

PRIORITY CHECKLISTS  
STANDARDS AND INSTRUMENTS  
TOOLS GUIDES MANUALS  
GOOD PRACTICES  
REVIEW MECHANISMS  
MEASURING EFFECTIVENESS

**CleanGovBiz**  
Integrity in practice

## Regulatory policy: improving governance

JULY 2012

The CleanGovBiz Initiative supports governments, business and civil society in their efforts to build integrity and fight corruption. The initiative draws together existing instruments, reinforces their implementation, improves co-ordination among relevant players and monitors progress towards integrity.

The CleanGovBiz toolkit provides guidance on how corruption can best be tackled in different policy areas and offers access to relevant standards and instruments.

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## Regulatory policy: improving governance

Regulation, i.e. tools which the government uses to intervene in the economy and life of their citizens (laws, secondary legislation and other, alternative tools), is of critical importance in shaping the welfare of economies and societies. The objective of regulatory policy is to ensure that regulations support economic growth and development as well as the achievement of broader societal objectives such as social welfare, environmental sustainability, and the respect of the rule of law. It addresses the permanent need to ensure that regulations and regulatory frameworks are justified, of high quality and achieve policy objectives. Regulatory policy helps policy makers to reach informed decisions about what to regulate, whom to regulate, and how to regulate. As an integral part of effective public governance, the foundation for building integrity, regulatory policy helps to shape the relationship between the state, citizens and businesses.

The use of regulatory policy to inform and improve policy formulation and decision-making has various dimensions. A range of tools must be deployed in a consistent and mutually supporting manner if systemic quality improvement is to be assured. The essential tools include regulatory impact analysis, the consideration of regulatory alternatives, administrative simplification, ensuring regulatory transparency and ex-post evaluation of existing regulation. Regulatory governance is grounded in the principles of democratic governance and engages a wider domain of players including the legislature, the judiciary, sub-national and supra-national levels of government as well as standard setting activities of the private sector. Effective regulatory governance maximises the influence of regulatory policy to deliver regulations which will have a positive impact on the economy and the society, and which meet underlying public policy objectives.

Regulatory policy increasingly supports transparency and the participation of citizens (the regulated) in the application of regulatory powers, through public consultations and open communication. As overcomplicated regulatory framework, lack of transparency in developing new regulations and inefficient and improper enforcement of regulations create room for corruptive behavior, an especially powerful reason for some countries to strengthen their regulatory policy is to minimise the opportunities for corruption and to reduce its negative economic and social impacts.

### Priority checklist

1. Are legal and constitutional practices consistent with and supportive of the rule of law?
2. Are regulations, regulatory institutions charged with implementation, and regulatory processes transparent and accessible?
3. Has the proposed regulation been analysed to identify that it is a necessary and effective means of achieving a legitimate policy goal?
4. Are regulations kept simple and have unnecessary administrative burdens been eliminated?
5. Is regulatory enforcement and inspection effectively set for fighting corruption?

## Implementation guidance

### Creating resistance to corruption in public policy and business environments

#### 1. Are legal and constitutional practices consistent with and supportive of the rule of law?

The concept of the rule of law dates from antiquity. It is the basis for a legal system, and has been interpreted to depend upon the separation of legislative, executive and judicial powers. The fundamental principle of the rule of law is that no power or person within the state can unilaterally or arbitrarily revise the legal framework or refuse to be subject to it. An effective integrity strategy relies on the credibility of a legal system that operates uniformly and provides equal justice to all persons.

An effective application of the rule of law implies attention to a range of issues including some which are directly connected to regulatory policy such as legal transparency, clarity and accessibility, and a well functioning appeal system for administrative decisions. There is a need for rules to be enforced, and applied fairly, without which the rule of law is undermined and corruption can spread. The rule of law thus depends, for many of its aspects, on an effective regulatory policy.

#### **Rule of law\***

**“All persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts.”**

1. The law must be accessible and so far as possible intelligible, clear and predictable.
2. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion. A discretion should ordinarily be narrowly defined and its exercise capable of reasoned justification.
3. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
4. The law must afford adequate protection of fundamental human rights.

5. Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve. People should be able, in the last resort, to go to court to have their rights and liabilities determined.
6. Ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred and without exceeding the limits of such powers.
7. Adjudicative procedures provided by the state should be fair.
8. The state must comply with its obligations in international law, the law which whether deriving from treaty or international custom and practice governs the conduct of nations.

\* Based on a speech by Lord Bingham, “The Rule of Law”, 6th Sir David Williams Lecture, 16 November 2006 (available at [www.cpl.law.cam.ac.uk](http://www.cpl.law.cam.ac.uk)).

## 2. Are regulations, regulatory institutions charged with implementation and regulatory processes transparent and accessible?

Transparency is one of the central pillars of effective regulation. It supports accountability of regulators and the government and sustains confidence in the legal environment. It also makes regulations more secure, more accessible, and less influenced by special interests. Regulatory transparency involves a range of actions including standardised procedures for making and changing regulations, regulatory oversight and reporting to ensure that they are applied consistently by regulators and ministries, effective communication and publication of regulations and plain language drafting, consolidation and codification, controls on administrative discretion, and effective appeals processes. Public information and consultation ahead of the adoption of legislature can help to engage citizens and improve the quality of regulations. In this regard, the contribution of e-government to improve regulatory transparency is of growing importance.

A country’s regulations contain much information about how a society is organised, i.e. about the rules of the game, and the political decisions taken. If citizens and businesses can readily access and understand regulations and if the process for making them is transparent and systematic, it may be more difficult for public officials to impose arbitrary requirements. Strong oversight, quality

controls and public reporting help to ensure compliance with standard procedures for making regulations and improve their quality.

