

Chapter 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 subnational 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 8.1. 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; and
- 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 C 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 8.1. 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 authorisations 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); and
- To implement legal techniques and tools to allow for permanent updating of regulations and make it available on line.

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 8.2).

Box 8.2. 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; and
- 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.