

IMPROVING BUSINESS INSPECTIONS



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EXECUTIVE SUMMARY

Government has placed simplification and reduction of bureaucracy high on the agenda. Throughout the years, different inspection functions have developed within a number of Government departments and entities. This development has led to wide differences in inspection policy and practice that cumulatively have become burdensome to businesses. In this regard, the 2015 Budget Speech announced that the Government is committed to reducing bureaucracy for businesses and to achieving greater coordination in the work of all or some of its inspectorates whilst safeguarding the employment of staff within the different inspectorates. This White Paper addresses the business community and the general public making use of Government inspectorates. The target group includes citizens, public authorities, organisations, and in particular, the business community and their representatives, industry associations and consumer interest groups.

The Government has looked into different approaches and best practices abroad and effectively is proposing this White Paper towards the improvement of inspections within the local context. It is evident that different countries have faced common issues to Malta. The paper identifies a number of issues that need to be addressed, namely, the regulator's autonomy in setting its own inspections policy, advice and guidance offered to the business community, silo mentality, practices in data sharing, risk analysis and risk-based assessments, the role of joint inspections, overlapping inspections, feedback and reporting, compliance recognition schemes and enforcement and penalty regimes.

Experience based on lessons learnt from the implementation of such reforms abroad support the current strategy identified in this White Paper.

The proposed way forward includes the formulation of a common policy framework.

The common policy framework proposes four main outcomes, namely:

- (i) more relevant inspections,
- (ii) empowered businesses,
- (iii) fewer inspections and a reduction in the associated burdens,
- (iv) improved transparency.

This framework is designed to lead to a more coherent and consistent inspections framework within which businesses will be able to operate, plan and execute their operations more effectively. Although developing a common policy framework goes a long way in setting a strategic direction, it does not deliver the desired results if left in a vacuum.

In addition to the common policy framework, the Government is consulting on three options for organisational change aimed at maximising the achievement of results in the implementation of the proposed reform of business inspections

1. INTRODUCTION

BACKGROUND

1.1 Government inspections are an essential function of a modern regulatory state. Regulation is an important tool of public governance. Businesses operate within a number of legislative frameworks that necessitate monitoring to ensure that laws are obeyed. The main purpose of the inspection function is to protect the interests of society and safeguard its future by ensuring compliance with legal, regulatory and governmental requirements. Inspections also enable policy makers to gain feedback on the impact and application of these requirements.

1.2 Enforcement and inspections are crucial to how the regulatory sphere affects businesses and the economy. Inspections and enforcement actions are generally the primary way through which businesses “experience” regulations and regulators. Changes to law will not deliver the anticipated benefits unless they are accompanied by changes in the way that enforcement and inspections are carried out.

1.3 Changes in the way inspections are carried out, aimed at making them more compliance-focused, more supportive and risk-based, can lead to real and significant improvements for businesses, even within the framework of existing regulations. Thus the ability to change the way regulations are enforced in practice does matter. Finally, enforcement and inspections are as much about methods and culture as institutions, and as much about organisational mechanisms as legislation.

1.4 In congruence with Government’s programme for the simplification and reduction of bureaucracy, and for the development of a better operating environment for businesses, the 2015 Budget speech¹ announced that Government would be considering the possibility of integrating all or some of its inspectorates or their functions into one entity aimed at the reduction of bureaucracy, whilst safeguarding the employment of employees within the different inspectorates.

1.5 The Government has conducted internal consultations within the relevant Ministries, organisations and their respective inspectorates, and gathered the necessary information with regard to inspectorates’ operations, co-ordination, communication, reporting, internal audit, compliance, enforcement and administrative fines.

RATIONALE

1.6 This White Paper looks into the current regimes of business inspections locally and considers approaches advocated in international studies and best practices in the implementation of inspections reforms. Four key objectives are paramount in the reform of local businesses inspections:

- bringing about better policy outcomes
- increasing compliance
- improving the relevance of inspections
- reducing the number of inspections and the associated burdens for businesses.

¹ Budget Document (2015), http://mfin.gov.mt/en/The-budget/Documents/The_Budget_2015/Diskors_tal_Budget_2015.pdf

2. LOCAL CONTEXT

GOVERNMENT COMMITMENTS

2.1 “Malta’s business sector is exceptional in the EU context due to its small size, and it is the small size of the market that naturally defines the pattern of this sector. Hence, it is no surprise that, since microfirms make up 95 out of 100 businesses with fewer than 10 employees, Malta accounts for the largest share of micro-firms out of all firms in the EU. They account for 39 000 employees, or slightly more than one third of private sector employment. In terms of industrial sectors, services and trade make up the major share. These two sectors together account for 77% of all SMEs (EU: 75%), 73% of employment (EU: 60%) and 82% of the total value-added created (EU: 66%). Construction and manufacturing, on the other hand, play a lesser role in Malta’s SME sector and in the economy as a whole. These results are determined by a number of specific service activities, such as distributive trades and food and accommodation, including tourism. Given Malta’s overall economic set-up, its particular geographic location and the small size of its economy, it is interesting that it should account for a relatively large share of high and medium-to-hightech manufacturing firms, as well as knowledge intensive services firms.”²

2.2 The Government is committed to publish a White Paper on the consolidation of business-related inspections. Inspections reform could impact positively on the business community, and this would subsequently have a positive effect on the national economy. In developing the options being put forward in this paper, particular consideration was given to the Government’s commitments and the ensuing developments within the public administration in an attempt to identify the most strategically opportune and effective implementation route that would reap the required reform benefits.

2.3 The Government has placed simplification and reduction of bureaucracy high on the agenda with a commitment to reduce bureaucracy by 25%. This has been re-affirmed through the appointment of a Parliamentary Secretary for Planning and Simplification of Administrative Processes and a Commissioner for Simplification and Reduction of Bureaucracy. The reform aimed to address business-related inspections as announced in the 2015 Budget speech is further confirmation of the Government’s commitment in this regard.

2.4 The Government is committed to achieve the 25% target in the reduction of bureaucracy through a number of actions namely:

- the better use of ICT;
- the elimination of repeated requests for information by different government entities;
- the elimination of unnecessary burdens for the business sector;
- ensuring that a single process will be required to get the required permits.

The above actions are considered as having direct relevance to the subject matter being addressed in this White Paper.

Inspection Regimes

2.5 Inspections within the scope of this paper are carried out by different inspection regimes across the public administration. Whilst a number of inspections are preventive, others are of a reactive nature and are conducted in response to the receipt of complaints. The majority of inspectorates included in the scope of this paper, conduct all their inspections in-house. A limited minority of inspections is conducted by external accredited assessors/competent persons and the legal responsibility to ensure that such inspections are conducted lies with private actors.

2.6 The local regulatory regime has developed in an incremental manner, with a number of Government departments and entities all mandated to conduct inspections within their specific remit. The legal status and composition of these bodies varies widely with only limited initiatives being taken to promote and facilitate joint working. This has led to wide differences in inspection policy and practice which cumulatively have become burdensome to businesses.

² http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2012/malta_en.pdf

2.7 This scenario has given rise to a number of issues which need to be addressed in a strategic approach, namely:

- Over-bureaucratisation
- Silo mentality
- High actual and opportunity costs
- Limited data sharing
- Inconsistencies in policy and practices
- Overlaps
- Weak reporting and report sharing
- Enforcement and penalty regimes that lack effectiveness.

2.8 Inspectorates generally function within a regulatory framework established by primary and subsidiary laws. EU regulations and international obligations also require inspections in relation to information obligations and are an integral function of regulators such as the Malta Competition and Consumer Affairs Authority or the Environmental Health Directorate. It is pertinent to note however that a number of non-regulated inspections are also conducted and are based on standards issued by local Departments.

2.9 As a result of the different regulatory requirements a number of inspections are highly regulated and necessitate specific technical and professional competences, such as in the case of food and food chain related inspections. 50% of the inspectorates require specific technical and professional competences by employees carrying inspections under their remit. On the other hand a considerable number of inspections do not require specialised competencies.

2.10 This variance in the professional and technical capability of employees is also reflected in the number of different public service sectoral agreements and public sector collective agreements covering the employment conditions of employees within their respective employing organisations.³

Inspection-induced burdens

2.11 Whether or not inspections are conducted in relation to information obligations, they generate administrative burdens for businesses and incur a cost to Government. Although this paper was not intended to undertake a detailed study of the cost of inspections, it is nonetheless considered necessary to try to attain a broad estimate of the total annual costs of inspections. In 2012 the administrative costs for businesses resulting from inspections

3 Annex 2

related to information obligations in eleven⁴ select areas within the remit of 16 regulatory departments or entities of Government, was estimated as totalling to €1,680,926 translated into 49,642 hours of administrative burden (staff time) for businesses.⁵ Therefore, in broad terms, private firms incur some €100,000 of administrative burden resultant to information obligations for each regulatory Government department or entity, although it is pertinent to note that this is not evenly spread. On the basis that this document addresses all types of business inspections (not only those required for information obligations), and on the above estimates and assumptions, the total cost of inspections in Malta is calculated at over €20 million annually.

2.12 It is not realistic to expect that this burden can be eliminated, given that inspections ultimately safeguard the interests of society and contribute to the quality of life of the public in general. However, one can reflect on how to adapt the various inspections regimes with a view to:

- better achieving policy outcomes – competitiveness, fair competition, consumer protection;
- increasing compliance – from policing to information provision, advising, empowerment and self-assessment; and
- reducing the number of inspections and the related burden for businesses – but also reducing social risks through proportionality, focus, and the introduction of risk-based and joint-inspection programmes.

2.13 The highest number of inspections related to information obligations are related to financial services and food safety.⁶ The data based on the number of annual inspections carried out in 2013, indicates that inspections related to price compliance are the highest of all at 11,800 inspections followed by programmed food-related inspections. Annex 4 outlines the ten highest incidences of annual inspections based on 2013 figures.

Results and Outcomes

2.14 Reports issued by the various inspectorates provide information on the results and outcomes of inspections. Reporting is predominantly qualitative rather than quantitative. Annex 5 presents a snap shot of some of the results and outcomes of inspections conducted in 2013.

4 Select areas being: Company Law; Pharmaceutical Legislation; Working Environment/Employment Relations; VAT; Food Safety, Fisheries; Financial Services; Environment; Public Procurement; Statistics; Income Tax from within 16 regulatory departments or government entities.

5 Better Regulation Unit MEU (2012), Government of Malta Better Regulation Project – Improvements to existing enforcement regimes.

6 Better Regulation Unit MEU (2012), Government of Malta Better Regulation Project – Improvements to existing enforcement regimes.

Key Issues

Regulator's autonomy in setting own inspections policy

2.15 Each regulator has autonomy in deciding its own inspection policy. This is at times influenced by legislative requirements or sector-specific frameworks, such as in the case of food-related inspections. There is no central co-ordination of inspection policy, on how inspections should be planned, co-ordinated and conducted. The lack of a common framework, together with the number of inspectorates and regulatory bodies across government, makes it hard to develop synergies between existing inspectorates. This has brought about the need for a common policy framework to facilitate convergence in the work of the different Inspectorates.

Advice & Guidance

2.16 Businesses need freely accessible information so they can comply with regulations, particularly when one considers the technical and complex nature of many regulations. This information needs to correctly reflect the law, but it also needs to be clear and easy to follow. At present such information is not widely available. This can be addressed by the provision of checklists, guidelines and other relevant documentation and information which are readily available to the business community and the general public.

2.17 Advice and guidance can be provided through appropriate educational campaigns and by making information easily accessible at a low cost for the business community and the consumer alike. This should be considered as a tool towards the attainment of increased compliance.

