

REVIEWING AND SUPPORTING REGULATORY IMPACT ASSESSMENT IN PORTUGAL

PROJECT INCEPTION REPORT – Final draft –

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1. INTRODUCTION

The Government of Portugal adopted Resolution No. 44/2017 of the Council of Ministers on 24 March 2017 concerning a “*Model for Legislative Impact Assessment*”. As part of the reform, the Portuguese Government has invited the Regulatory Policy Division of the OECD to identify the institutional, legal provisions, and practices of ex ante evaluation of regulatory drafts in Portugal, focusing on the oversight activities of the Legislative Impact Evaluation Unit of the Presidency of the Council of Ministers (CEJUR-UTAIL).

This report is the first OECD deliverable in the framework of the larger project to support the Government of Portugal in strengthening its law-making process, specifically with respect to regulatory impact analysis. This first report will inform and accompany the official evaluation of the pilot phase for the year 2017, which the Technical Unit for Legislative Impact Assessment (UTAIL) is due to submit to the Council of Ministers by 31 January 2018.¹

This report takes stock of the organisational and procedural implementation of regulatory policy reforms in the Portuguese government, in relation to the introduction of Legislative Impact Assessment (LIA) and the *ex ante* measurement of administrative and regulatory costs since March 2017. ***The report includes an assessment of the progress made to date, which sets the basis for considerations about ongoing reform refinements as well as short-term and more strategic interventions to further consolidate the diffusion and effectiveness of RIA practices throughout the law-making process in the executive.***

Evidence underpinning the report has been gathered primarily through a review of presentations by the Portuguese Government, background documents and OECD databases,² and a fact-finding mission of a OECD Secretariat Team to Lisbon from 13 to 15 December 2017. Discussions with institutional actors (including centre-of-government services, line ministries, and the National Statistics Institute) and with representatives of trade unions, the private sector and academia have provided multi-stakeholder direct insights and up-to-date information.

¹ In accordance with Point 6. of Resolution No. 44/2017.

² The information is based on presentations made at the [9th Measuring Regulatory Performance Workshop](#) held in Portugal in July 2017, the [OECD 2015 iREG Country Note](#) and survey, the [OECD 2010 Better Regulation in Europe: Portugal Report](#) as well as on a preliminary review of the recently submitted Portuguese iREG survey answers.

2. REGULATORY POLICY IN PORTUGAL – A STATE OF PLAY

2.1. Administrative modernisation

Portugal has a consolidated track record in simplifying and reforming public administration, pursuing two key objectives. One main goal is to promote better and smarter regulations and to reduce administrative burdens. The so-called *Simplex* programme was launched in 2008 with the aim of reducing administrative burden imposed by rules legal and regulatory national origin by 25% in 2012. Portugal placed special attention on the significant events in the life cycle of companies. The Standard Cost Model (SCM) methodology was adopted to measure administrative burdens.

Building on that experience, the Portuguese Government launched *Simplex+* in 2016,³ which upgrades its predecessor and consists of implementing a suitable mechanism to measure the economic impact of new legislative initiatives approved by the Council of Ministers – notably with respect to micro-firms and small and medium-sized enterprises (SMEs). *Simplex+* aims at connecting different areas of the public administration and linking up their services according to a citizens and user-centred approach. The programme's centrepiece are the measures (255 in 2016, and 237 in 2017) that the public service commits to implementing within a year to simplify the life of citizens and companies. An extensive engagement with citizens, businesses and public administrators forms the basis for the measures. In order to gather views from ordinary citizens on how to simplify services, a *Simplex+* team criss-crossed the country for four months and interviewed 2,000 people.

In addition, two fixed commencement dates for new rules to enter into force strengthen the stability of the regulatory framework and give stakeholders time to adapt to new obligations. Furthermore, all decree-laws⁴ must be approved together with all necessary complementary regulation to avoid gaps and uncertainty. Finally, in an attempt to simplify access to legislation, authorities have taken measures to clarify regulation and facilitate compliance, for instance through plain language abstracts for all new laws.

The second goal of the Portuguese modernisation strategy is to increase public service efficiency and quality by enhancing shared services, co-production and civic participation. This objective is being pursued through a number of avenues. A comprehensive ICT strategy seeks to reduce spending by sharing capacities (e.g. telecommunication networks) and making use of new technologies. In addition, a network of citizen one-stop shops has been established in cooperation with municipalities.

As part of the modernisation agenda, the Council of Ministers also hopes to boost public sector efficiency to achieve better results with less work and in cooperation with citizens. For that purpose, the Government has founded *LabX*, which serves as an experimentation space for the public administration to test prototypes and try new solutions before scaling them up in size. Feedback is also sought from within the public sector, for instance by organising design thinking sessions to identify problems experienced in their daily work and to identify solutions together.

Finally, the administrative modernisation process in Portugal also aims to engage citizens through participatory democracy. A prominent example of this drive is the use of participatory budgets, which permits citizens to be directly involved in the allocation of a part of the budget in areas such as culture, agriculture, adult training and science. Following the examples at the municipal and regional levels,

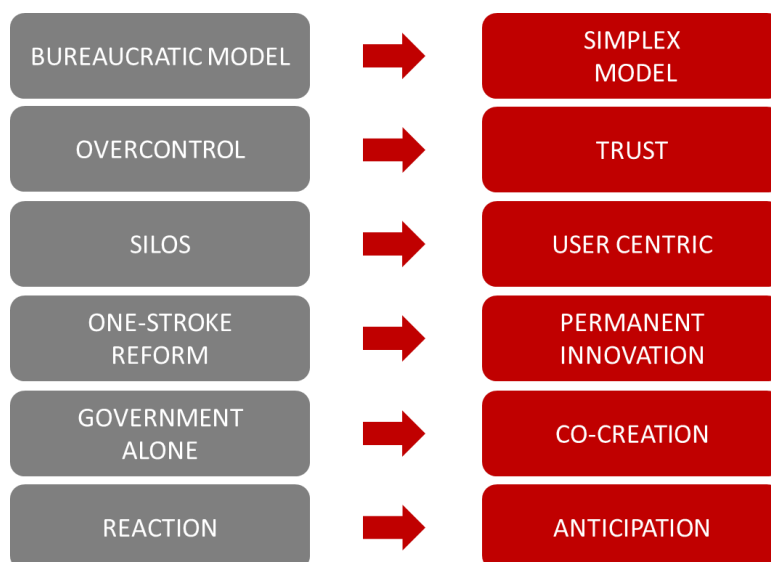
³ See <https://www.simplex.gov.pt/>.

⁴ In the Portuguese legal framework, a decree-law (*decreto-lei*) is primary or secondary legislation that is initiated and enacted by the government. Other types of primary law are by contrast enacted by the parliament.

citizens can now actively decide on the allocation of three million Euros of the national budget. Citizens can vote online or by text message for specific projects the money should be spent on. This approach has been used for the first time at the national level in 2017 concerning around 600 proposals.

A number of “paradigm shifts” underpin modernisation in the public administration and the Portuguese Government has pledged to design reforms patterns so as to foster such changes. Figure 1. illustrates the logic underpinning most reform efforts in Portugal.

