

## Chapter 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 recognised as an important part of effective public governance and is embedded in the policy agenda. The need for Better Regulation is now increasingly recognised 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.*

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**Recommendation 1.1. 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.**

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*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.*

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**Recommendation 1.2. The government should take steps to strengthen *ex ante* impact assessment (see Chapter 4).**

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### ***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.

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**Recommendation 1.3. 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.**

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### ***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.

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**Recommendation 1.4. 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.**

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*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.

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**Recommendation 1.5. 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).**

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### ***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 on line. 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.

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**Recommendation 1.6. Portugal should continue to make the roll out of e-Government in support of Better Regulation a priority.**

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## Background

### *Economic context and 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.

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 1.1. 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](http://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 I.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.

### ***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 1.2. 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 dematerialisation 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; and
- 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 on line 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 1.2 and Figure 1.1). 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 1.3. Development of e-Government in Portugal**

In recent years Portuguese government agencies have increasingly put services on line. 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.

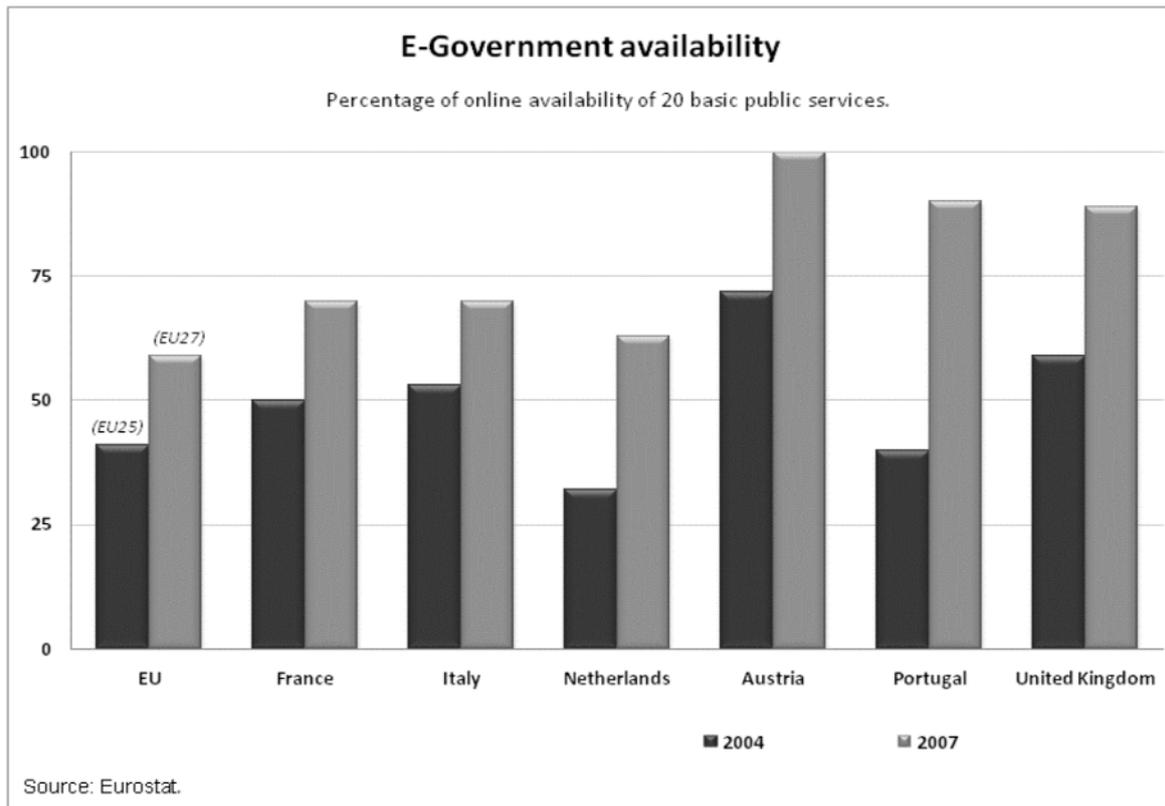
For services requiring strict authentication of identity, such as the fully on line creation of a company, advanced digital signature certificates are used for digital authentication: the Citizen's Card or alternative digital signature certificates recognised by the State such those carried by lawyers. 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 recognised 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 on line.

With respect to full online availability of basic e-services, Portugal ranks 3<sup>rd</sup> amongst European countries, after Austria and Malta (see European Commission, 2007 and Figure 1.1 regarding online availability in selected countries). According to the ranking, Portugal has 90% of its services fully on line 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 on line 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 1.1. Percentage of e-services fully available on line**



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,<sup>1</sup> a national Citizen's Card,<sup>2</sup> 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.<sup>3</sup> 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).<sup>4</sup>
- *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 on line) 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](http://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](http://www.portugal.gov.pt); [www.portaldocidadao.pt](http://www.portaldocidadao.pt); [www.portaldaempresa.pt](http://www.portaldaempresa.pt).
4. [www.cuttingredtape.mj.pt](http://www.cuttingredtape.mj.pt).