Silo Mentality

2.18 In the current scenario, businesses too often have to communicate the same information to different inspectorates at the same time because of the limited use of joint inspections and the limited sharing of data. Moreover, in the process of acquiring a particular licence, the same business is subject to a number of inspections by different inspectorates.

2.19 Considering the number of inspectorates and their various responsibilities, it is important to address and reduce this silo mentality whilst increasing co-operation between different Inspectorates.

Data Sharing

2.20 The practice of data sharing requires improvement. However, a number of entities have adopted mechanisms to enable the sharing of data and information and are venturing to facilitate co-operation through the establishment of protocols and memoranda of understanding (MoUs) with other inspectorates. The sharing of data and information between Government departments, directorates and entities, based on identified needs and informed consent, is essential to ensure an efficient and effective inspections system.

2.21 Inspectorates need to increase their effectiveness by better data sharing. This will include memoranda of understanding between inspectorates and data sharing protocols. Moreover, there is the need to take full advantage of information and communications technology (ICT) in creating and facilitating data sharing. Investment in ICT is required to facilitate data sharing. Data protection requirements must be observed.

Risk Analysis and Risk-Based Assessments

2.22 Inspectorate operations range from best practice models adopting a risk-based approach, to the adoption of non-risk based operations. In those instances where some element of risk assessment is implemented, this is generally done as a measure to mitigate workload pressures due to resource-related issues rather than as a policy initiative to target inspections in a more effective manner. Thus, there is a need for better targeted inspections through the adoption of risk analysis and risk-based assessments.

2.23 Risk-based inspections and assessments are being implemented by a number of inspectorates, mainly as a result of EU legal obligations. Most Inspectorates provide specialised training to their staff and have designated applications, tools (e.g. Quality Risk Management Tool) and data, to carry out the assessments and grade them into High, Medium and Low risk categories depending on the expected outcome of each scenario.

2.24 Risk analysis can be predominantly observed amongst some inspectorates where ICT applications are used to assist in extrapolating information about high risk factors that may necessitate additional inspections, either scheduled or ad hoc, and possibly in collaboration with other inspectorates.

2.25 A number of inspectorates have a regulatory framework which requires risk analysis and a risk-based approach to inspections. These are predominantly in the areas of food chains, food safety and the environment sector. Other inspectorates, whilst not obliged by their respective legal framework, have adopted risk analysis and risk-based assessments as part of their operational norms. However a significant number of inspectorates have not yet adopted such measures.

2.26 Risk analysis is the tool used to gauge risk factors and their effects and is not only essential in obvious scenarios, such as the construction industry or food safety, but also in areas where the protection of the consumer is paramount, as in the tourism industry which is an important contributor to economic growth. In this context the definition of risk may need further elaboration and specification with a view to bringing about greater convergence in the different inspectorate sectors. Different sectors will view the concept of risk from their particular perspective and operational dimension.

2.27 Risk-based assessments and inspections need to be conducted to better manage risks. Incoming complaints often take precedence in the day-to-day running of inspections and need to be investigated irrespective of any pending risk analysis or risk-based assessment. Risk analysis and risk-based assessments are crucially important to minimise risk through a holistic approach. Despite the various legal parameters and concerns, risk analysis can be carried out through a singular inspection which caters for multi-faceted purposes, including a wide range and variety of assessments which to-date are being carried out separately.

Joint Inspections

2.28 In some cases, joint inspections are required due to legislative frameworks and obligations. However joint inspections can be applied even in the absence of a legal obligation to do so, although this does not necessarily mean that in all instances and under all circumstances joint inspections should prevail. Facilitation and co-ordination of joint inspections is necessary in order to reduce the bureaucratic and administrative burdens on businesses, particularly during start-up as well as in follow-up inspections which aim at minimising risks or to gather information in compliance with legislative obligations. Thus, there exists the need to set up a mechanism in order to bring together those aspects which are fundamental to inspections in different

scenarios, and which would co-ordinate both technical and non-technical functions or components of inspections.

2.29 A number of inspectorates do conduct shared inspections for various reasons, and not necessarily because shared inspections are provided for by law. Most joint inspections seem to be intelligently planned and require strategy, systemic co-ordination and dynamic action in order to achieve efficient and effective results with the least exerted effort.

Overlaps

2.30 Legislation at times gives rise to a number of overlaps which come to be reflected in the operational practices undertaken by different inspectorates. Whilst it is understandable that a number of inspections require specialised intervention, assessments, and actions, others have overlapping functions, particularly at an administrative level. Overlaps need to be reduced in order to reduce administrative burdens for business whilst ensuring that inspections are carried out to satisfy legal obligations and to protect society.

2.31 Overlaps originate from the very starting point of administrative processes, whether these are in the form of an application, a query or a complaint. The concept of a single point of entry for the reception of applications is crucial in determining the route of action that is required and where such action needs to be addressed, disseminated, co-ordinated, actioned, inspected, reported, shared, notified and finalised. Such processes are often similar to a variety of actions which are required, be they pre or post licensing/permitting of any particular business.

2.32 There has to be a clear distinction between inspections which are required to issue certification that a building is up to standard to carry out any business or commercial activity, and inspections which are required to issue a particular licence for any trade or business under specific legislation. Whilst the latter instance very often requires specialised knowledge, competences and experience of the particular subject and its corresponding legislation, the former requires administrative and technical competences which may have overlaps shared between professional and non-professional regimes. In this respect, a number of non-technical tasks can be undertaken by technical or professional personnel during their inspections. The identification of overlaps becomes once again crucial in reducing administrative burdens whilst increasing efficiency and effectiveness. Co-operation and collaboration between inspectorates becomes an essential tool, where communication networks provide a basis for identifying strengths within operational systems and address them coherently, intelligently and creatively. The co-ordinating aspect thus becomes prevalent in ensuring that all the necessary functions of inspections are undertaken without overlaps which are often viewed as cumbersome by the business community.

2.33 Consideration needs to be given not only to existing legislation but also to new regulations that come into force from time to time. In this respect, inspection and monitoring regimes are to be viewed as a mechanism to consolidate inspections prior to creating new ones arising from such new obligations.

Feedback and Reporting

2.34 Inspection reports are issued mostly for internal consumption or for enforcement purposes. There is the need for more sharing of reports with other entities and authorities, as well as of submitting reports to businesses and customers. This would further assist the process of changing cultural attitudes towards the provision of an increased assistance to the business community.

2.35 Advice and guidance can be more effective following a discussion of inspection findings and the reports that follow, rather than resorting to enforcement action. These tie with the need for educational campaigns and the concepts of self-assessment, self-risk analysis and self-compliance which need to be incorporated in the procedures of any Inspectorate.

2.36 In a minority of cases inspectorates do overtly and explicitly discuss negative reports on irregularities found during inspections with the regulated body concerned and agree on a time-frame for follow-up inspections. Such good practice needs to be enshrined as a principle, at least for those situations where self-regulation is identified to take precedence over the inflexible conduct of inspections.

2.37 Consistent and regular reporting, be it shared with other inspectorates or simply 'client based', provides a basis for analysing risks, and further highlighting the need for risk-based assessments to better target repeated non-compliance.

2.38 The issue of reporting further impinges on statistical information which is required both for national and international reporting obligations. Information-gathering needs to be streamlined in the interest of greater consistency and transparency of outcomes and results.

Compliance Recognition Schemes

2.39 Compliance schemes, such as the Trust You Mark implemented by the Office for Consumer Affairs, are limited in number. Inspectorates, in their various modes of operations and dealing with the business community, need to consider initiating compliance recognition schemes as a matter of good practice.

Enforcement and Penalty Regimes

2.40 A number of inspectorates base their enforcement efforts on the reporting of infringements to the Police with a view to the institution of court action against those responsible. This approach is of limited effectiveness, notably due to delays in the system which at times results in cases becoming time-barred.

2.41 Initiatives such as administrative fines and out-of-court settlement have been applied only to a limited extent so far. Although in most cases the experience in the use of administrative fines is a positive one, delays are nonetheless experienced in the proceedings of administrative appeals bodies.

2.42 Systems which promote, facilitate and enhance the processes of progressive warnings, administrative fines and out-of-court settlements need to be encouraged and explored further. A culture of resorting to an arbiter needs to be nurtured, whereby tribunal and court actions would be limited to being the final resort both on the part of the alleged non-conforming regulated party as well as by the regulatory body.

Addressing the Issues

2.43 The proliferation of inspectorates within different departments and entities has resulted in a number of issues which consequently are impacting negatively on businesses. Most of these issues derive primarily from the autonomy of each inspectorate to decide its own inspection policy. This has been further compounded by a lack of data sharing arising mainly from perceived legal restrictions, incompatible IT systems, and the resultant silo mentality. Moreover, the provision of advice and guidance should be considered as a means for inspectorates to facilitate improvements in the compliance rate rather than as a threat.

3. INTERNATIONAL PERSPECTIVE

The Organisation for Economic Co-operation and Development

3.1 The Organisation for Economic Co-operation and Development (OECD), as a leading international community player in the promotion of reforms to regulatory inspections, provides a range of core principles on which countries can base regulatory enforcement and inspections. These principles provide for best compliance outcomes and the highest possible regulatory quality. Through these principles, the OECD seeks to develop an overarching framework to support initiatives for the improvement of regulatory enforcement and inspection, making them more effective, efficient and less burdensome for inspected bodies and at the same time less resource intensive for governments.

OECD Regulatory Enforcement and Inspection Reform Principles	
<ul style="list-style-type: none"> • evidence-based enforcement • selectivity • risk focus and proportionality • responsive regulation • long term vision • co-ordination and consolidation 	<ul style="list-style-type: none"> • transparent governance • information integration • clear and fair process • compliance promotion • professionalism

The Hampton Review

3.2 In 2005 the Hampton review in the UK published a report entitled 'Reducing administrative burdens: effective inspection and enforcement'. This report considers how to reduce unnecessary administration for businesses and includes a number of recommendations in relation to principles for regulatory enforcement:

- the use of comprehensive risk assessment throughout the regulatory system to concentrate resources on the areas that need them most - reducing inspections where risks are low, but increasing them where necessary and making much more use of advice;
- regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
- all regulations should be written in a manner that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when regulations are being drafted;
- no inspection should take place without a reason;
- businesses should not have to give unnecessary information or give the same piece of information twice;

- the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions;
- regulators should provide authoritative, accessible advice easily and cheaply;
- when new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimize the administrative burden imposed;
- regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work;
- regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case to do so.

Implementing Inspections Reforms – Best Practice

United Kingdom

3.3 The Hampton review report published in 2005 was critical to inspectorate reform in the UK. The review sought to embed a new policy approach to enforcement based on proportionality and risk-based assessments to help focus human resources on high-risk businesses that were unlikely to comply with regulations, and to reduce the burden on those that did. Amongst its main recommendations, the Hampton review recommended that the 31 regulatory bodies then in existence should be merged into seven thematic ones:

- Consumer protection and trading standards;
- Health and safety;
- Food standards;
- Environmental protection;
- Rural and countryside issues;
- Agricultural inspection; and
- Animal health.

The report recommended that human resources should be released from unnecessary inspections and redirected towards the provision of advice to improve compliance. The report also pointed to the need of data requirements, including the design of forms, to be co-ordinated across regulators.⁷

3.4 Subsequently the UK Government enacted the Regulatory Enforcement and Sanctions Act 2008 which sought to advance Hampton's vision of a regulatory system that is risk-based, consistent, proportionate and effective. The Act provides an extended toolkit of alternative civil sanctions as a more proportionate and flexible response to cases of regulatory non-compliance normally dealt with in the criminal courts. The civil sanctions which regulators may impose as alternatives to criminal sanctions are fixed monetary penalties, discretionary requirements (such as variable penalties and non-monetary requirements), stop notices and enforcement undertakings.