Figure 1. Paradigm shifts to support administrative modernisation



Source: Maria Manuel Leitão Marques, Minister of the Presidency and Administrative Modernisation, Portugal, Presentation on “Administrative Modernisation”, 2017.

To achieve such shifts, the Government is committed to fostering the involvement of public officials at all levels and maintaining an open communication. As change cannot be ‘decreed’ in a top-down approach and might have potentially disruptive effects, all civil servants, not only managers and directors, should play a part in identifying priorities for modernisation and designing new services. Furthermore, open communication is needed to demonstrate tangible benefits from administrative modernisation for citizens. It also increases transparency and accountability, which is key to the credibility of the process. Finally, the Government also believes that administrative modernisation can only be successful if it is supported at the highest political level to bring about a culture change where governments’ effectiveness is not measured by the number laws they adopt but by their performance in achieving good regulatory outcomes.

2.2. Ex ante legislative impact assessment

With the focus of the reform efforts mainly pivoting around administrative simplification, the Government has recently complemented its regulatory policy with an explicit strategy for strengthening evidence-based decision-making, upgrading the evaluation capacity across ministries, and introducing *ex ante* impact assessments in the legislative process of the executive.

As of 2010, ex ante impact assessment was still in an embryonic stage in Portugal. The Government had introduced the *Simplex Test* for new draft regulation and by 2010 most ministries were aware of the

tool. The initial *Simplex Test* was used only to measure the administrative burdens on businesses of new regulations. Despite a push for e-government solutions in 2010, the *Simplex Test* was still paper-based (12 pages long) much to the consternation of ministries, which often found the test to be cumbersome and time consuming. The test did, however, include elements to make ministries consider alternatives to regulation and required ministries to consider how to make services to citizens more streamlined.

In its 2010 review, the OECD considered the *Simplex Test* as a promising first step towards establishing a more effective *ex ante* impact assessment regime.⁵ The shifts in priorities and constraints due to the financial and economic crisis in the following years have nonetheless stopped the reform endeavour. Arguably also for those reasons, the experience with Regulatory Impact Assessment developed within the Ministry of Justice around 2010 has not been spilled over onto a government-wide practice.

The current Government has relaunched the agenda with a view to mainstream and embed ex ante impact assessment in the daily practice of the administration, also in relation to micro-firms and SMEs. In March 2017, the Government adopted a new RIA framework, called *Custa quanto?* (“How Much Does It Cost?”), via Resolution No. 44/2017. The new impulse given to *ex ante* impact assessment results directly from the Programme of the XXI Constitutional Government,⁶ which sets the reduction of burdens created by legislation as one of the objectives of its mandate. In that context, the preliminary assessment of the legislative impact is considered as a means to improve legislative practices and, consequently, the quality of legislative acts. Together with the *Simplex+* programme, *Custa quanto?* seeks to provide a significant stimulus to economic competitiveness, entrepreneurship and economic growth in Portugal.⁷

Box 1. summarises the main features of the *Custa quanto?* framework.

**Box 1. Portugal’s *Custa quanto?* framework for legislative impact assessment:
Rationale and main innovative elements**

The *Custa Quanto?* framework is grounded on the acknowledgment that, if well designed and performing, *ex ante* impact assessment contributes to achieving the following objectives:

- supporting the political decision process;
- improving regulatory efficiency and economic rationality;
- eliminating, reducing and/or mitigating administrative burdens and compliance costs for firms;
- implementing a culture of assessment and simplification and promoting administrative modernisation;
- improving law making practices and the quality of regulation; and
- strengthening the rationale and reinforcing the communication of measures adopted by the Government.

The framework is set up by a Resolution of the Council of Ministers and formalised along the following elements:

- impact assessment is instituted as an integral part of the legislative procedure;
- coordination is attributed to the Presidency of the Council of Ministers;
- a Technical Unit for Legislative Impact Assessment (UTAIL) is created within the Legal Centre of the Presidency of the Council of Ministers (CEJUR);

⁵ OECD (2010), *Better Regulation in Europe: Portugal*, OECD Publishing, Paris, pp.64ff.

⁶ See <https://www.portugal.gov.pt/ficheiros-geral/programa-do-governo-pdf.aspx>.

⁷ See <https://www.portugal.gov.pt/pt/gc21/area-de-governo/presidencia-e-modernizacao-administrativa/informacao-adicional/cejur-centro-juridico.aspx> (Section *Avaliação prévia de impacto legislativo – “Custa Quanto?”*).

- UTAIL and the ministries are closely related and a network of “contact points” are established within the sectorial public administrative bodies;
- particular attention is given to the impacts on SME (SME Test), while the framework also implements a Competition Impact Assessment procedure;
- the framework is implemented as a pilot project in 2017 in relation to economic costs imposed on businesses, and evaluated in early 2018.

Source: UTAIL, June / December 2017

The framework was presented in its broadest terms to external stakeholders (such as business associations, trade unions, and academia) in a series of meetings between January and March 2017 for information and to get support for the initiative.

Scope of application and types of the impact assessed

The new framework mandatorily applies to all proposals of legislative initiatives (primarily, decree-laws) to be approved by the Council of Ministers, as from 1 January 2017. On a facultative basis, LIAs following the *Custa quanto?* model may be carried out on draft decree-laws or other relevant initiatives initiated by the Government before the entry into force of the framework.

As Resolution No. 44/2017 also indicates, the Rules of Procedure of the Council of Ministers of 2015⁸ had already provided for the *ex ante* evaluation and control of new administrative costs onto citizens and companies, mandating also the Minister of the Presidency and Administrative Modernisation to issue binding opinions in the presence of legislative projects that involve a likely increase in charges or other costs. At the same time, the Rules of Procedure stipulate that the explanatory note accompanying those projects includes information on any new administrative acts thereby created. One of the objective of the launching the *Custa quanto?* framework is to institutionalise that practice. Although the legal basis refers to identifying and measuring economic costs imposed both on citizens and businesses, the framework has been implemented as a pilot until the end of 2017 in relation to the economic costs on businesses, only.

The cost estimation is complemented by an identification and indicative description of the benefits associated with the legislative proposal, which are prompted by a specific section of the Cost Calculator spreadsheet (*Folha de Informação*). UTAIL is considering promoting a more systematic investigation of the benefits as the *Custa quanto?* regime develops over the next months.

The framework also brings the *ex ante* impact assessment practices more closely under the framework of the European Union’s Small Business Act, towards complying with the *Think Small First* principle.⁹ Should the assessment indicate significant economic costs on micro-firms and SMEs generated by administrative activities, the proponent ministries are urged to consider exemptions or other alternative schemes to mitigate those costs and alleviate those firms. This is particularly relevant in the context of the Portuguese economic fabric, which is dominated by very small economic operators.

In addition, the use of the OECD Competition Impact Assessment Checklist supports the analysis of potential distortions to competition as a result of the regulatory intervention. The checklist is used as a signal to draw the attention of regulators in case one or more questions are answered affirmatively. If an

⁸ Council of Ministers Resolution No. 95-A/2015, of 17 December 2015.

⁹ See https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act_en.

expected distortion of competition is not directly solved by provisions included in the legislative proposal examined, a more specific expert competition assessment may be outsourced to sectoral bodies or the Portuguese Competition Authority.

