Education to education establishments)
16. Elimination of certificates proving non-existence of debts
17. Simplified building fire safety system
18. Electronic declaration of trading
19. Simplification of industrial licences and permits

20. Simplification of retail licences
21. Electronic filing of export declarations
22. Online application for aid under the Common Agricultural Policy (CAP)
23. Reconciliation of the ecological balance and the development of the populations living in national ecological reserve (REN) areas
24. Virtual Single Contact Point for port authorities (Single Virtual Porthole)
25. Removal of obligation for corporate notarised deeds
26. Removal of obligation for company ledgers (related to book-keeping)
27. Easier and faster company dissolution and liquidation
28. Single filing of accounts and other information requirements
29. Electronic mailbox for all citizens
30. On the spot trademark

Simplex 2007:

1. Centralised register of licences and prior authorisations
2. “I Lost My Wallet” desk (integrated service at a single contact point for re-issuing of identity documents)
3. Removal of certificates for public authorities (by improving communication within public administration)
4. Electronic legislative procedure
5. Electronic complaints to security and police services
6. Online system for locating Portuguese citizens abroad
7. Online retirement (electronic application for pensions and other social benefits)
8. Internet access points with help for taxpayers at tax offices
9. One-stop Home (single contact point for purchase/sale of property)
10. Single contact point for Inheritance (official acts linked to a person’s death)
11. Simplification of planning processes (town and countryside)
12. Simplification of procedures for inspection of liquid gas and fuel systems
13. Winegrowing Online

14. Single Logistical Window for the Maritime/Port System
15. Online version of the “Work and Employment Bulletin”
16. Electronic booking of hospital appointments (continuation of initiative from Simplex 2006)
17. Electronic Student’s Card
18. Online information on higher education graduates – benchmarking of institutions
19. Cultural website
20. Streamlining of procedures related to the military census

Simplex 2008:

1. Dematerialisation of waste monitoring forms
2. Process of supporting recipients of CAP aids and incentives
3. Mandatory deposit of publications
4. Licensing of enterprise location areas
5. Ministry of Defence’s “Networked Library” project
6. Bilingual trade registry
7. Public announcement website
8. New website for the electronic edition of the Diário da República
9. Payment of VAT on imports
10. ADSE – Access to beneficiaries’ current accounts
11. E-diary (doctors’ appointments)
12. Driving license
13. User reception points and dematerialisation process in the Border and Immigration Services (SEF)
14. Improve user contacts with the social security system

Note

1. These measures (as well as the rest of the initiatives of the Simplex programmes) are detailed in www.simplex.pt. Information includes objective of the measure, ministries involved as well as a follow-up on implementation.

ANNEX 3. SIMPLIS – THE PROGRAMME FOR ADMINISTRATIVE SIMPLIFICATION OF LISBON MUNICIPALITY

In 2008 the City Hall of Lisbon launched a programme for the simplification of administrative regulations, procedures and practices, which aims at streamlining internal management of the municipality, increasing the quality of public services and promoting active citizenship. This programme is part of the *Simplex Autárquico* programme developed by the central government, and in which the Municipality of Lisbon participates.

For 2008 17 initiatives have been selected out of 78 proposals. Criteria for selection were *i)* the expected benefits for citizens, companies or other social and cultural actors, *ii)* the capacity of the initiative to generate immediate benefits (“quick wins”) in areas of strategic priority for the Municipality. In 2008 the Municipality drew out the choice of initiatives from the experience of municipal civil servants and their perception of what are the most urgent needs of citizens. It plans to introduce a consultation procedure for the selection of initiatives in the second year of the project.

The initiatives for 2008 are structured into 3 different areas of intervention. Five initiatives relate to citizenship, 8 to service delivery, and 4 to internal operation. They involve 10 different Departments.

- Area of intervention: citizenship
 - Open licensing (increasing online availability of information on the procedure for urban licensing)
 - Internal management of environment protection issues (develop a system of indicators on the environmental impact of paper consumption by the municipality)
 - “Regulamentar Melhor” Programme – phase 1 (develop rules for the elaboration of regulations)
 - Membership in SCOT (Sistema de Contr-Ordenações de Trânsito) through a protocol with the Road Safety Authority (Autoridade de Segurança Rodoviária)
 - Renovation of the Internet site of Lisbon City Hall
- Area of intervention: service delivery
 - Creation of online contact point for citizens on the Internet site of Lisbon City Hall
 - Reproduction in one hour (simplification of the process for obtaining a certificate regarding licensing procedures which have already been dematerialised)
 - Issue of certificate on the day and place of request through elimination of unnecessary acts once the authorisation has been granted.