3.5 In 2005 the UK Food Standard Agency Launched a Safer Food, Better Business Toolkit, which was made available in 16 languages, in reaction to a high number of problems among small-scale food business operators, as a result of which compliance proved to be difficult in spite of a high rate of inspections. The toolkit explained why it was important to follow certain procedures and not just how. The toolkit included all points checked by regulators and made it clear that no action would be taken by inspectors for procedures which were not listed in the toolkit. Besides eliminating unnecessary bureaucracy, the aim of the toolkit was to reduce both food contamination and related hazards and the loss of customers due to food poisoning.⁸

3.6 Another initiative in the UK was the introduction of the Primary Authority concept which aimed to sustain the smooth running of businesses and improve efficiency by reducing unnecessary bureaucracy. Under this scheme, a business enters into a partnership with one enforcement body, which then becomes its primary contact for advice, planning and help with trading law across the UK. Once a Primary Authority Partnership has been formally adopted, local authorities can first contact the Primary Authority rather than the business itself regarding evidence of that business's compliance with legislation, even if the business has offices in different regions of the country. An inspection

⁷ Blanc F. (2012), *Inspection Reforms – Why, How, What Results?, Review of experience in inspections and enforcement of business regulations and their reform*, OECD Workshop, Jerusalem.

⁸ Blanc F. (2012), *Improving Inspections – Better Implementation and Delivery Tools, Some examples of approaches and reforms to enhance outcomes and reduce burden*, OECD Workshop, Jerusalem.

plan can also be drawn up which acts as a guide for other local authorities when carrying out inspections on that business. This gives businesses knowledge of how they will be checked and also what they need to do to show compliance, allowing them to put in place systems that will work the same wherever their premises are located.⁹

Scotland

3.7 Scotland's Environment and Rural Services (SEARS) is a partnership between eight public bodies¹⁰ aiming to improve the inspections experience for land managers by working together to provide an efficient and effective service. The eight SEARS organisations work together to provide joined-up services to Scotland's land managers, steadily reducing inspections and simplifying the forms and surveys that land managers need to complete. Among the key service improvements since SEARS got underway in June 2008 are annual savings of approximately £133,000 for the sheep farming industry in annual groundwater licence charge waivers and around 5,000 fewer inspections for land managers.

3.8 Within its partner organisations SEARS has brought about important cultural change. It has broken down barriers and encouraged greater collaboration and skills sharing between partners. SEARS applies a one door any door principle, which allows for easy access to information and advice from SEARS partners. SEARS aims to provide a consistent and responsive service, so that its partners will operate a common and transparent customer care standard and SEARS staff have the required knowledge and experience beyond their normal organisational boundary. Regular updates on SEARS and the work of the SEARS partners are made available on its online portal, which aims to provide customers with background information on the partnership, additional information and links to all the bodies involved. Collaboration between SEARS partners has enabled producers to plan for potential disease outbreaks, and has led to the creation of a simple bio-security protocol for staff to help prevent the spread of plant and animal disease on rural land.¹¹

Croatia

3.9 By 2008 Croatia consolidated many of its inspection processes into a single autonomous agency that now conducts most of the nation's inspections: the State Inspectorate. The Inspectorate is today responsible for eleven inspection functions, which include inspections previously conducted by the Ministries of Economy, Forestry and Agriculture, Tourism and Work and Social Welfare. This system has not only reduced the number of visits a business is likely to receive but has saved considerable budgetary resources. The number of units that conduct inspections has been reduced from 110 to 49, and the number

of county offices cut from 22 to 5. Another important benefit of Croatia's single Inspectorate is that it has prevented the kind of conflicts of interest that might arise when the same ministry or agency issues licences and conducts inspections in the same field, by taking most of the ministries and subordinate agencies that issue licences out of the business of conducting inspections. The larger goals of establishing this unified state Inspectorate were to:

- concentrate key inspection functions in one place;
- improve working conditions;
- raise the expertise level for supervision of inspections;
- improve co-operation and co-ordination among various inspection units; and
- eliminate the costs of performing several inspections of the same target.

3.10 The greatest advantage experienced is that it has reduced the number of inspections needed, with both the state administration and businesses benefitting from this new procedure. The reform has also achieved efficiency improvements of between 15 to 20% in inspection visits whilst facilitating the rationalisation of inspection services and increasing use of risk-based inspections.¹²

Lithuania

3.11 A new way of dealing with inspections was introduced by Lithuania, under the slogan From Policing to Advice. As part of the reform the largest nine inspectorates¹³ were amalgamated to form a committee of experts. The committee shared best practices and other experiences between the different inspectorates. Some initiatives in the reform included:

- exemption from fines and other sanctions during the first year of operations of new businesses;
- the introduction of business-friendly check lists;
- a uniform telephone advice procedure;
- risk-based planning;
- the managing of minor irregularities;
- measurement of inspection performance; and
- consolidation of IT systems.

⁹ Better Regulation Delivery Office (2014), *Primary Authority: A Guide for Officials*.

¹⁰ Animal Health and Veterinary Laboratories Agency, Cairngorms National Park Authority, Crofting Commission, Forestry Commission Scotland, Loch Lomond and the Trossachs National Park Authority, Scottish Environment Protection Agency (SEPA), Scottish Government Rural Payments and Inspections Directorate, Scottish Natural Heritage.

¹¹ Scottish Government, *Scotland's Environment and Rural Services (SEARS)*.

¹² World Bank Group (2011), *How to Reform Business Inspections - Design, Implementation, Challenges*, Washington D.C.

¹³ Fire and Rescue Department (PAGD); State Labour Inspectorate (VDI); State Non-Food Product Inspectorate (VNMP); State Food and Veterinary Service (VMVT); State Tax Inspectorate (VMI); Road Transport Inspectorate (VKTI); State Public Health Service (VKTI); State Territorial Planning and Construction Inspectorate (VTPSI) and Environmental Protection Agency and Regional Environmental Protection Departments under the Ministry of Environment (AAA).

3.12 A survey indicated that the change in the culture of inspectors from sanction oriented to more assistance oriented had the approval of 68% of businesses. These respondents confirmed that the attitude of inspectors had also improved.¹⁴

Italy

3.13 Fire safety in existing premises is one of the major concerns for the Italian National Fire Corps, not only in terms of intervention in the case of fire, but also for determining specific preventive regulations and countermeasures. Together with the Civil Service Department the National Fire Corps worked on a new approach by simplifying the start-up procedures for business premises based on risk categorisation as part of the Less Paper, More Safety initiative launched in 2011. Lower risk premises now can benefit from simplified procedures, start without a formal permit and are only inspected in a small percentage of cases. However, the two institutions found through their own data and discussions with businesses that the new, simplified procedures were rarely being made use of – and that this was because businesses did not know about them, and specialised consultants kept using the more complex procedure, since this allowed them to charge their clients higher fees. The solution was the development of a brochure explaining simply which business belonged to which category, and which procedures were applicable in each case. As a result, an increase in the take-up of the new simplified procedure was registered, and the new procedure is now being widely used by lower-risk businesses. Through this system the National Fire Corps has more resources to devote to high-risk areas, ensuring better safety.¹⁵

Denmark

3.14 The Working Environment Authority has published risk assessment checklists for sixty different sectors or workplaces. These checklists are designed to help small enterprises carry out the mandatory risk assessment themselves and they help identify the major hazards in the workplace. The checklists contain a series of questions which businesses need to answer through a simple yes or no. All questions to which a yes answer is registered are indicative of a working environment issue that requires action and must form part of an action plan in connection with the particular checklist.

3.15 The Working Environment Authority has also invested in a specific training system for new inspectors through mentoring. All newly recruited inspectors are allocated a mentor (experienced inspector) throughout the first year of service. The mentor undertakes joint inspections and generally supports the new inspector throughout this period.¹⁶

¹⁴ Kadzianskas G. (2012), *Business Inspection Reform in Lithuania*, Ministry of Economy, Lithuania

¹⁵ Blanc F. (2012), *Improving Inspections – Better Implementation and Delivery Tools, Some examples of approaches and reforms to enhance outcomes and reduce burden*, OECD Workshop, Jerusalem

¹⁶ EPSU (2012), *A mapping report on Labour Inspection Services in 15 European Countries*, A SYNDEX report for the European Federation of Public Service Unions

4. STRATEGIC DIRECTION SETTING

SETTING DIRECTION THROUGH POLICY

4.1 The Government is committed to bring about the necessary changes for the co-ordination of services provided by the various inspectorates. This can be achieved through the formulation of a policy framework which would set a strategic direction for the reform to be able to take place. The policy framework provides clear principles, outcomes and measures which will address the identified issues.

A COMMON POLICY FRAMEWORK (CPF)

Purpose

4.2 Inspections play an important part in regulatory enforcement and in ensuring compliance. Notwithstanding the fact that inspections are generally sector-specific, there are cross-cutting activities common for all or most inspections. The method adopted in planning inspections, communication with regulated bodies, and ethical behaviour are a few examples of issues that can be addressed generally across different sectors and inspectorates through a CPF. It is recognised, however, that in particular specialised sectors, the way inspections are conducted is highly regulated mainly through European regulations. The CPF should offer flexibility to inspectorates to operate within their legislative and regulatory regimes.

4.3 Regulation exists to protect the interests of society and safeguard its future. Inspections are a key to achieve that objective through high levels of compliance while keeping burdens to a minimum. Besides addressing the regulatory requirements of their respective mandates, inspectorates should ensure that there is coherence at a national level with Government departments, and other regulatory bodies at all times. By having a coherent and consistent inspections framework in place businesses will be able to operate, plan and execute their operations more effectively.

Key principles, Outcomes and Measures

4.4 In order to ensure coherence across the board, five principles have been identified in conformity with the principles of better regulation.¹⁷ These principles are summarised here and set out in further detail in Annex 1.

Principle 1

Consistency

Inspectorates shall adopt a common approach to inspections, promoting and facilitating joint inspections and the provision of information and advice.

Principle 2

Targeting

Inspections will be goal-based and risk-based with a degree of random inspection.

Principle 3

Effectiveness

Inspections shall achieve the desired outcome by facilitating higher compliance.

Principle 4

Proportionality

Inspections shall avoid unnecessary burdens through alignment to the risk profile of regulated bodies.

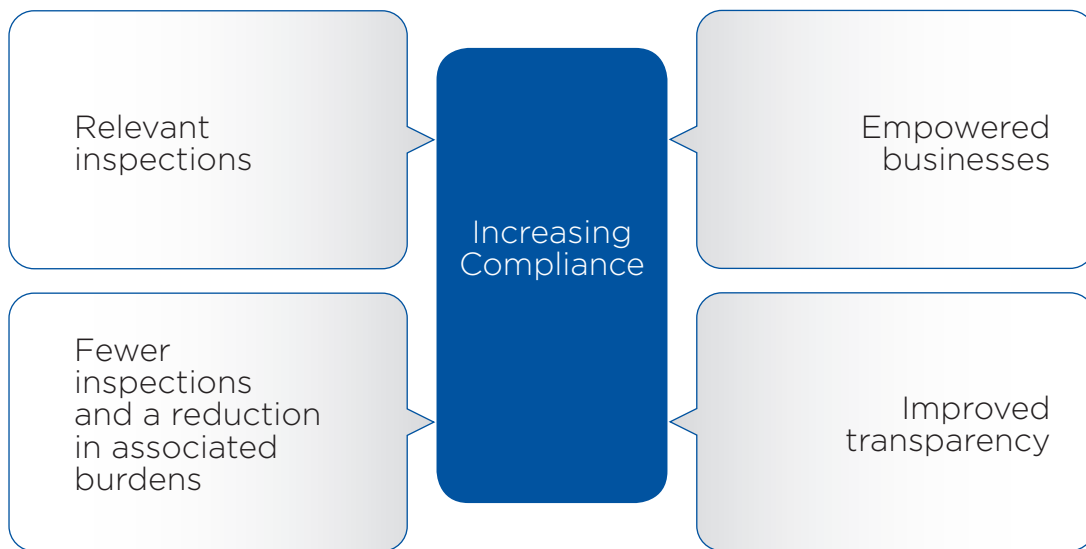
Principle 5

Transparency

Inspections shall be carried out in an open, inclusive and equitable manner to instil public confidence, through the provision of user-friendly, transparent and easily accessible guidelines, checklists, toolkits and legally vetted FAQs. Regulators must be able to justify decisions, and be subject to public scrutiny.