Institutional architecture for legislative impact assessment

Resolution No. 44/2017 sets out the organisational elements underpinning the framework. Two elements in particular are new compared to the previous arrangements, and refer to both the centre of the government and the organisation in the line ministries.

Technical Unit for Legislative Impact Assessment (UTAIL)

The Council of Ministers created a dedicated Technical Unit for Legislative Impact Assessment (UTAIL), to organise and support the implementation of the LIA. UTAIL is nested within the Legal Centre of the Presidency of the Council of Ministers (CEJUR), which serves as technical expert body at the centre of the government. Administratively, both CEJUR and UTAIL are independent of the governmental structure and pledge political neutrality.

Staffed with 2.5 full-time equivalent experts, UTAIL's mandate is multiple. It is responsible for:

- developing and refining the impact assessment methodology and the related Cost Calculator tool (see below);
- designing and running capacity building initiatives, including training (see below);
- providing technical support to individual impact assessment dossiers (upon request of the policy department or the focal point in the line ministry responsible for the dossier);
- producing and reviewing reports for each impact assessment analyses; and
- contributing to raising awareness about the impact assessment reform both across public administrations and among external stakeholders.

Ministerial organisation

At the same time, the Resolution provides for a re-organisation of the peripheral administration. A network of “focal points” within ministries and sectorial public administrative bodies underpins the new framework. The focal points act as direct technical and expert help desks; they are mostly tasked with the actual calculation of the costs; and they ensure a sustained dialogue and collaboration with UTAIL. It falls upon each ministry to decide on the location and size of its focal point.

While in principle each ministerial cabinet should nominate one focal point, practical implementation during the first months has been less formalised and rigid and UTAIL has sometimes established direct contacts with various services within the same ministry.

Procedural arrangements

The elaboration of the LIA is not spelled out explicitly in Resolution No. 44/2017. While practice may occasionally diverge, Box 2. outlines the main steps of a typical procedure.

**Box. 2. Implementing the *Custa quanto?* framework:
Procedural steps and practical responsibilities**

The elaboration of the LIA under the *Custa quanto?* framework is a sort of add-on to the normal policy and legislative process. Typically, the LIA process starts once the draft legal text is already well advanced.

The procedure then tends to follow the following steps:

- within the ministry, the policy / sectoral department in charge shares the legal draft and background information on the rationale for the initiative, the legal basis and the objectives thereby pursued with the impact assessment focal point;
- the focal point, in collaboration with the policy department as appropriate, proceeds to the impact assessment calculation using UTAIL's Cost Calculator spreadsheet (*Folha de Informação*), prompting or directly carrying out the necessary analytical steps. These are:
 - identification of the parties affected;
 - characterisation of the main parameters (type of costs, time, population, frequency)
 - data collection and treatment for each parameter (INE, the Portuguese national statistics institutes, provides information on average wages and productivities per sector);
 - cost estimation
 - SME Test
 - Competition Impact Assessment
- Upon their request, UTAIL may intervene in support of either the focal point or the line department directly at any moment of the process.¹⁰
- Upon completion of the *Folha de Informação*, the Cabinet of the line ministry in charge of the legislative dossier encloses it to the documentation accompanying the legal proposal (*Nota Justificativa*)¹¹ and transmits it through the e-platform *SmartDocs Diplomas* to the Cabinet of the Secretary of State of the Presidency of the Council of Ministers. The latter proceeds to a formal verification of such documentation.
- UTAIL is formally involved in the process when it receives the draft decree-law, the *Nota Justificativa* and the *Folha de Informação* from the Cabinet of the Secretary of State of the Presidency of the Council of Ministers. At that stage, UTAIL
 - considers the plausibility of the assumption and data inputs in the Cost Calculator, on the basis of the provisions included in the legal draft;
 - checks the correctness of the cost estimations; and
 - drafts a preliminary LIA report, which includes the estimates obtained from the Cost Calculator and explains the results in a standard template narrative. If necessary, UTAIL invites the concerned focal point and the policy department to revisit their *Custa quanto?* assessment; or
 - issues a final LIA report (*relatório final*).
- Such final report is then forwarded to the Office of the Minister of the Presidency and Administrative Modernisation for the binding opinion on administrative costs.¹² UTAIL's report forms also part of the documentation circulated during the inter-ministerial consultation, as prescribed for by the Rules of Procedures of the Government to gather comments and feedback. The report eventually informs the decision by the Meeting of the Secretaries of State first, and by the Council of Ministers afterwards, to modify and ultimately adopt the legal act or not.

Source: UTAIL, June / December 2017; and legal bases mentioned in this box.

¹⁰ So far, this has occurred exceptionally – a handful of times out of some 200 legislative impact assessments.

¹¹ According to Article 26(1) of the Government's Rules of Procedures (Resolution No. 95-A/2015), as amended by Resolution No. 44/2017.

¹² According to Article 29 of the Government's Rules of Procedures (Resolution No. 95-A/2015).

The interaction and the allocation of roles and responsibilities between policy departments and the impact assessment focal point are at the discretion of each ministry. Practice varies and different solutions have emerged:

- Anecdotal evidence suggests that in most line ministries the policy departments and the focal point have worked on a rather sequential basis (along the lines of what outlined in Box 2. above), with relatively low levels of inter-ministerial cooperation and cross-fertilisation.
- Signals of a progressive co-production of assessments between policy departments and focal points nonetheless appear to emerge from practice. The Portuguese Environmental Agency, for instance, has on sporadic occasions started interacting with relevant ministerial departments already in the very elaboration of the draft legal text.
- In some cases, such as the Ministry of Finance, an internal “Impact Assessment Working Group” is systematically set up for each legislative proposal subject to impact assessment. The Working Group, which consists of a member of the Cabinet, the responsible policy department and the focal point (impact assessment technical unit), is tasked with co-producing the cost estimation, typically allocating roles as follows:
 - the policy department drafts the legislative proposal;
 - the Cabinet identifies the likely impacts (costs) on businesses; and
 - the technical unit cross-checks the analysis; advises on additional or different impacts; and recommends recourse to the most appropriate information sources.
 - The actual cost assessment is then carried out by the Working Group in a joint process.

During the first months of operation, the *Custa quanto?* regime has delivered a significant number of LIAs. The OECD does not have exhaustive and detailed information in that regard, but partial statistical evidence available for the period between March and October 2017 shows that 141 proposals have been submitted by line ministries for a LIA – of which 90 reached the stage of the final report by UTAIL. During the same period, some 53 draft decree-laws were presented as not generating direct economic impacts on businesses.¹³

Capacity building programme

The *Custa quanto?* framework is made operational through a number of tools and supporting initiatives to ensure transfer of the necessary knowledge and expertise.

Business Cost Calculator

UTAIL has developed a business Cost Calculator for estimating the economic impact of new legislative proposals to be adopted by the executive (i.e. decree-laws). The focus is on the creation or variation in direct compliance costs, administrative costs, specific financial costs, and non-specific financial costs.¹⁴ The cost estimation results from an adapted version of the Standard Cost Model (SCM).