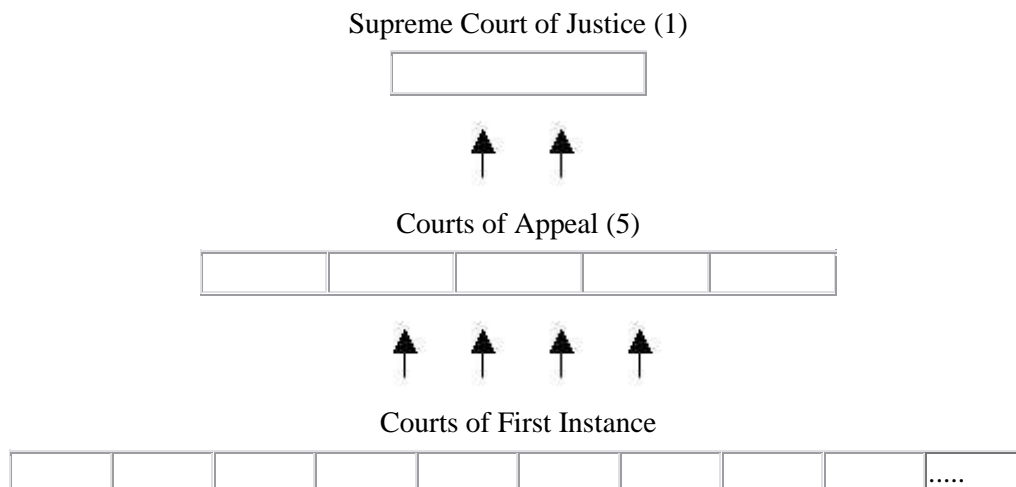
- Simplification of authorization procedures regarding commercial licensing
- Lisbon Film Commission (establish a single contact point to handle licensing and authorizations in the broadcasting and film industries)
- Licensing certificate within one hour
- Urban planning maps online
- Online simulator to calculate the fee related to urban infrastructure development
- Area of intervention: internal operations
 - Dematerialisation of fax transmission and reception
 - Development of a common base for geographic digital addresses to be used by all services
 - Renovation of the Intranet of Lisbon City Hall

ANNEX 4. PORTUGAL'S JUDICIAL SYSTEM

Fundamental principles:

- The Courts are sovereign bodies with competence to administer justice in the name of the people;
- Their function is to ensure the defence citizen rights and interests, to redress the violation of democratic legal rights and to settle disputes of public and private interests;
- The Courts are independent and are subject only to the law;
- The decisions of the Courts are binding on all public and private entities and they have precedence over those of any other authorities;
- All are guaranteed access to Courts and an appropriate defence, even with without financial means;
- Everyone is entitled to legal information and advice, to the protection of the Courts, and to be represented by a lawyer before any authority;
- Everyone is entitled to the case in which they are participating being decided within a reasonable period by means of an equitable process;
- The Law provides citizens for the defence of rights and liberties and personal guarantees, with legal procedures that are characterised by celerity and priority, in order to provide effective and timely protection in the face of any threat to or violation of such rights;
- Court hearings are public, except when the court itself, in a well-founded decision, decides otherwise, for the purpose of guaranteeing and safeguarding the dignity of persons and public morals or ensuring their normal operation.

Court organisation:



The constitution provides for the Constitutional Court, the Supreme Court of Justice and the Supreme Administrative Court (the last two have subordinate courts) and a variety of special courts, including a military court system. It states that the courts are the “organs of supreme authority competent to administer justice in the name of the people”. The courts are also designated as “independent and subject only to the law”.

The Constitutional Court was called into existence by the constitutional reform of 1982, judges whether legislative acts are legal and constitutional (*ex ante* and *ex post*). Among other duties, this court also ascertains the physical ability of the president to carry out presidential functions and to examine international agreements for their constitutionality. The Constitutional Court is composed of thirteen judges, ten of whom are appointed by the Assembly of the Republic and three co-opted by those ten for a single mandate of nine years. Six of the judges who are appointed by the Assembly of the Republic or are co-opted shall obligatorily be chosen from among the judges of the remaining courts, and the others from among jurists.

The Supreme Court of Administration examines the fiscal and administrative conduct of government institutions. It is not concerned with the state's political decisions or legislation. One section of this court deals with administrative disputes; below it are 16 courts of first instance and two of second instance (for the North and the South). Another section deals with tax disputes and is supported by courts of first and second instance. In addition to these courts, there is a Court of Audit (a distinct senior body) with authority to scrutinize the legality of public expenditure and judge such accounts.

The Supreme Court of Justice is the superior hierarchical body of the judicial courts. Its headquarters are in Lisbon. It consists of civil, criminal and social divisions. It functions under the direction of a President as a full bench of the Court, in specialised divisions and in sections. The criminal sections try cases of a criminal nature; the social sections try cases for which the Labour Courts have competence; and the civil sections are competent to try cases that are not allocated to other divisions. The Supreme Court of Justice, save in the case of legally enshrined exceptions, only deals with matters of law. It is designated the “highest court of law”, but “without prejudice to the jurisdiction of the Constitutional Court”, and heads the court system. The Supreme Court of Justice may serve as a court of first instance in some cases and as an appeals court in others.

The Courts of Appeal are, as a rule, courts of second instance. There are one or more Courts of Appeal in each district. There are five second instance courts divided according to the geographical area they cover: at the present time the Courts of Appeal sit in Lisbon, Oporto, Coimbra, Évora and Guimarães. The Courts of Appeal also include civil, criminal and social divisions with objective competence on a par with that which is indicated in relation to the Supreme Court of Justice. They function under the direction of a President, as a full bench or by divisions.

The judicial courts of first instance are normally the District Courts and they exercise jurisdiction in all areas that are not attributed to other judicial jurisdictions. When justified by the volume or nature of the service, several courts can exist within the same district. The area of competence of the judicial courts is the district. However, courts may exist with competences for one or more districts or for areas specially defined by law. For example, there are Family Courts, Juvenile Courts, Commercial Courts and even Maritime Courts.

Other judicial organisations:

Overseeing the nominations, training, promotions, transfers, and professional conduct of Portugal's judges are the Higher Council of the Bench and the Superior Council of the Administrative and Fiscal Courts. These bodies have the right to discipline judges whose conduct does not comply with the law. Also looking after the rights of the citizens is the ombudsman, elected by the Assembly of the Republic for a four-year term. In the early 1990s, this official received some 3 000 complaints a year from Portuguese who felt they had been improperly dealt with by state institutions.

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