¹⁷ Malta MEU (2010), *Better Regulation Procedures Manual*; UK Better Regulation Task Force (2003), *Principles of Good Regulation*; European Commission (2012) *Code of Practice for Consultation of Stakeholders*.

4.5 The CPF focuses on four key outcomes that through a number of measures should lead to an increase in compliance.



Key outcome 1 Relevant inspections: ensuring that no inspection is conducted unless there is a basis for it in law.

Measures

- Justification should be provided when introducing a new inspection or inspection regime.
- All regulating bodies should conduct systematic periodical reviews of regulation from an inspection perspective.
- Overlaps, gaps and possible transfer of competencies from one inspectorate to another should be identified and addressed.
- Unnecessary legislation or provisions thereof should be repealed.
- Focus should be made on ensuring that critical business standards are being met and continually improved.

Key outcome 2 Empowered businesses: to ensure that business have the necessary tools and information in attaining compliance.

Measures

- Establish sector-specific front office services to provide a single point of contact including an accessible portal with necessary information facilitating applications for permits and licenses for businesses.
- Promote self-assessment through the provision of updated checklists, toolkits, and self-regulation initiatives.
- Assess and evaluate the potential for the setting up of compliance-promotion initiatives, such as compliance awards and compliance recognition schemes and moratoria aimed at business start-ups and the promotion of a high level of compliance in specific sectors.
- Deliver training programmes to change mindsets of inspectorates to enable them to better promote and achieve compliance through better working partnerships with businesses.

Key outcome 3 Fewer inspections and a reduction in the associated burdens: to ensure that inspections are targeted and overlaps are minimised.

Measures

Establish advisory and consultative fora¹⁸ to coordinate and facilitate the implementation of the common policy framework.

Introduce risk-based inspections across all inspection regimes and where possible through the application of purposely dedicated ICT software.

Facilitate and promote data-sharing and joint inspection programmes through better co-operation through the drawing up of memoranda of understanding and protocols between inspectorates.

Introduce systematic reviews through self-assessment and evaluation of inspectorates to identify unnecessary inspections and the potential for simplification.

Introduce broader application of administrative fines and recourse to administrative appeals.

Key outcome 4 Improved transparency: to ensure transparency in inspections through the provision of standardised information and reporting mechanisms.

Measures

Regulated bodies should have access at low cost to information and advice. Inspectorates should be coherent in the level and extent of information published. Updated information and advice should be published online and where possible through a single point of reference e.g. a single information website.

Provide consistent feedback to operators after inspections regardless of the outcome of the inspection.

Implement a broader application of an administrative appeals system for all inspection regimes whilst retaining a range of tools, such as observations, verbal warnings, improvement notices, civil penalties and criminal penalties.

Facilitate and promote the publication of standardised periodical reports by inspectorates addressing specific sectoral compliance issues.

¹⁸ Advisory forum made up of representatives of regulatory bodies, and consultative forum made up of representatives of the business community and regulatory bodies. Consideration could be given to making use of the advisory and consultative mechanisms provided for in the Small Business Act (Chapter 512) such as the College of Regulators under Article 13 of the Act.

5. INSTITUTIONAL AND STRUCTURAL SETTING

IMPLEMENTATION CONSIDERATIONS

5.1 The achievement of the desired outcomes should be complimented with action at an institutional and structural level, supported by the necessary legislative action, the necessary capacity and competencies by addressing the human resources aspect and investment in ICT, and by addressing a change in culture. This section considers these actions and presents recommendations in this respect focused on inspections which:

- Achieve policy outcomes – competitiveness, fair competition, consumer protection.
- Increase compliance – from policing to information provision, advising, empowerment and self-assessment.
- Reduce the number of inspections and the burdens on businesses – but also reduce social risks through proportionality, focus, and risk based and joint inspection programmes.

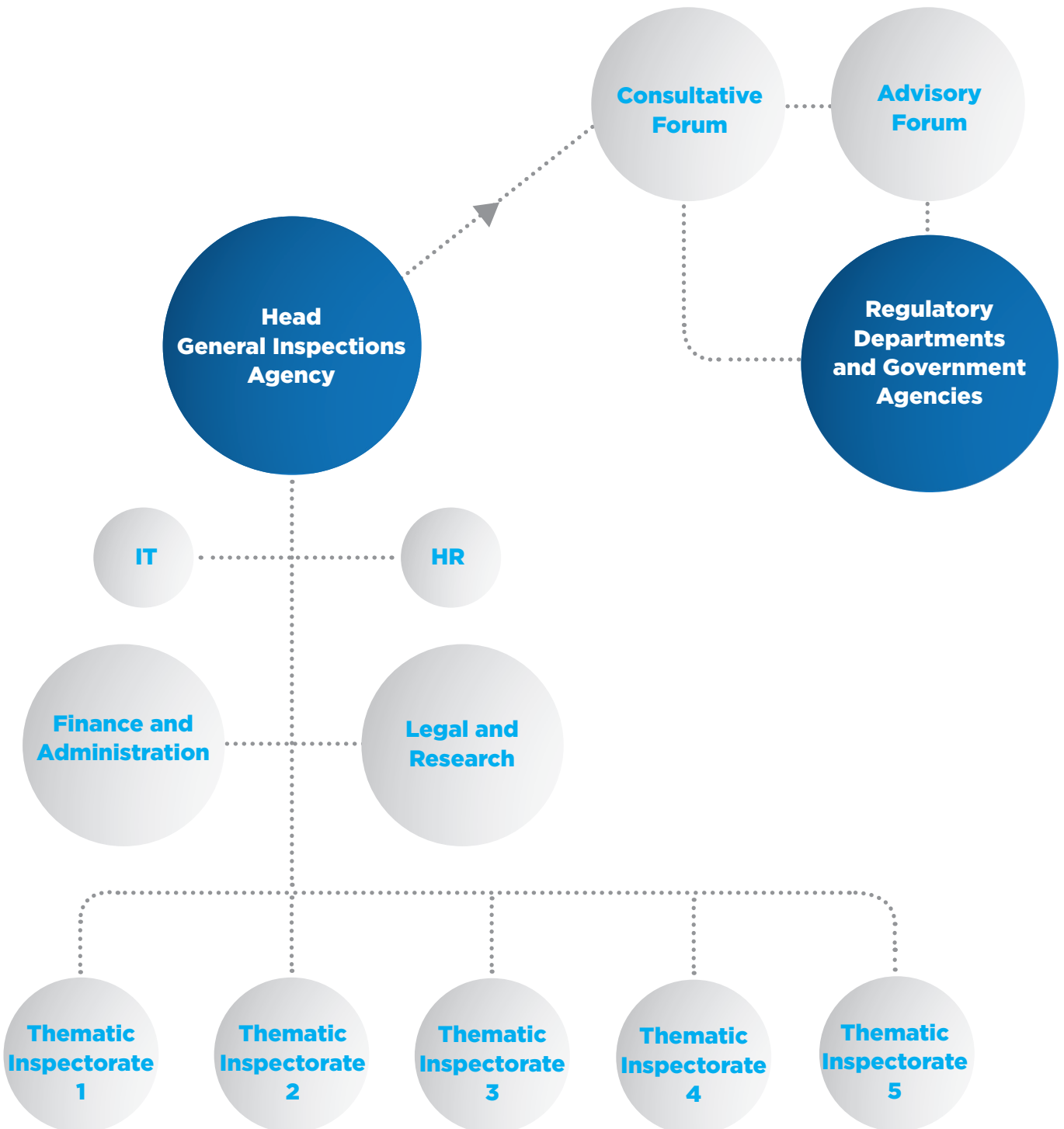
5.2 When considering improvements at an institutional and structural level three options are being put forward for consideration. Each option presents a number of opportunities and challenges which would impact on the timeline for the delivery of the reform and its effectiveness. What needs to be considered at this stage of events is the conceptualisation of the different forms that a new inspectorate's operations can take and what could be achieved through the adoption of each such form.

OPTION 1

Establish a General Inspections Agency

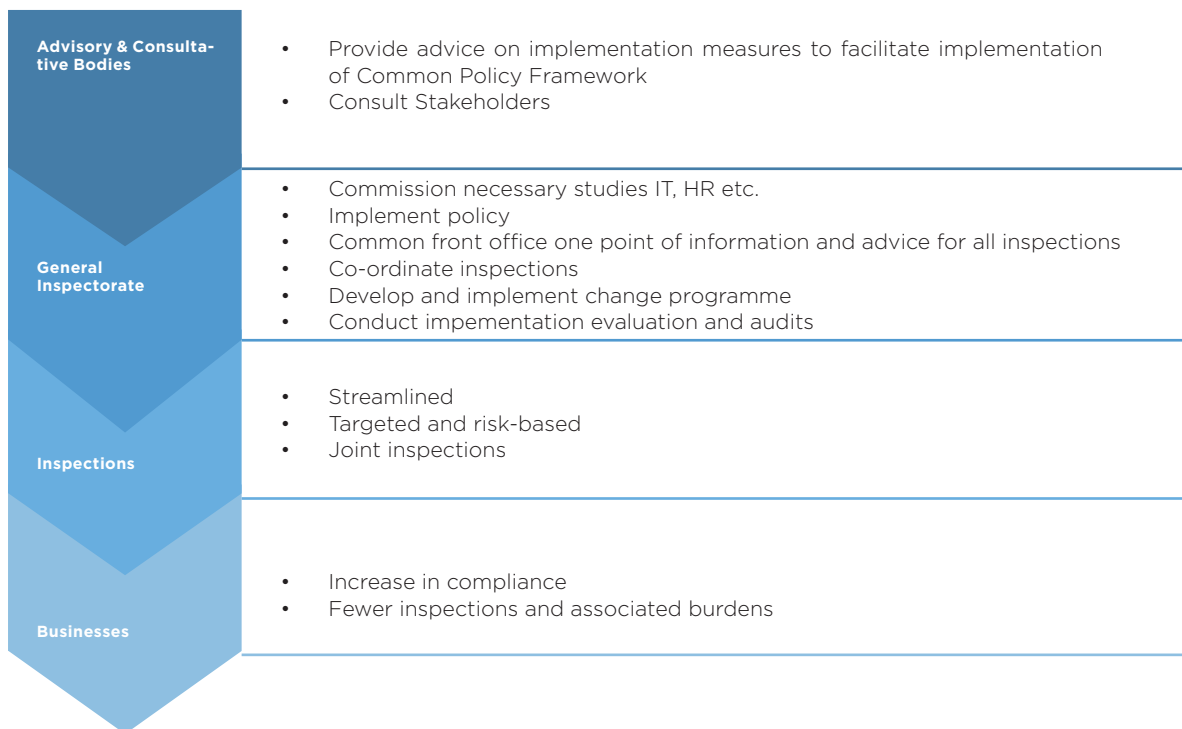
5.3 This option foresees the establishment of a Central General Inspections Agency that would act as a supervisory body for all or most of the inspectorates. Government might wish to opt not to include certain inspectorates of a strategic nature e.g. those involved in the fields of financial services and gaming.