The Cost Calculator takes the form of an Excel spreadsheet. It was designed by UTAIL benefitting from in-depth discussions with experts from various institutional bodies, including the Ministry of Finance, the Ministry of Economy and the National Statistics Institute.

¹³ The OECD understands that such statistical evidence will be provided by UTAIL in its evaluation report to the Council of Ministers in late January 2018. The figures indicated in this report, therefore, are merely indicative and seek to provide a sense of magnitude of the impact assessment activity.

¹⁴ Each of these types of costs are defined in the introductory page of the Cost Calculator spreadsheet.

The Cost Calculator spreadsheet is available on the government's intranet RiNG.

The Cost Calculator guides those policy makers who write legislative impact assessments through a template that begins with describing the legislative initiative, including qualitatively describing its benefits. No quantification of benefits is required.

The Cost Calculator then guides the policy maker to estimate the costs of the new regulation as required under the Resolution No. 44/2017. The average wage and productivity in 19 industries are included in the calculator to support estimates of various regulatory compliance costs, reducing the time needed for policy makers to research such variables. Currently, the Cost Calculator can be used to calculate the regulatory compliance costs for five groups in one year.

Guidance and training

As mentioned, UTAIL is responsible also for ensuring that the necessary capacities are built across the public administration to make the *Custa quanto?* framework work effectively. To that end, UTAIL has worked on two levels – issuing an Impact Assessment Manual; and delivering (general and tailored) training seminars.

The Manual for Legislative Impact Assessment

UTAIL issued its Manual (*Avaliação Prévia de Impacto Legislativo – Manual de Apoio*) in April 2017 in order to support and assist desk officers with the completion of a LIA. The Manual

- informs about the purpose and structure of the *Custa quanto?* framework;
- describes the scope of application of the analysis for the pilot year 2017 as well as the procedural steps required to comply with the established arrangements;
- provides relevant definitions of terms and concepts; and
- explains, step by step, how to proceed with the Cost Calculator (Excel spreadsheet) (in its Annex I); as well as other analytical requirements such as the SME Test (Annex II) and the Competition Impact Assessment (Annex III).

All ministerial Cabinets have been provided with a copy of the Manual. They are responsible for circulating it among policy departments and relevant services, including the impact assessment focal points. While UTAIL has actively promoted the circulation of the Manual during the training sessions it organised, it is not possible to track at this stage of the implementation whether desk officers in all policy departments are aware of the tool.

UTAIL is currently revising the Manual and an upgraded version is expected to be ready in January 2018.

UTAIL's training programme

UTAIL has designed a training programme to familiarise relevant government staff to the *Custa quanto?* framework. Several sessions of such training were delivered throughout 2017. Two rounds of training have taken place during the pilot phase:

- the first round involved some 80 officials from the centre of the government as well as ministries and sectoral administrative bodies, most of whom working at Cabinet level and in the ministerial focal points;

- a second round including more than 15 sessions reached out up to 230 desk officers (mainly stemming from policy departments).

Participants for each training are identified, appointed and authorised by each ministry. UTAIL delivers the training.

Training sessions typically last one working day and include a presentation of the concepts of (legislative) impact assessment; a comparative analysis of international experiences; and a theoretical explanation of how the *Custa quanto?* framework works. The second part of the training is usually devoted to applying the module (Cost Calculator spreadsheet).

In general training sessions, concrete examples of good and bad practices of impact assessments are presented, while safeguarding the confidentiality of the legislative process. In sector specific training sessions, good practices by the involved ministry are analysed more openly. The practical exercises with the Excel spreadsheet bring two important benefits in addition to familiarising participants with the tool:

- on the one hand, they show desk officers as well as Cabinet members that it is indeed possible to come up with a quantified estimation of costs (what participants *prima facie* tend to consider a very challenging and sometimes nearly impossible task); and,
- on the other hand, they indicate to the participants what provisions of the legal proposal would deserve further consideration or revision thanks to the insights generated from the cost estimation.

Participation and evaluation practices

Stakeholder engagement in Portugal's LIA

At this point in the design and implementation of the impact assessment regime in Portugal, LIAs are not conceived to further nurture the interface between the regulators and the affected parties.

Being an integral part of the whole documentation underpinning the legislative process within the government, both the cost estimation (*Folha de Informação*) and the final LIA report (*relatorio final*) are confidential under Portuguese law. As a result, LIAs are never consulted upon publicly, nor are they published in their final version.

Occasionally, and at the discretion of the proponent ministry, parts of the impact assessment rationale and calculations are shared with social partners or selected stakeholders on a confidentiality basis to collect or validate data. In such cases, however, the parties consulted are not necessarily informed about the object and the purpose of such fact-finding initiatives.

Monitoring and evaluation of the framework

Although not provided for explicitly and in detail by the legal base, an internal system for impact assessment monitoring and evaluation (M&E) is in place. UTAIL has tracked the performance of the *Custa quanto?* regime during the pilot year 2017, to provide statistical data and allow lesson drawing in the evaluation report that it is to submit to the Council of Minister by the end of January 2018.

The OECD was informed that M&E elements include a disaggregation of impact assessments by line ministries, differentiating for instance between assessments that prompted UTAIL to invite focal points to provide additional revisions as opposed to satisfactory cost estimation; or between proposals that triggered a reduction and those that generated an increase in economic costs on businesses; etc.

2.3. Envisaged next steps

The Portuguese Government is set to establish a more comprehensive regime for evidence-based decision-making over the years. As mentioned in this report – and stipulated in Resolution No. 44/2017 as well, 2017 has been just the pilot year to launch and experiment the *Custa quanto?* framework.

The Government has opted in other words for a piecemeal, progressive approach in implementing good regulatory practices related to *ex ante* impact assessment, acknowledging that such an approach inevitably leaves the framework potentially open to several shortcomings and trade-offs.

At the same time, several initiatives are envisaged (and some have been already submitted for funding) over the next two years to consolidate and strengthen the framework. The involvement of external assistance and funding, such as by the OECD and the European Commission, sets in principle the basis for a multi-annual programme that seeks to tackle various dimensions until 2020.

Specifically, it is envisaged to pursue the following avenues of reform:

- In the course of 2018:
 - upgrade of the methodology pertaining to assessing the economic costs borne by businesses (Cost Calculator spreadsheet) as well as the SME Test;
 - collaboration with the National Statistics Institute to collect statistical data the regulatory costs on businesses;
 - launch of the assessment of economic costs on citizens;
 - introduction of an IT platform (replacing the Excel spreadsheet and introducing new services and functions);
 - awareness raising activities and external promotion, at least with two public events organised jointly by UTAIL and the OECD; and
 - in-depth report identifying key recommendations for improvement.
- As of 2019:
 - upgrade of the statistical information on citizens and public administrations;
 - launch of the assessment of economic costs on public administrations;
 - training of public network of institutions;
 - development of a methodology for Cost-Benefit Analysis, and launch of 2-3 pilot projects; and
 - final activity report.

Not all these activities were secured at the moment of drafting this report.

3. TOWARDS A CONSOLIDATED, PROPORTIONATE IMPACT ASSESSMENT SYSTEM IN PORTUGAL

This section consolidates findings from the discussions that the OECD held with representatives of both governmental institutions and stakeholders on the current implementation and the prospective development of the *Custa quanto?* framework.

