

Chapter 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 5.1. 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 5.1. 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 on line.

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.
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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 5.2. 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 B presents the list of those flagship measures.

Many initiatives have dealt with the harmonisation 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 dematerialisation, 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 5.2). In some cases prior licensing requirements have been transformed into prior declaration (for example for opening a restaurant).

Box 5.2. 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 on line. 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 on line 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 recognised 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; and
- 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 customised

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.