The General Inspections Agency would be mandated to define the policy package and instruments, conduct a gap analysis with respect to the policy package and draw up an improvement plan over 2 years, implement the reform of operational policies of inspections, implement and develop institutional organisation structures and staff competencies, and co-ordinate inspections. The agency would be required to carry out ICT, HR and other studies as necessary to build the evidence base to improve inspections in line with the policy package.



5.4 In implementing such a unified structure, six challenges would need to be addressed:

- a) Legal - the assignment of the different inspectorate duties to the new structure through the enactment of a common legal framework for inspections governing all inspection undertaken by the General Inspections Agency, and amendments to specific legislation to enable the delegation by regulatory bodies of authority to carry out inspections.
- b) Organisational - the setting-up of a functional structure that would deliver on its remit efficiently and effectively. It is considered that in order to facilitate operations under such a structure inspections would be organised under specific themes¹⁹ such as:
 - Public Health, Hygiene, Food and Feed Safety
 - Construction, Planning and Building Regulation
 - Environment
 - Consumer Affairs and Non-Food Products
 - Employment and Social Inspections.
- c) Managerial - the setting-up of a strong management team that would need to get the different Inspectorate teams to work together whilst maintaining strong communication and co-operation between the different regulatory bodies and the central inspectorate service.
- d) The setting-up of advisory and consultative bodies²⁰ to facilitate the implementation of the Common Policy Framework.
- e) The development of a chain of key inputs, activities and outputs.



f) Establishing a high level timeline and durations.²¹

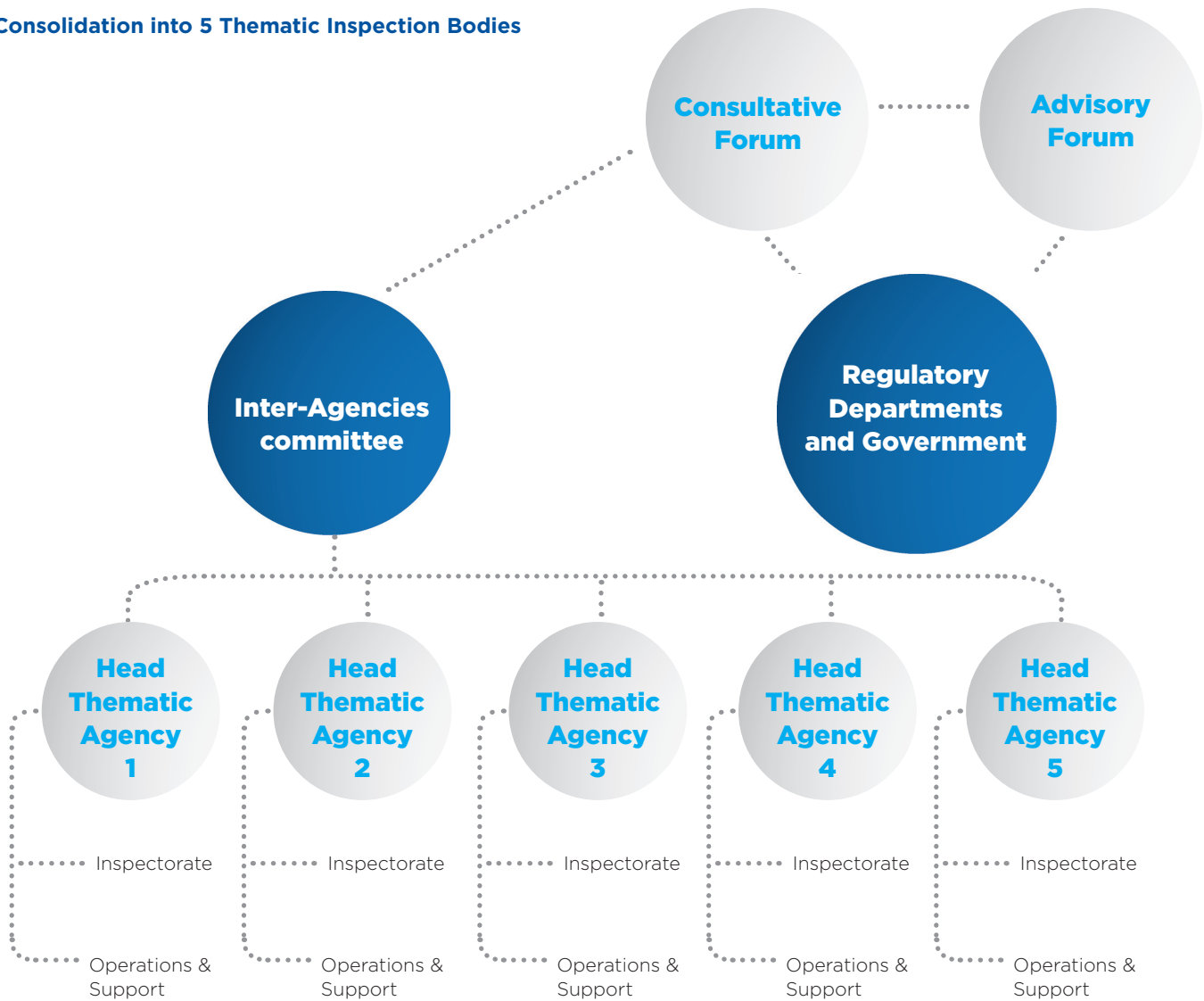
¹⁹ Themes may be expanded further depending on whether inspection functions of a Strategic Nature and the Revenue Generating Streams within the Ministry for Finance are included in the scope of the reform.

²⁰ Consideration could be given to making use of the advisory and consultative mechanisms provided for in the Small Business Act (Chapter 512) such as the College of Regulators under Article 13 of the Act.

²¹ Annex 5

OPTION 2

Consolidation into 5 Thematic Inspection Bodies



5.5 Under this option the current inspection regimes would be consolidated into five²² bodies through the consolidation of functions and re-alignment of current structures. This could be attained through the amalgamation of current functions or where necessary the creation of new bodies incorporating specific inspectorates. Each such body would be mandated to define the policy package and instruments, conduct a gap analysis within its thematic area of inspections with respect to the policy package and draw up an improvement plan over 2 years, implement the reform of operational policies of inspections, develop institutional organization structures and staff competencies, and co-ordinate inspections. Each agency would be required to carry out ICT, HR and other studies as necessary to build the evidence base to improve inspections in line with the policy package.

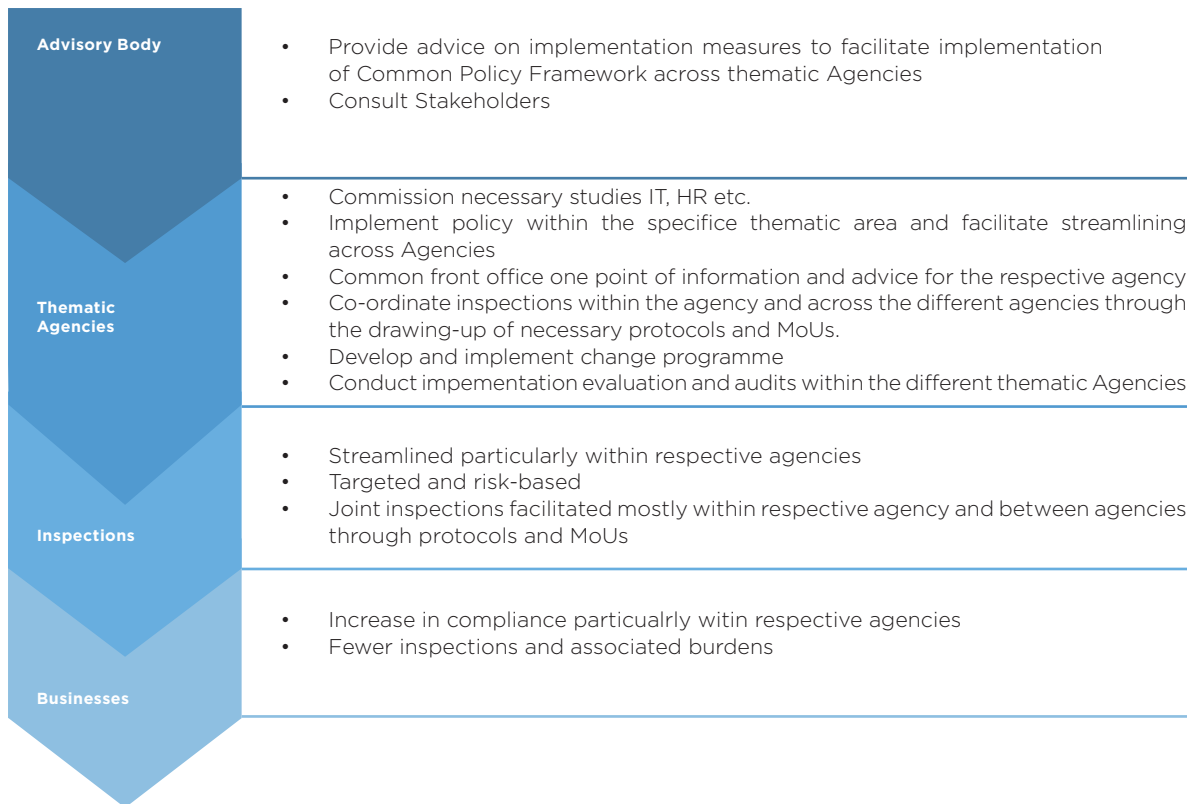
The agencies would address inspections based on the following proposed thematic areas:

- Public Health, Hygiene, Food and Feed Safety
- Construction, Planning and Building Regulation
- Environment
- Consumer Affairs and Non-Food Products
- Employment and Social Inspections.

²² The number of domains may be expanded further depending on whether inspection functions of a strategic nature and the revenue generating streams within the Ministry for Finance are included in the scope of the reform

5.6 In implementing this option, seven challenges would need to be addressed:

- a) Legal - the consolidation of inspectorate duties under a number of thematic areas through the enactment of an inspections framework governing inspections by the different thematic agencies and amendments to specific legislation to enable the delegation by regulatory bodies of authority to carry out inspections.
- b) Organisational - the setting-up of thematic functional structures that would deliver on their remit efficiently and effectively.
- c) Managerial - the setting-up of a strong management teams within the different agencies that would get the different inspectorate teams to work together whilst maintaining strong communication and co-operation between the different regulatory bodies and thematic agencies.
- d) The setting-up of advisory and consultative bodies²³ to facilitate the implementation of the Common Policy Framework.
- e) An inter-agency co-ordination committee to facilitate inter-agency communication and streamlining.
- f) The development of a chain of key inputs, activities and outputs.