The section assesses the current level of reforms and offers issues for consideration to further organise the impact assessment system in the Portuguese government. The suggestions for reform avenues raised below are open-ended and are conceived as guiding ideas informing the work of UTAIL, the OECD and all the involved actors when exploring future steps.

3.1. A fundamental starting point to enhance evidence-based decision-making

Evidence and feedback gathered by the OECD on the first experiences made with the Custa quanto? framework are generally positive. The developments occurred during the pilot year 2017 have had the great merit of introducing the practice of identifying and assessing impacts of legislative proposals by the Government, in a political and administrative context of very limited past record of evidence-based decision-making.

In addition to that fundamental achievement, the *Custo quanto?* framework constitutes a basis to expand the current elements onto a more comprehensive, proportionate and effective impact assessment system.

Several positive features can be highlighted from the design and pilot implementation of the framework, including:

- ***Overarching political support*** at the highest level, embodied in the commitment to reduce regulatory economic costs included in the Programme of the XX Constitutional Government.
- ***The enactment of legal bases*** – Resolution No. 95-A/2015 (the Rules of Procedure) and Resolution No. 44/2017 (on the legislative impact assessment) – which formalise that commitment over a few years until end of 2019 at least.
- ***The establishment of formal bodies*** at the centre of the government (UTAIL) and in the line ministries (the “focal points”), thereby following organisational good practices.
- ***The creation of single, uniform and relatively simple methodology*** that applies across all ministries and sectoral bodies, with one cost estimation approach and one standardised template. This is particularly instrumental in the light of the very limited experience that line ministries have in Portugal with assessing even partial regulatory impacts.
- ***The pragmatic interpretation of Resolution No. 44/2017***, which allows for a tiered, incremental approach to reforming and that pursues a “vision” of what the LIA should evolve into. There are several elements of the formal *Custa quanto?* framework that have enjoyed a certain discretion during implementation so far, and which are already planned to unfold further along with the envisaged development of the framework. Among those elements, the following can be highlighted:

- the flexible approach followed by line ministries in establishing and formalising the “focal points”, which in the short term potentially allows for opting for the best administrative solutions to execute the required functions;
 - the visibility given to the Cost Calculator spreadsheet as an important means in the interaction both between line ministries and UTAIL and, within a ministry, between the focal points and the policy departments. This is expected to pave the way to a future more encompassing and multi-functional IT platform.
 - the inclusion, as integral part of the *Custa quanto?* framework, of the SME Test, with the idea of leveraging the very nature of that tool (i.e., the impact investigation through hands-on dialogue with relevant associations and affected firms) to possibly expand the scope of stakeholder engagement in impact analysis in the future; and
 - the oversight / gate-keeping function of UTAIL, which so far has been exercised with relative generosity preferring moral suasion and constructive dialogue with the line ministries over rigorous and formal scrutiny.
- Against this backdrop, ***the general very positive and constructive stance*** towards the reform endeavour, taken by all institutional actors and stakeholders met by the OECD. Discussions during the fact-finding mission have revealed, by all parties involved:
 - good levels of awareness of (i) the administrative and political challenges that the Government faces when embarking in such a reform; (ii) the limits of the current measures put in place; and (iii) the importance of already thinking prospectively to reverse inertial regulatory practices and trigger change;
 - clear indication of high support of a more decided and coherent regulatory policy in general as well as, more specifically, of the impact assessment reform. Overall, the climate surrounding the impact assessment reform is very optimistic. (In the latter respect, most institutional actors interviewed by the OECD also indicated that they agreed with the choice by the Government to opt for a piecemeal approach. Interlocutors have also praised the fact that the reform was coordinated centrally, and they did not perceive it to be a top-down imposition upon them.); and
 - concretely, large satisfaction with the work by UTAIL notably with regard to its independence and neutrality; the provision of speedy expert technical assistance and feedback; and tailored and practice-oriented capacity-building. Considering the comparatively modest resources available to it, UTAIL is widely acknowledged as the legitimate, credible expert engine of the *Custo quanto?* framework.

3.2. Shifting from an incremental approach to a systemic change

Acknowledging the deliberate implementation strategy chosen by the Government, it appears nonetheless important to underscore the fact that ***wide-spread experience across OECD countries has shown that in most cases the most significant added value that regulatory impact assessment (RIA) system bring lies with the very process of conducting a RIA, rather than with the sheer calculation of regulatory impacts.***

Strictly speaking, what the *Custa quanto?* model has introduced so far in the Portuguese government does not yet constitute a fully-fledged RIA, nor does it rest on a comprehensive process. The assessment exercise is limited to a sub-set of direct compliance costs on economic operators, leaving out several

constitutive elements of a typical RIA – most notably, a thorough definition of the problem or mischief at hand and its foreseeable evolution in the future (baseline scenario); the identification and evaluation of alternative (non-regulatory) policy options; and the identification and valuing of benefits.

In this light, while the *Custa quanto?* model features important positive achievements and is delivering along the lines, two sets of challenges require close attention.

First, sequencing incremental adds-on to a tool does not necessarily result in coherent and comprehensive paradigm shifts. The Government does not appear to have addressed this question yet. Accordingly, it is critical for the Portuguese Government to pro-actively consider how it plans to ensure that progressively adding analytical elements will ultimately yield to an overarching systemic change in its process of elaborating policy, legislative and regulatory interventions.

Several elements may jeopardise a smooth, linear transformation of the government modus operandi into a fully-fledged participatory evidence-based decision-making process. They reflect the following strategic queries:

- ***How to reverse the “regulatory instinct” and create a result-oriented culture?*** – The *Custa quanto?* framework has not altered the foundations of the legislative process in the government: the elaboration of a legal text remains the starting and pivotal building-block of the process. Even in its most developed format (i.e. once the analysis of economic, social and environmental costs and benefits performed on businesses, citizens and public sector will be fully integrated), the framework’s procedural setting needs redesigning to encompass the “problem definition” step as the actual triggering element of the analytical process, at the earliest stages possible.

A further challenge refers to the fact that, at present, the LIA report is almost entirely a product of UTAIL. This does not foster analytical ownership by the ministerial policy departments responsible for drafting the legislative proposal, thereby hampering the process of reversing the regulatory instinct. The system, moreover, confers potentially significant policy influence on a technical body such UTAIL.

Issue for consideration: *Discussions during the OECD fact-finding mission have highlighted instances of more closely linking the analytical considerations to the drafting process. While still taking place exclusively on a pre-definite legal draft, such efforts of voluntary early collaboration and even co-production of the impact assessment between policy departments and focal points (and sometimes even including the Cabinet) should be promoted and eventually mainstreamed as institutional practice. Fundamentally, the Custa quanto? regime should be grounded upon the assumption that LIA reports are initiated and elaborated by the line ministries. The latter should bear full political and administrative ownership of the analytical process.*

- ***How to ensure that impact assessments do influence decision-making, and how to create demand for them?*** – The overarching purpose of requiring government services to produce LIAs is yet to be spelled out fully. So far, there has arguably been no or little actual interaction and discussion on the cost estimations and on the LIA report. The latter is produced by UTAIL only in the second part of the pilot phase and after UTAIL has shared it with the responsible line ministry for agreement, before transmitting to the Secretariat of State.