g) Establishing a high level timeline and duration.²⁴

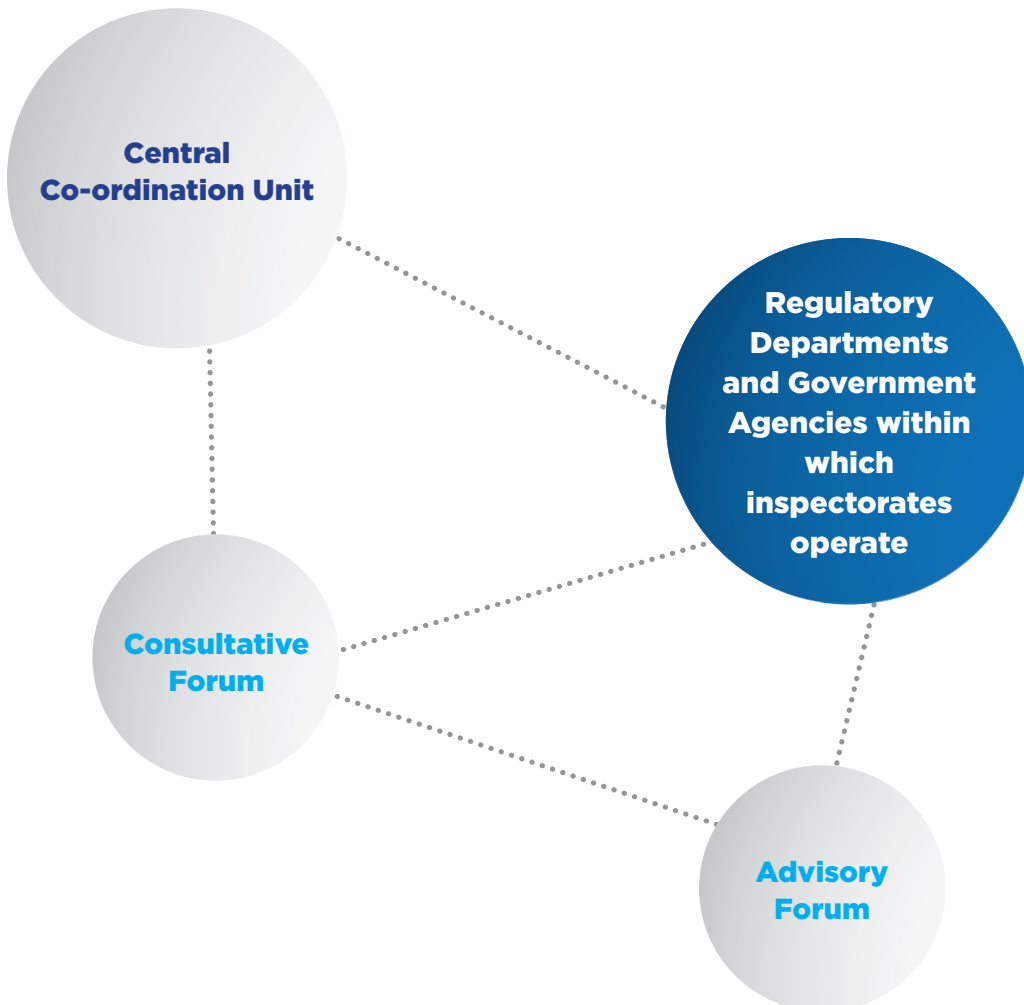
²³ Consideration could be given to making use of the advisory and consultative mechanisms provided for in the Small Business Act (Chapter 512) such as the Council of Regulators under Article 13 of the Act.

²⁴ Annex 5.

OPTION 3

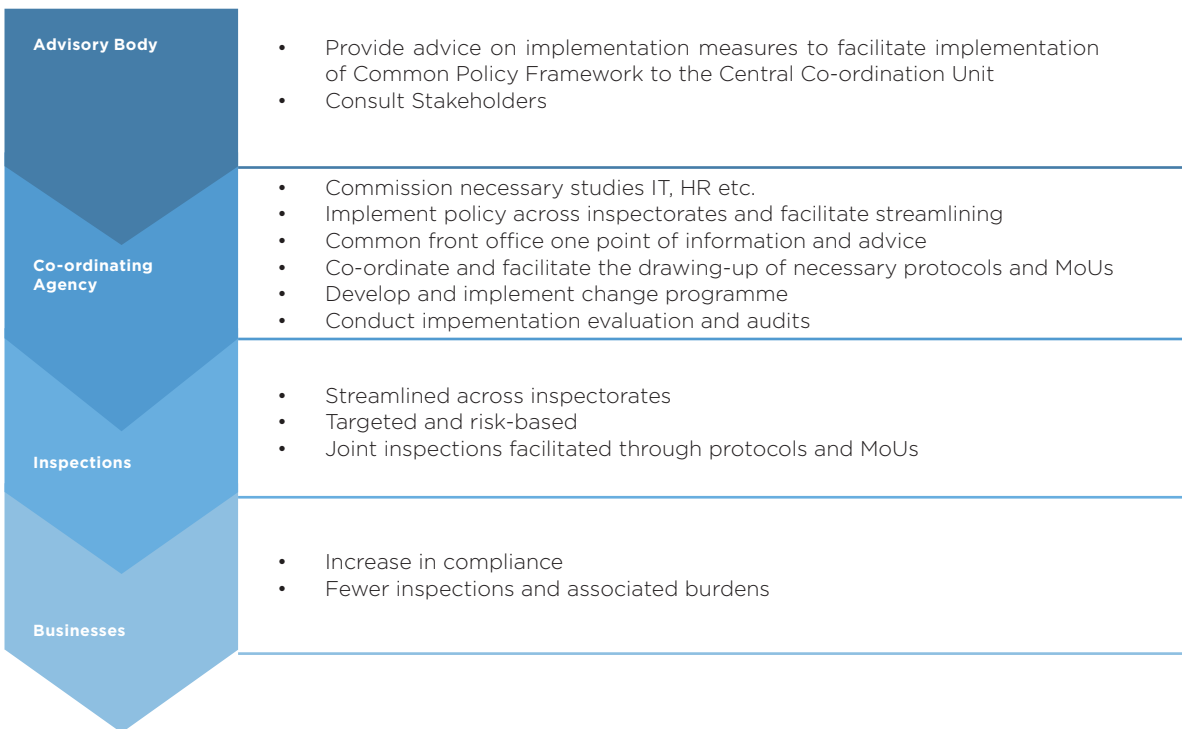
ESTABLISH A CENTRAL INSPECTIONS CO-ORDINATION UNIT

5.7 Through this option whilst for practical and operational purposes Inspectorates may be thematically classified, they would remain within their current regulatory bodies, whilst a central driving and co-ordinating body would be set up to facilitate co-operation, increase joint inspections and facilitate the implementation of the Common Policy Framework. The Central Co-ordination Unit would define the policy package and instruments and provide support to inspectorates through training. This option would require inspectorates to carry out a gap analysis with respect to the policy package and propose an improvement plan over two years to attain objectives. The Co-ordination Unit would be mandated to carry out any necessary studies e.g. ICT, HR to build the evidence base to improve inspections in line with the policy package.



5.8 In implementing such a unified structure, four challenges would need to be addressed:

- a) Legal - the establishment of a Central Inspections Co-ordination Unit governing the supervisory and co-ordination mandate in relation to the Common Policy Framework.
- b) Organisational - the setting-up of functional co-ordinating and supervisory structures that would deliver on their remit efficiently and effectively.
- c) Managerial - the setting-up of a strong management team that would need to bring together the different inspectorate teams within different regulatory bodies to work together whilst maintaining strong communication and co-operation between the different regulatory bodies.



- d) The setting-up of advisory and consultative bodies²⁵ to facilitate the implementation of the Common Policy Framework.

5.9 An appraisal of these three options is presented hereunder with a view to attain a better understanding of their pros and cons.

²⁵ Consideration could be given to making use of the advisory and consultative mechanisms provided for in the Small Business Act (Chapter 512) such as the Council of Regulators under Article 13 of the Act.

APPRAISING THE OPTIONS

5.10 A comparative appraisal of the presented options is being put forward based on three criteria, namely, suitability, feasibility and acceptability, in attaining the set strategic direction as defined by the CPF and the achievement of the desired outcomes. In determining this, a set of key questions are presented in relation to each presented option. The three considerations have been modelled taking into account the legislative, organisational, managerial, implementation timelines, financial, technological and human resources factors that come into play. Each model has its strengths and limitations. Furthermore, one would expect that such models may be further modified in order to adjust to emerging situations from the administrative and legal regimes as well as from the demands, requirements and needs of the business community which they are intended to serve.

Assessing Suitability

- Will the option address the key issues and will it be able to deliver desired outcomes?
- How will the option address the issue or problem?
- Are there any unintended consequences?
- Are costs and benefits equitably distributed?

OPTION 1	OPTION 2	OPTION 3
<p>Consolidate into 1 General Inspections Agency</p>	<p>Consolidate in 5 thematic inspection bodies</p>	<p>Set-up a Central Inspections Co-ordination Unit</p>
<ul style="list-style-type: none"> • Option addresses issues in the long-term • Unintended consequences could include a focus on institution building rather than results on stakeholders • Longer timeframe to deliver • Anticipated higher economies of scale but may be limited to less technical and generic inspections 	<ul style="list-style-type: none"> • Option addresses issues in the medium-term provided that changes are implemented smoothly and rapidly • Applicable mostly in integrated areas and where regulatory coverage needs improvement or more economies of scale • Medium timeframe to deliver results 	<ul style="list-style-type: none"> • Option addresses issues in the short-term • Focus on results and stakeholders • Minimal incremental costs • Shortest timeframe for delivery of results • Lower economies of scale

Assessing Feasibility

- Is the option a realistic and practical possibility?
- Is there sufficient capability to implement and manage the option?
- Is the option financial viable and does it represent value-for-money compared to the other options?
- Can risks be mitigated and managed?

OPTION 1	OPTION 2	OPTION 3
<p>Consolidate into 1 General Inspections Agency</p> <ul style="list-style-type: none"> • Feedback from internal stakeholders indicate that this may not be realistic or practical • Change management capability and other heavy investment and in HR and IT • High funding requirement • Low-to-medium value added • Economies of scale in the long-term 	<p>Consolidate in 5 thematic inspection bodies</p> <ul style="list-style-type: none"> • Can be realized and practical where this solution is justified • Moderate change management capability • Medium incremental funding requirement 	<p>Set-up a Central Inspections Co-ordination Unit</p> <ul style="list-style-type: none"> • Realistic and practical • Minimum investment in central co-ordination and studies • Requires strong co-ordinating champion • Funding as anticipated in budget process since inspectorates will remain within the regulating bodies • High value for money if regulators commit and act on policy framework

Assessing Acceptability

- Is the option supported by those with the authority and influence to legitimise action?
- Is there sufficient buy-in and support from both internal and external stakeholders?

OPTION 1	OPTION 2	OPTION 3
<p>Consolidate into 1 General Inspections Agency</p> <ul style="list-style-type: none"> • Feedback from internal consultations indicates that this may not be internally supported • Very low buy-in from internal and external stakeholders (the latter would experience many relationship changes) 	<p>Consolidate in 5 thematic inspection bodies</p> <ul style="list-style-type: none"> • Option is offered low support from institutions • Low buy-in from internal and external stakeholders (the latter would experience some relationship changes) 	<p>Set-up a Central Inspections Co-ordination Unit</p> <ul style="list-style-type: none"> • Option is highly supported by institutions • High buy-in from internal and external stakeholders (the latter would retain established relationships)

Appraising Option 1

5.11 This option presents a number of opportunities and challenges. One has to consider that whilst the Agency is in the phase of developing its internal capacity (top management positions), inspections under the current regime would still need to be conducted. This interim phase could last a number of months. This option would consolidate the existing inspectorates falling under the various agencies and authorities into one general Inspectorate. Thus, implementing such structure and putting in place the necessary systems would take a longer timeframe to deliver, when compared to the other options, considering the legal and IT changes that fall into play. It is considered that tangible improvements under this option would only start to be realised in the third quarter of the third year from commencement of the project. Primarily due to the complexity of the actions required at different levels this option addresses issues in the long-term. This implies that initially, for the first few years, unintended consequences could include a focus on institution building rather than on results and outcomes resulting in an improved 'experience' for businesses. It is anticipated that such new structure would generate and provide higher economies of scale but which may be limited to less technical and generic functions. This option presents a number of opportunities in streamlining inspections and facilitating and promoting joint inspections and data sharing. However, on an industrial relations and legislative level, it presents a number of challenges due to the different regulatory regimes that need to be addressed when consolidating inspectorates, and the different sectoral and collective agreements governing working conditions across the different departments and entities within which inspectorates are currently operating.