Also at the later stage of the legislative process, during the inter-ministerial consultation, cost estimations and the related report do not seem to play a role in the screening of the legal proposal

by various ministries with a view to identify cross-sectoral issues, exploit policy synergies and settle trade-offs.¹⁵

Furthermore, if the cost estimation or the report is amended further to the inter-ministerial consultation or during the revisions and deliberations in the meetings of the State Secretaries and/or of the Council of Ministers, UTAIL is not consulted upon, let alone informed. Similarly, the amendment of a draft legal text does not trigger a revision of the cost estimation.

Finally, the cost estimations eventually are a mere informative element in the deliberations of the Council of Ministers and there is no political obligation to justify a decision based on the LIA (either confirming or diverging from it), since the latter, moreover, remains confidential and is not put in the public domain.

Overall, the impression gathered from the initial experiences of the pilot phase is that LIA reports tend to have a minimal influence on the Government's decision-making. This stems in part from the fact that the Government has not fully explored the rationale behind the LIA process. Is it just to "inform" the Government on potential impacts? Is there the intention to progressively expand such communication function of LIA to inform all actors in the legislative process, including stakeholders? And should LIA (also) be used to stimulate systematic policy integration through the active joint consideration, in the assessing phase, of the economic, social and environmental dimensions? If such questions are not addressed upfront strategically, the *Custa quanto?* framework might severely suffer from a systemic lack of *raison d'être* and, ultimately, demand.

***Issue for consideration:** There appears to be scope for clarifying the purpose of LIA within an overarching vision, commitment and overarching policy to enhance evidence-based, transparent and participatory decision-making. Only if LIA reports are explicitly and publicly declared as one of the key bases for government decision-making can they become relevant. As a result, also the underlying process of producing and "using" LIAs will be considered more carefully by all actors involved.*

- ***How to overcome likely increasing resistance and create incentives for embracing impact assessment?*** – OECD discussions during the fact-finding mission have not revealed the existence of major resistance to the initial set of reforms. As mentioned above, on the contrary the general attitude of the actors interviewed was positive, constructive and optimistic while being realistic. This is an extremely valuable asset that should be maintained and nurtured but, from OECD experience, it is relatively atypical.

On the one hand, a certain level of internal administrative and political resistance is unavoidable. By default, regulatory policy intrinsically affects the distribution of bureaucratic power and the allocation of resources. The introduction of regulatory management tools such as regulatory or legislative impact assessment and the requirement to abide by due process and quality standards are often seen as an imposition and bureaucratic burden.

On the other hand, the apparently absent (or latent) resistance to LIA reported so far may well depend on the very design of the *Custa quanto?* approach – and that is inevitably going to change as the reform unfolds.

- The relatively uncontested implementation of the framework may be due to its relatively small practical impact on the daily legislative behaviour of the ministries. The treatment has been

¹⁵ The OECD Team was reported of anecdotal evidence of one case where one ministry has indeed challenged another sectoral body on the basis of the evidential information underpinning the proposal. It is unclear, though, whether the decision to request a re-examination of the impact assessment was informed by the *Custa quanto?* estimations and what were the actual concerns.

relatively “painless”, so to speak. Because of the very nature of its incremental approach – the limited set of costs to be identified and estimated; the narrow range of stakeholders to be considered; the relative simple application of the Cost Calculator; and the allocation of tasks between (mainly) the ministerial focal points and UTAIL – all these factors have affected ministerial policy departments only marginally. The cost estimations have *de facto* not extended or overburdened the typical procedures followed by the policy and technical departments. Often, the calculations are “squeezed in” in a handful of days to accommodate the set pace of the legislative process.

- The *Custa quanto?* framework has not represented a major political shift, either. It is not surprising therefore that ministerial cabinets have not resisted the model so far, at worst maintaining a rather neutral stance towards the tool. As mentioned above, the LIA regime lack “political teeth” at the moment.
- While the absence of resistance is positive and encouraging, this may be a temporary reaction and sheer inertia (or more intense objections) may take over when the “rules of the game” change and there are more constraints – i.e. as the *Custa quanto?* model advances on its path of adding analytical requirement and making assessments more sophisticated. Analyses will inevitably have to be longer, affecting both the bureaucratic machinery but also the political agenda. If the level of resources and analytical efforts invested in the impact assessment increases, then, the expectations by those supporting and preparing the assessment will increase in relation to their usage and, potentially, their influence throughout the decision-making process.

Issue for consideration: *The Government should be prepared to counter changes in the bureaucratic attitude towards the Custa quanto? framework. Reversing the logic, it appears critical for the Government and UTAIL to also work on new incentives for all actors involved to sustain their commitment and keep the reform’s momentum. The risk otherwise would be to advance at the slowest possible pace. Possible ideas to enhance the incentives structure to produce good quality LIAs could include issuing and publishing “naming & praising” reporting mechanisms; or upgrading the appraisal schemes for administrative performance (for instance by establishing awards, budgetary bonuses and promotions based on objective quality standards and transparent meritocratic criteria).*

- ***How to upgrade capacities and tailor efforts to maximise return in analytical investment?*** – In the light of the progressive introduction of additional analytical requirements for impact assessment, and consequently also the increased difficulty in carrying out the analyses, the *Custa quanto?* model cannot be conceived at constant resources. Both UTAIL and representatives of focal points have estimated as barely adequate the current level of resources at their disposal. Moreover, their capacities are going to be overstretched with the unfolding of the programme. The framework cannot rely on personal commitment and dedication only, which many officials both within UTAIL and in the ministerial services have admirably shown throughout the inception phase. It must be sustainable and rest on adequate, systemic resources.

Issue for consideration: *In order to maintain the envisaged pace of reform and ensure the delivery of credible and effective LIAs, investments in expert human resources are necessary and unavoidable both at the central level (UTAIL) and in the ministries (possibly in the shape of formalised LIA units). At the same time, capacity building should continue along many of the guiding principles deployed so far by UTAIL – namely (i) designing tailored, practice-oriented and rigorous training programs; (ii) best targeting participants to maximise return in training investment; (iii) forming and retaining high-quality trainers and coaches; (iv) providing incentives to ministries and individual civil servants to invest in such capacity-building; and (v)*

subsequently creating a sense of community of experts who are stimulated to contribute to the reform implementation and diffusion of good practices.

With regard to knowledge diffusion and institutional learning, discussions during the OECD fact-finding mission have also highlighted the willingness by line ministries – and their focal points in particular – to be better informed about commonly shared challenges in understanding regulatory impacts; in using the Cost Calculator spreadsheet; and other methodological difficulties encountered by ministerial services. Sharing good practices and particularly illustrative examples would also be most valued. At the same time, both UTAIL as well as the ministerial focal points should make sure that the upgraded LIA Manual is widely distributed across all policy departments.

A further element to consider is the scope of application of LIA, which at present is indiscriminately wide. With the progressive expansion of the types of impacts to identify and assess, and the related increasing sophistication of the analytical expertise required, there inevitably will be a need to address the trade-off between the number of analysis to carry out and their adequacy and effectiveness.