Appraising Option 2

5.12 This option provides the opportunity to consolidate the current range of inspectorates into five inspection themes/clusters and addresses issues in the medium-term provided that changes are implemented smoothly and rapidly. The approach is applicable mostly in integrated areas and where regulatory coverage needs improvement or more economies of scale. In view of the fact that there is the need for both ICT and legal enhancements to be carried out across the board, the structure provides a medium timeframe to deliver results. Moreover industrial relations issues would need to be addressed due to the different sectoral and collective agreements currently in place. This option presents greater challenges in implementing a streamlined approach across all thematic areas although streamlining inspections within

the respective themes should be facilitated. The implementation of joint inspections and data sharing within the specific thematic agency should also be facilitated, however protocols and memoranda of understanding to facilitate co-ordination and co-operation between different agencies would be required. It is considered that improvements in the inspectorates' operations under this option would only start to be realised by the fourth quarter of the second year from commencement of the project.

Appraising Option 3

5.13 This option is probably the most efficient and effective way forward for the short-term fast-track implementation. It is considered that improvements in the inspectorates' operations would start to be realised by first quarter of the second year from commencement of the project. This can be achieved by having a co-ordinating body whose sole function would be to co-ordinate and increase joint inspections. Through this measure the system would urgently focus on obtaining quick results and attending to the needs of stakeholders. This option presents the lowest costs as well as the shortest timeframe for implementation, but with lower economies of scale. This option does present strong challenges particularly due to the fact that inspectorates would still be operating within their current organisations and not under the direct control of the Central Co-ordination Unit. However, strong leadership within the Unit coupled with an effective legal framework for its operations, can attain effective results within this setting.

CONSULTATION QUESTIONS

- 1.** To what extent do you consider that the introduction of a Common Policy Framework would increase the efficiency and effectiveness of inspections?
- 2.** To what extent do you agree with the underlying principles of the proposed Common Policy Framework?
- 3.** To what extent can inspections be reduced whilst increasing compliance?
- 4.** To what extent can self-regulation increase compliance?
- 5.** To what extent would joint inspections contribute towards an improved inspections system?
- 6.** To what extent can administrative fines be used as a form of an out-of-court settlement?
- 7.** To what extent can arbiters and tribunals help to solve quick settlements between stakeholders?
- 8.** Do you consider any one of the proposed options as being the best approach in attaining the desired outcomes?
- 9.** To what extent do you consider that this approach would facilitate the implementation of the Common Policy Framework and improve the 'experience' of business inspections?
- 10.** Do you have any options or suggestions other than those proposed in this White Paper?

6. CONCLUSION

6.1 This White Paper sets out the fundamental issues involved in the implementation of a more effective and efficient business inspections regime.

6.2 Following consideration of good practices abroad and how these could fit within the local context, three implementation options have been identified as summarised below.

6.3 The establishment of a Common Policy Framework is considered as being of fundamental importance in achieving improvements in this sector. However such a framework will not reap the desired results without a degree of institutional change. The paper presents three options in this respect:

1. Establishing a General Inspections Agency
2. Establishing 5 thematic inspection agencies
3. Establishing a Central Co-ordination Unit

6.4 The implementation of this reform, irrespective of the approach adopted, requires a strong management team which would be able to transform the current inspections system and reorient it towards better understanding of the needs of the business community, whilst at the same time retaining and improving the standards of inspections to ensure compliance with regulations and thus protect the interests of society. This is a long-term task which will require vision, acumen and vitality on the part of the management team. The team would need to be given the authority and legal backing necessary to achieve the expected results.

6.5 The feedback obtained following the publication of this White Paper will facilitate identification of the optimal way forward in the improvement of the current inspections system.

Annex 1

Principles of the Common Policy Framework for Inspectorates

Target Group

This Common Policy Framework addresses public authorities, regulators and inspectorates, organisations, and in particular the business community and their representatives, industry associations, consumer interest groups and the general public.

In order to ensure coherence across the board, five principles have been identified in conformity with the principles of better regulation.²⁶ These principles provide the basis for consistency, targeting, effectiveness, proportionality and transparency in the day-to-day running of regulators and inspectorates. These principles further provide guidelines to stakeholders and the general public on expectations of the general standards and ethics arising from the process of inspections and enforcement.

Principle 1

Consistency

Inspectorates shall adopt a common approach to inspections, promoting and facilitating joint inspections and the provision of information and advice.

Government rules and standards must be joined up and implemented fairly. Decisions have to be fair and consistent. However, no two situations are the same and inspectorates' employees have to exercise their judgement in each case. Nevertheless, inspectorates should strive to ensure that decisions and judgements are consistent, keeping regular contact with each other and other stakeholders or interested groups.

Regulators should be consistent with each other, and work together in a joined-up way. New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin. Regulation should be predictable in order to give stability and certainty to those being regulated. Enforcement regulators should apply consistent rules across board.

Principle 2

Targeting

Regulation should be focused on the problem, and minimise side effects.

Government's policy on inspections is based on the potential risk posed by different scenarios should something go wrong. This decides how often particular premises are inspected, with those that pose the biggest potential risk getting more regular visits.

Regulations should focus on the problem, and avoid a scattergun approach. Where appropriate, regulators should adopt a "goals-based" and "risk-based" approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets. Guidance and support should be adapted to the needs of different groups. Enforcers should focus primarily on those whose activities give rise to the most serious risks. Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.

²⁶ Malta MEU (2010), *Better Regulation Procedures Manual*; UK Better Regulation Task Force (2003), *Principles of Good Regulation*; European Commission (2012) *Code of Practice for Consultation of Stakeholders*.

Principle 3

Effectiveness

Inspections shall achieve the desired outcome by facilitating higher compliance.

Consultation should be undertaken at the earliest possible stage in the decision-making process, when there is scope to influence the policy outcome. The link to decision-making on a specific policy or implementing measure should be made clear. The consultation should make clear its purpose, context and the process that will ensue after it closes. Contributors to consultations should be informed of any limitations that the reviewing board faces. Consultation should be targeted to make sure that the relevant stakeholders are involved. The method of consultation should be appropriate, and staff should have the necessary competence.

Principle 4

Proportionality

Inspections shall avoid unnecessary burdens through alignment to the risk profile of regulated bodies.

Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised. Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed. All the options for achieving policy objectives must be considered – not just prescriptive regulation.

Alternatives may be more effective and cheaper to apply. Regulation can have a disproportionate impact on small businesses. EC Directives should be transposed without gold plating. Enforcement regimes should be proportionate to the risk posed. Enforcers should consider an educational, rather than a punitive approach, where possible.

Principle 5

Transparency

Regulators should be open, and keep regulations simple and user-friendly.

Inspectorates must be accountable for their actions. Inspections should be carried out in an open, inclusive and equitable manner to instil public confidence, through the provision of user-friendly, transparent and easily accessible guidelines, checklists, toolkits and legally vetted FAQs.

Constructive, timely feedback to stakeholders improves the transparency and accountability of the overall policy development process, and helps make the connections between stakeholders' input and the final result. Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties. Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken into account. Regulations should be clear and simple, and guidance should be provided in plain language. Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished. Those being regulated should be given the time and support to comply. It may be helpful to supply examples of methods of compliance. The consequences of noncompliance should be made clear.

If someone is found to be in breach of the regulations, inspectorates should give them a clear explanation of what is wrong and what they need to do. Inspectorates may also give advice on how to go beyond the basic requirements and meet current best practice. If the breach is serious and immediate action is needed, then inspectorates should explain why, both verbally and in writing.

Proposals should be published and all those affected consulted before decisions are taken. Regulators should clearly explain how and why final decisions have been reached. Regulators and enforcers should establish clear standards and criteria against which they can be judged. There should be well-publicised, accessible, fair and effective complaints and appeals procedures. Regulators and enforcers should have clear lines of accountability to Ministers, to Parliament and officially constituted bodies, and to the public.

Annex 2

Organisations with inspectorates within the scope of the White Paper

Malta Tourism Authority	
Malta Resources Authority	
Enemalta Corporation	
Water Services Corporation	
Environmental Health Directorate	
Department for Industrial and Employment Relations	
Occupational Health and Safety Authority	
Malta Communications and Consumer Affairs Authority	Standards and Metrology Institute
	Market Surveillance
	Office for Consumer Affairs
Medicines Authority	
Employment and Training Corporation	
Malta Industrial Parks	
Kummissjon Nazzjonal Persuni B'Dizabilta	
Department for Social Welfare Standards	
Malta Environment and Planning Authority	
Government Property Division	
Veterinary and Phytosanitary Regulations Department	Animal Health and Welfare
	Safety of the Food Chain
	Animal Nutrition and Medicines
Plant Health	
Department of Fisheries and Aquaculture	
Building Regulation Office	
Value Added Tax Department	
Inland Revenue Department	
Customs Department	

Annex 3

Legislative
Regimes

Annex 3

LEGISLATIVE REGIMES

ENTITY	LEGISLATION
Malta Resources Authority	<p>Malta Resources Authority Act (Chapter 423)</p> <p>LN 44/2008 as amended by Act XV of 2009</p> <p>LN 79/2010</p> <p>LN66/2011</p> <p>LN231/2012</p> <p>LN300/2014</p> <p>LN303/2014</p> <p>LN225/2010 as amended by LN426/2012</p> <p>LN 525/2004 and 526/2004 as amended by LNs 426/2007, 337/2009, 31/2010, 38/2010 and 184/2012</p> <p>LN 139/2002 as amended by LNs 378/2005, 426/2007</p>
Malta Tourism Authority	<p>Malta Travel and Tourism Services Act (Chapter 409)</p> <p>LN 359/2012</p> <p>LN 109/2012</p> <p>LN 175/2004 as amended by LN 426/2007 and LN 290/2010</p> <p>LN 128/2002 as amended by LNs 186/2002, 409/2004, 85/2005, 426/2007, 270/2009 and 289/2010</p>
Occupational Health and Safety Authority	<p>Occupational Health and Safety Authority Act (Chapter 424) as amended by Act XXXII of 2007</p> <p>Act X of 2013</p> <p>LN 426/2007</p>

ENTITY	LEGISLATION
Malta Competition and Consumer Affairs Authority	<p>Consumer Affairs Act (Chapter 378) as amended by Acts V of 1995, XIX of 1996, XXVI of 2000, VI of 2001 and XV of 2006</p> <p>LN 425/2007</p> <p>Act II of 2008</p> <p>Act XIV of 2009</p> <p>Act VI of 2009</p> <p>Act IX of 2011</p> <p>LN 426 of 2012</p> <p>Act VI of 2014</p> <p>SL 378.09</p> <p>Product Safety Act (Chapter 378)</p> <p>Metrology Act (Chapter 454) as amended by LNs 427 of 2007 and Act VI of 2011 AND Act XV of 2006</p> <p>LN 223/2011</p> <p>LNs427/2007, 110/2010 and Act VI of 2011.</p> <p>LN 411/2002 as amended by LN 221/2006</p> <p>Pesticides Control Act (Chapter 430)</p>
Medicines Authority	Medicines Act (Chapter 458)
Malta Environment and Planning Authority	Environment and Development Planning Act (Chapter 504)
Building Regulations Office	<p>Building Regulations Act (Chapter 513)</p> <p>SL 513.02</p> <p>SL 504.83</p>
Environmental Health Directorate	<p>Public Health Act (Chapter 465)</p> <p>LN 5/2006 as amended by LN 262/2006</p> <p>LN 125/2008 as amended by LN 237/2011</p> <p>Food Safety Act (Chapter 449)</p>
Department for Industrial and Employment Relations	Employment and Industrial Relations Act (Chapter 452)
Employment and Training Corporation	Employment and Training Services Act (Chapter 343)