Issue for consideration: *Besides building capacities for LIA both qualitatively and numerically, therefore, the Government may consider limiting the types of initiatives for which an assessment is required, or opting for a tiered approach that progressively tailors the depth and type of the analysis carried out. This prompts reflections on possible approaches to rationalise and prioritise impact assessments – for instance, by setting impact thresholds; by establishing filtering (“triage”) mechanisms for tiered (light / medium / full) impact assessments); or by allowing a more progressive spectrum of possible assessment based on the proportionate analysis principle.*

- ***How to define regulatory quality and the success of the Custa quanto? reform?*** – Seeking “better” regulation is only possible and relevant if criteria are drawn up to differentiate between poor or good regulatory quality. Similarly, cost quantification may shed light on the appropriateness of a measure only if benchmark is possible. The *Custa quanto?* framework has so far not envisaged establishing regulatory quality criteria (no quality checklist is for instance available to UTAIL yet to systematically review submissions by the focal points). Neither has it developed proportionality guidance, allowing for instance to ascertain when “high costs” are “too high”.

As to the latter point, at present cost benchmarking is prohibitive because benefits are vaguely identified and barely assessed, and because only one option (the proposed regulatory measure) is considered in the LIA. Until there is a more comprehensive analysis, it is difficult to imagine that the impact assessment system will have an impact and, for instance, prevent Government from adopting unsound regulatory initiatives (see also the remarks above about LIA’s capacity to influence decision-making).

To be sure, UTAIL has kept track of submissions, partially collecting statistical information on substantial indicators (such as the number of proposals that overall reduce or increase costs; and of the times in which ministries were prompted to revise their initial assessments). Albeit commendable and relevant, this activity results from a voluntary commitment by UTAIL to best underpin the mandatory interim evaluation report it has to submit to the Council of Ministers, rather than being a structural policy for reform monitoring and evaluation that is inbuilt in the very design of the *Custa quanto?* framework. Ministries moreover do not appear to have been made aware formally of such practice by UTAIL, which may affect their incentives to perform.

Issue for consideration: *While UTAIL has, as reported to the OECD team, greatly facilitated such dialogue within the current confidentiality constraints, margins for a more structured and*

tailored approach exist. UTAIL interim evaluation report in January will constitute a first valuable source to discuss achievements and challenges among all actors involved. In that respect, the report will be a valuable input to the Government to make further decisions on the implementation of the Custa quanto? framework, it will also be an opportunity to stimulate horizontal learning and make practical improvements in the daily LIA practice of the ministries.

More generally, it appears fundamental that a framework is drawn up of explicit quantitative targets and performance indicators to monitor progress in implementation; determine whether success is achieved; and ultimately enhance accountability and stimulate learning.

Monitoring and reporting on the performance of Custa quanto? framework could moreover provide relevant elements to open and nurture a dialogue with external stakeholders (representing the private sector, civil society and academia, as appropriate). Experience in OECD countries suggests that communicating about reform endeavours is vital for several reasons, including effectiveness, accountability, legitimacy and trust. In addition to stimulating their responsibility for delivering relevant data and, in general, improving the level playing field for evidence-based decision-making, informing stakeholders may become critically instrumental when seeking external support by the reform champions. As mentioned above, “helping the reformers reform” is likely to be increasingly necessary as the system unfolds, when it might be more difficult for forces within the government alone to counter internal resistance.

3.3. Leveraging impact assessment to tackle Portugal’s regulatory challenges

The second set of considerations refers to the extent to which the LIA practices resulting from the Custa quanto? framework address the actual regulatory challenges that burden the Portuguese economy and society.

The OECD is fully aware that the *Custa quanto?* framework is a first attempt to (re-)introduce the notion and practice of evidence-based decision-making after several years of reform stalemate. It also acknowledges that only a few months have passed since the Government actual set in motion of the framework. The following considerations are by contrast quite conceptual, structural and systemic in nature. They refer to a unitary, coherent vision of the Government’s regulatory policy concerning all the reform components and applying throughout the various legislative stages and across all executive services.

To a large extent, therefore, the implications stemming from this section are likely to trigger the reform agenda for a period stretching well beyond the years 2018-2019. It is nonetheless critical to raise the issues to best situate the *Custa quanto?* system and the LIA regime in such an encompassing strategy.

One of the first reflection motivating governments to launch regulatory policy reforms is the diagnosis of current regulatory challenges. The Better Regulation agenda can serve several purposes, also simultaneously. Among those, the identification, measurement and possibly reduction of administrative burdens and regulatory costs on businesses is certainly a relevant objective. In the context of post-crisis recovery, moreover, that has become an explicit agenda in many EU Member States. Also the European Commission has committed to support reforms to that end.

The *Custa quanto?* model has been designed to tackle such a specific reform front, and first quick deliverables are already at hand. The Government might nonetheless ***consider whether the potential of the model can be strengthened further by moulding the future LIA regime in a reform strategy that consistently accounts for and addresses current shortcomings in Portugal’s regulatory environment.***

The following three major regulatory challenges emerged from the discussions during the OECD fact-finding mission:

- **Predictability** – The introduction of Common Commencement Dates has facilitated regulatory compliance by regulated entities and increased legal certainty. However, to a large extent the government legislative planning system appears to remain opaque and rather unstructured. Annual legislative programmes are not published in their entirety, which prevents stakeholders from anticipating forthcoming initiatives and measures and prepare for change. With government, in turn, no systematic track is kept of the implementation of the annual programme, and there seems to be irregular discipline to limit unplanned initiatives. Predictability is reported to be particularly jeopardised in cases of “omnibus” transpositions of EU Directives, when several EU legal provisions on disparate fields are adopted through one single transposing act, thereby making it difficult for stakeholders to ensure compliance.
- **Stakeholder engagement** – In Portugal, public consultation is not legally required for all legislative and regulatory initiatives. Consultations take place almost exclusively on the sole draft legal text. There is great variance of practice in terms of the channels and format of consultation; the stakeholders invited to participate; the stage in which it occurs and the consultation period. Open public consultations are seldom. Ministerial services and cabinets enjoy significant discretion in organising the consultation rounds, there is no single set of principles and minimum standards and consultation practices are not screened systematically. While extremely short deadlines for submitting inputs and feedback are not exceptional, stakeholders also tend to question whether criteria are deployed to ensure a balanced representativeness of the views collected by government. The government also fails to systematically provide feedback to those contributing to the consultation process and explain the reasons for including or disregarding specific inputs.
- **Data availability** – The scarcity and poor reliability of data is a challenge equally acknowledged by both government services and stakeholders. The available data is often not easily accessible, old, and procured through different methodologies or assumptions, so that harmonisation and comparison are difficult. Open data is scarce in Portugal. Within the public administration, one factor aggravating the difficulty to generate relevant data is the confidentiality regime which hampers the establishment of common databases and data sharing. The National Statistical Institute has embarked on a series of projects to update and upgrade the statistical database, but the practice of collecting data at firms’ level is relatively recent. On the stakeholders’ side, producing relevant data in a timely manner is difficult because of the often tight deadlines imposed by the policy elaboration and legislative process, along with lack of capacities and internal organisational challenges among most associations to swiftly reach out the membership for direct data sourcing.
- **Implementation and enforcement** – Both implementation and enforcement are reported to present serious challenges in Portugal. Drafters of legal texts often neglect aspects of compliance, while organisational and procedural arrangements tend to remain unconsidered and the related costs underestimated. Feasibility impact assessments are not carried out and there is no section in the LIA template explicitly dedicated to post-adoption arrangements and forecasts. Similarly, enforcement presents ample margins for rationalisation and coordination. Inspections tend to be determined by discretionary decisions of the enforcing authorities, mainly due to the lack of resources and a certain ambiguity in interpreting legal provisions.

The OECD Team gathered several indications from actors both within the Government and external stakeholders that the existence of such challenges is widely acknowledged and also that there is broad agreement on the underlying causes and implications. ***What seems to be missing – or, at least, to be still at a very embryonic stage – is the elaboration of a reform strategy to consistently tackle such challenges.***

Issue for consideration: *In the context of further developing the Custa quanto? framework, it appears necessary to specifically work on the interface between*

- ***LIA and the legislative planning*** – *Working on such an interface should be geared towards radically streamlining the activity of the Government and make ministries more accountable for their legislative initiatives.*

On the one hand, in the future LIA should become the pivotal element to define the policy problem and to set the rationale for State intervention. This should start at the earliest stages possible. To date, by contrast, no tool in the impact assessment process serves that purpose and legal drafts are produced with no proper background evidential analysis. LIAs are largely still post-facto justifications of decisions already taken and they do not impact decision-making beyond merely informing on the magnitude of cost variances imposed on businesses. At the same time, adopted legislation might quickly prove disproportionate, ineffective or even disadvantageous. As an interlocutor of the OECD put it, given Portugal's budgetary constraints and its competitiveness gaps, no time is left for experimenting with regulatory solutions. The issues need to be diagnosed and addressed pragmatically once.

On the other hand, the reform of the legislative planning should encompass mechanisms to accommodate replacing the current general requirement to carry out undifferentiated impact assessments on all legislative initiatives of the Government by a more targeted approach. Such a shift acknowledges objective budgetary and human resources constraints, once the Custa quanto? regime reaches cruising speed. It also reflects the “value for money” rationale, in as much as it makes the scope of application of LIA strategic and proportionate, narrowing the production of fully-fledged assessment down to a quite limited number of most important proposals, possibly on the basis of government-wide checklists.

- ***LIA and stakeholder engagement*** – *A second front where synergies can be maximized considerably regards the involvement of external actors in the process of producing and validating LIAs. Experience in OECD countries suggests that the potential to enrich the source of information, improve the evidential analysis and hence increase the relevance of impact assessments for the decision-making increases exponentially if there is a porous exchange between experts of the public administration, in the private sector and civil society.*

This appears to be all the more necessary if the Custa quanto? model is to strengthen the SME Test, as the usefulness of the latter is intimately dependent on the decree to which relevant information on micro-enterprises and SMEs are collected closer to the source.

A more systematic and sustained engagement of the stakeholders at the early stages of the legislative process would meet with their demands for closer participation; it would help restore trust in public action and reduce the risk of regulatory failure. Concrete reform steps would include setting and enforcing minimum public consultation periods; including as much as possible background documents underpinning the legal draft in the consultation dossier; and ensuring that ministries provide public feedback on public consultation inputs.

At the same time, this does not mean indiscriminately accepting the principle of co-producing public policies and abdicating the responsibility and leadership of government in determining

policy action. Enhanced stakeholder engagement complements and supports this task, it does not replace it.

As to the challenge posed by the current confidentiality regime, which formally prevents Portugal to fully embrace Open Government practices, considerations should be given to the opportunity to amend the legal basis. In the short term, the Government might also consider ways to allow for a more porous interface with external stakeholders, for instance by drawing from collaborative experiences both in the framework of the Simplex programme and with participatory budgeting. Because of the intrinsic role played by public consultation in the SME Test, the requirement to carry out such assessments meaningfully may help loosen the rationale for the confidentiality regime.

- **LIA and implementation / enforcement** – The current template for impact assessment could be expanded to explicitly include considerations on the feasibility and proportionality of the implementation and enforcement arrangements envisaged by the legal proposal to ensure achievement of the set policy goals. The Impact Assessment Manual might be revised accordingly to provide policy departments and focal points with additional guidance on these aspects. Specific emphasis should be put on the analysis of the resources needed by both the public administration and the economy to comply with the envisaged measures.

In the spirit of joining up reforms endeavours more structurally, it also appears opportune to seek a closer integration between the administrative simplification initiatives and the Custa quanto? framework. To date, these initiatives appear to have remained largely autonomous and to advance on independent tracks, despite clear potential overlap.

Issue for consideration: In particular, there seems to be unexplored opportunities for institutional learning from the experience with Simplex programme. The latter is now established, credible and effective component of the Portugal's Better Regulation agenda and important lessons could be drawn to avoid similar mistakes in designing and implementing the reform and maximise efficiency in deploying LIA.

Specifically,

- it may be worth investigating further the extent to which those elements could be adapted and transposed to the Custa quanto? framework, which have made Simplex such a collaborative and participatory tool. One important aspect, for instance, is the definition of what is (or is perceived to be) a problem and why it deserve simplification. Under the Simplex programme, direct inputs and suggestions stem directly from stakeholders. Also thanks to such participatory approach has Simplex managed to change the bureaucratic mindset within public administrations in Portugal, shifting it away from a procedure-based to a result oriented culture.
- A further key factor supporting the success of Simplex has been the thorough follow-up, monitoring and reporting arrangements, which has fostered the transparency and accountability of the programme. Each year, the Government is required to report on the implementation of the simplification measures and to provide reasons in case of non-implementation. The monitoring relies on two complimentary approaches. First, small inquiries through forms and survey letters provide an insight into citizens' and companies' perception of the implemented measures. Second, a scientific framework has been developed together with indicators for evaluating different Simplex measures, in co-operation with public universities and a selected number of companies.

- *Finally, it is excellent that unique expertise from the Agência para a Modernização Administrativa (AMA) is currently made available to the impact assessment framework as a permanent staff of UTAIL. Closer organisational bonds could nonetheless be developed in the future to ensure that synergies are sought on how to best use information resulting from administrative burden calculations in the context of Simplex to inform ex ante impact assessment as a part of the Custa quanto? framework.*

As mentioned at the outset of this section, all these are systemic changes that cannot stem from and rely only upon initiatives undertaken in the framework of the *Custa quanto?* programme. To be sure, by their very nature most of them escape the remit of the competences entrusted to UTAIL. However, the success of the LIA reform over the medium-term will ultimately pass also through the recognition of the need to embed the tool in such a broader, strategic action. Failure to do so might severely jeopardise the chances for the *Custa quanto?* programme to make real difference, and even to survive changes in political support in the Government and personal commitment in UTAIL and among key ministerial cabinets and focal points.

Recognising this might require revisiting the incremental approach upon which the *Custa quanto?* reform is resting. Some elements might require more decisive, radical change. Considering Portugal's past record in implementing reforms to enhance more evidence-based decision-making and the relative delay accumulated to date in delivering better regulation compared to other European countries, it is opportune to ponder whether Portugal can afford any tarrying with the reform of its legislative process.