ENTITY	LEGISLATION
Malta Industrial Parks	<p>Commissioner of Land Ordinance (Chapter 169) as amended by Acts XXII of 1991, III of 2004, XIV of 2006 and XXVIII of 2007</p> <p>Land (Compulsory Eviction) Act (Chapter 228) as amended by Acts XIII of 1983, VIII of 1990 and III of 2004</p> <p>LN 411/2007</p> <p>Act III of 2011</p>
Department for Social Welfare Standards	Adoption Administration Act (Chapter 495)
Commission for Persons with Disability	Equal Opportunities Act (Chapter 413)
Government Property Division	<p>Commissioner of Land Ordinance (Chapter 169) as amended by Acts XXII of 1991, III of 2004, XIV of 2006 and XXVIII of 2007</p> <p>Land (Compulsory Eviction) Act (Chapter 504) as amended by Acts XIII of 1983, VIII of 1990, and III of 2004</p> <p>LN 411/2007</p> <p>Act III of 2011</p>
Veterinary and Phytosanitary Regulations Directorate	<p>Animal Welfare Act (Chapter 439)</p> <p>Veterinary Services Act (Chapter 437)</p> <p>EC Regulations 882/2004, 852/20004, 854,2004, 1069/2011, 178/2002, 2073/2005</p>
Department of Fisheries and Aquaculture	Fisheries Conservation Management Act (Chapter 425)
Plant Health Directorate	<p>Plant Quarantine Act (Chapter 433) as amended by Act III of 2004</p> <p>LN 426/2007</p> <p>Act V of 2011</p>
Value Added Tax Department	<p>Cap. 372 Income Tax Management Act</p> <p>S.L. 406.05 Value Added Tax (Letting of Premises and Sites for Parking Vehicles) Regulations</p>

ENTITY	LEGISLATION
Inland Revenue Department	<p>Cap. 123 Income Tax Act</p> <p>S.L. 123.07 Income Tax Deductions Rules</p> <p>S.L. 123.20 Income Tax (Rounding Up) Notice</p> <p>S.L. 123.21 Income Tax Exemption Order</p> <p>S.L. 123.54 Income Tax and Duty on Documents and Transfers on Transfers of Dwelling Houses to Shareholders Exemption Order</p> <p>S.L. 123.58 Income Tax and Duty on Documents and Transfers on Transfers of Dwelling Houses by Commercial Partnerships Exemption Order</p> <p>S.L. 123.70 Double Taxation Relief on Taxes on Income with the Republic of Slovenia Order</p> <p>S.L. 123.89 Trusts (Income Tax) Regulations</p> <p>S.L. 123.93 Hosting of Students (Income Tax) Rules</p> <p>S.L. 123.94 Double Taxation Relief on Taxes on Income with the Kingdom of Spain Order</p> <p>S.L. 123.101 Tax Accounts (Income Tax) Rules</p> <p>S.L. 123.114 Foundations (Income Tax) Regulations</p> <p>S.L. 123.125 Notice of Appointed Date Income Tax Act) Order</p> <p>S.L. 123.140 Rulings (Income Tax and Duty Treatment of Mergers and Divisions) Rules</p> <p>S.L. 345.01 Reduction in the Rate of Income Tax chargeable on Gains or Profits of Quoted Companies (Extension) Notice</p> <p>Cap. 372 Income Tax Management Act</p> <p>S.L. 372.01 Income Tax (Declaration of Secrecy) Rules</p> <p>S.L. 372.03 Income Tax (Dividend Distribution to Shareholders) Rules</p> <p>S.L. 372.04 Income Tax Rules</p> <p>S.L. 372.05 Income Tax (Form of Returns) Rules</p> <p>S.L. 372.08 Income Tax (Form of Returns for Companies, Entities and Bodies of Persons) Rules</p> <p>S.L. 372.09 Income Tax (Form of Return for a Company, Body Corporate or Undertaking) Rules</p> <p>S.L. 372.15 Income Tax Return (Exemption) Order</p> <p>S.L. 372.17 Income Tax (Further Return Form) Rules</p> <p>S.L. 372.19 Income Tax (Declaration Form) Rules</p> <p>S.L. 406.05 Value Added Tax (Letting of Premises and Sites for Parking Vehicles) Regulations</p>

ENTITY	LEGISLATION
Customs Department	<p>S.L. 35.09 Fees due to Customs Weighers Regulations</p> <p>S.L. 35.12 Fees where Motor Vehicles are kept by the Customs Department Regulations</p> <p>Cap. 37 Customs Ordinance</p> <p>S.L. 37.04 Control of Customs Sheds and Area Regulations</p> <p>S.L. 37.05 Customs Regulations</p> <p>S.L. 37.07 Fire Precautions at Customs Regulations</p> <p>S.L. 37.09 Certain Powers of Officers of Customs Regulations</p> <p>S.L. 37.10 Control at Airport Customs Regulations</p> <p>S.L. 37.13 Customs Ordinance (Convention on Mutual Assistance and Co-operation between Customs Administrations) (Naples II) Regulations</p> <p>Cap. 163 Comptroller of Customs Ordinance</p> <p>S.L. 337.45 Customs (Implementation of Provisions of Customs Code) Regulations</p> <p>Cap. 395 Customs and Excise Tax Act</p> <p>S.L. 406.18 Value Added Tax (Remittance of Interest and Administrative Penalties incurred under the Value Added Tax Act, 1998, Customs and Excise Tax Act and Value Added Tax Act, 1994) Regulations</p>

Annex 4

HIGHEST TEN INCIDENCES OF ANNUAL INSPECTIONS

Inspection Type	Annual Inspections (2013) ²⁷
Price indication compliance	11,800
Programmed inspections of catering establishments (Environmental Health Directorate)	6,350
Inspections related to registration of employment	6,000
Inspections deriving from environment-related complaints	5,748
Inspections relating to compliance with development permits	5,000
Inspections of licensed establishments by the Environment Health Directorate	3,627
Inspections relating to landing of controlled fish species	3,170
Inspections relating to animal identification in the rummenant sector	3,002
Inspection of building sites to avoid nuisance to the general public	3,000
Inspections of establishments to ensure compliance with sewer treatment permit	1,966

²⁷ Based on non-validated data collated during the course of this assignment.

Annex 5

RESULTS AND OUTCOMES DERIVED FROM INSPECTORATE OPERATIONS

<p>Environmental Health Directorate</p>	<p>Over 33 tonnes of foodstuffs and kitchenware destroyed; 27 food products re-called from the market; 8 premises closed for a period of time; 19 food related activities stopped for a period of time; 15 contraventions issued; Over €9,000 of fines imposed further to court action; €2,358 in fines imposed by Local Tribunals.</p>
<p>Government Property Division</p>	<p>95 eviction orders out of which 45 were executed.</p>
<p>Plant Health</p>	<p>28 notifications sent to the EC related to infringements of wood packaging material; 1,576 plant passports issued; 36 export phytosanitary certificates were issued; A total of 741 palm trees had to be destroyed, of which 596 were destroyed as a consequence of Red Palm Weevil; 3 enforcement letters were fixed on site for removal of palm trees; 49 letters were sent to clients to conduct curative treatments; 186 notifications were sent to individuals for the removal of infected/dead palm trees.</p>
<p>Occupational Health & Safety Authority</p>	<p>98 criminal cases initiated; €51,800 in total fines imposed by Court; 17 cases of asbestos removal.</p>

Standards & Metrology Institute MCCA	<p>1.1 million in estimated savings to consumers further to inspections on fuel pump handles;</p> <p>.....</p> <p>1,697 calibration certificates issued;</p> <p>.....</p> <p>29 notifications sent to the EC.</p>
Office for Consumer Affairs MCCA	<p>227 outlets issued warning letters regarding Price Indications;</p> <p>.....</p> <p>91% compliance rate as a result of inspections of grocery outlets with a sales area of over 200m²;</p> <p>.....</p> <p>197 clothing outlets identified as non-compliant with price indication requirements on the first inspection resulted compliant on the second inspection.</p>
Market Surveillance Directorate MCCA	<p>Court action initiated against 3 plant protection products agents and 1 lift installation agent.</p>
Department for Industrial and Employment Relations	<p>38 cases referred for legal action;</p> <p>.....</p> <p>85 monetary claims issued;</p> <p>.....</p> <p>6 employment agencies had their license withdrawn.</p>
Medicines Authority	<p>9 investigations/enforcement cases were carried out following inspections and complaints.</p>
Malta Resources Authority	<p>1 case initiated against a petroleum filling station;</p> <p>.....</p> <p>2 criminal actions initiated regarding secondary storages for liquid fuels.</p>
Value Added Tax Department & Inland Revenue Department	<p>153 cases were found guilty of failure to issue fiscal receipts and together were fined a total of €135,896;</p> <p>.....</p> <p>80 cases were together fined €70,257 for failure to submit tax returns.</p>
Customs Department	<p>31 criminal cases were fined a total of €94,336;</p> <p>.....</p> <p>9 of these 31 cases were given a suspended sentence;</p> <p>.....</p> <p>8 of these 31 cases were further found guilty for breaching other laws and were altogether fined €25,950;</p> <p>.....</p> <p>11 of these 31 cases were further decreed to pay a total amount of €30,922 in civil debt;</p> <p>.....</p> <p>€338,038 was collected as fines from 79 out of court settlement agreements.</p>

Annex 6

Summary of Objectives, Benefits and Measures

Annex 6

SUMMARY OF OBJECTIVES, BENEFITS AND MEASURES

Product	Objectives	Benefits
Common Policy Framework	To identify the principles, outcomes and measures to be addressed by reforms.	Will allow a managed alignment between inspection regimes under a single common framework to deliver better policy outcomes.
Structural change: Establish a General Inspections Agency, 5 Thematic Inspection Bodies or a Central Co-ordinating Inspections Unit.	To create a unified structure for inspectorates.	Better managed and co-ordinated inspection activity. Consistent co-ordination and advice across the spectrum of businesses
Joint inspections	To reduce the number of inspections and the repetition of inspection activity	Fewer inspections per business overall. Reduced cost
Publicly available inspection criteria	To increase transparency	Businesses operate in the knowledge of required standards
Self-assessment toolkits	To support self assessment and self regulation	Businesses can assess themselves against inspection criteria
Shared data sets between inspectorates	To eliminate duplicated data. To make available a single set of data with appropriate access rights. To provide a single data set to aid risk assessment.	“Single version of the truth”. Data collected once and used many times. Efficiencies of centralized data
Risk-based inspection	To make inspection proportionate to need.	Resources are released where the risk assessment shows the need for a light touch inspection. Resources are intensified where there is concern.
Out of court fines and sanctions	To deter non-compliance and enhance its consequences.	Penalty regime is easy to administer and has low overheads.

1 Based on non-validated data collated during the course of this assignment.

Measures

Number of inspections that take place without a legislative or regulatory basis (target = zero)

Reduction in defects as a proportion of inspection days (target = x%).

Reduction of bureaucracy as measured by a reduction in the cost of compliance per head of population (target x%).

Increase in customer satisfaction of businesses inspected.

(Baseline survey conducted April 2016)

Reduction in the number of inspections per business (target x %).

Reduction in loss of productivity (days-lost time because of inspection).

The number of inspection agencies with publicly available inspection criteria (target 100%).

The number of inspectorates with on line tool kits that enable businesses to assess themselves against criteria (target 100%)

The number of businesses completing on-line self assessments (standard information requirement in returns; annually increasing target).

Reduction in administrative costs over 3 years (target to halve the cost).

The number and percentage of inspections conducted following a risk assessment (target 100%).

The number of inspections that have increased activity due to the risk assessment.

The number of inspections that have reduced activity due to the risk assessment.

The number of out of court fines and sanctions (no target).