### **Transparent communication of regulations in Sweden**

Sweden attaches considerable importance to the principle of transparency, with roots going back to the eighteenth century. Transparency is enshrined at the highest level, in two of the four fundamental laws making up the constitution. Public access to regulatory information, public consultation on draft laws and a substantive effort to draft regulation in plain language constitute some key elements of regulatory transparency in the communication of regulations in Sweden.

Public consultation is a routine part of developing draft laws and subordinate regulations. Once adopted, Sweden then publishes all regulations in a consolidated and free of charge database on the internet. It emphasises the importance of plain language, spearheaded by the Ministry of Justice. This includes work on the promotion of plain language within the EU institutions. The parliament takes a keen interest in plain language, with the adoption of the law in 2005, where several national language policy goals were adopted, among them on plain language. This was followed in 2008 with the Swedish language law, which among other issues states that authorities should strive to use clean comprehensible language. They receive guidance to help them achieve this goal.

*Source: Better Regulation in Europe: Sweden, OECD (2010).*

### **3. Has the proposed regulation been analysed to identify that it is a necessary and effective means of achieving a legitimate policy goal?**

Regulation used by government is often overly complex and subject to the risk of failure. Without the oversight mechanisms embedded in good governance arrangements, such as an integrated system of Regulatory Impact Analysis (RIA), governments are vulnerable to the problem of generating regulation that is excessive, unnecessary or poorly designed. The resulting poor quality regulation can potentially corrupt the intended policy aims of the regulation, providing opportunities to advantage certain interest groups at the expense of the wider social good. This may as easily result from the opportunistic behavior of officials, as simply through an inadequate consideration of the effects of regulation. For example, the beneficiaries of regulation have an incentive to engage in rent seeking behavior, which may improve their own economic returns but at a cost to

the wider community through reduced competitive outcomes. In the absence of a system of evaluation, it may simply not be apparent that the costs to society or the environment of particular regulatory measures are being underestimated, or that it disproportionately benefits a select group.

### Regulatory impact analysis

Regulatory Impact Analysis (RIA) is both a tool and a decision process for informing political decision makers on whether and how to regulate to achieve public policy goals. Improving the evidence base for regulation through Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. The aim is to improve the design of regulations by assisting policy makers to identify and select among the most efficient and effective regulatory approaches, including the non regulatory alternatives. It does this by analysing the costs and benefits of regulation and of alternative means of achieving policy goals to identify the approach that is likely to deliver the greatest net benefit to society.

RIA should be used to promote the use of beneficial competition to improve social outcomes. Incorporating a competition analysis in RIA can identify whether particular regulatory approaches are likely to work effectively or not, and also identify potential alternative approaches for achieving the intended policy objectives at a lower cost to society without restricting competition.

In **Australia**, in 1996 the national and sub national governments all signed up to the Competition Principles Agreement, which obliged the governments to review and, where appropriate, reform all existing legislation that restricts competition (as it was in place in June 1996). It continues to require governments to assess all proposed regulation and to remove restrictions on competition unless they can demonstrate that restricting competition benefits the community overall (being in the public interest) and that the restriction is necessary to achieve the objective.

*Sources:* OECD Reviews of Regulatory Reform - Australia: Towards a Seamless National Economy, OECD, 2010 and Competition Principles Agreement (1995), (as amended to 13 April 2007) Australian National Competition Council [www.ncc.gov.au](http://www.ncc.gov.au).

A well functioning RIA system can make transparent the tradeoffs inherent in regulatory proposals. An open analysis, engaging the wider public, will identify who is likely to benefit from the distribution of impacts from regulation and who is likely to bear the costs. These costs may be in the form of increased risks, or

environmental externalities. Of equal importance is considering if the policy goals can be achieved by alternative means with lower regulatory costs.

Moreover, external analysis of regulatory agencies can help to make their work more efficient and make sure it is designed to serve the public good and not particular interests.

#### **4. Are regulations straightforward and have unnecessary administrative burdens been eliminated?**

Regulatory frameworks that are too complex and causing excessive regulatory burdens create possibilities for corruption and encourage the growth of an informal economy. There is a negative correlation between how economies rank in indicators of regulatory quality and indicators on corruption.<sup>1</sup> The OECD Guiding Principles for regulatory Quality and Performance recommend governments to minimise the aggregate regulatory burden on those affected as an explicit objective to lessen administrative costs for citizens and businesses and as part of a policy stimulating economic efficiency.

The more restrictive and complex the regulations are, the more possibilities there are for public servants on one side and specialised private agents on the other to find ways how to bypass the regulation using semi or non legal ways. The excessive complexity of the regulatory framework makes regulations difficult to understand for day-to-day users, especially citizens, entrepreneurs and small and medium enterprises (SME). This creates opportunities for officials to “be creative” in providing guidance to those who fully depend on it. Lack of standardisation of procedures might contribute to create confusion and promote discretion, and thus potential discrimination and corruption. Lack of guidelines defining conditions that should be respected by administrative procedures can hamper predictability and coherence of an administrative system as a whole.

This may be illustrated by an example of regulation on business start-ups. A complicated system where licenses and permits are needed from several institutions to open up a business, procedures and requirements for obtaining those are not fully clear and the whole process takes long time to finish is a perfect incentive for using bribes to speed-up the process. In some countries the

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<sup>1</sup> In order to make inferences about the causal relationship between corruption and regulatory quality, more research would be necessary.

system is even more complicated by the fact that additional intermediaries (e.g. notaries) are needed to deal with the administrative process. Sometimes, they are used not because of their knowledge of the procedures but actually for knowing ways how to avoid delays and complications.

### **Project 30 – a review of administrative procedures in Viet Nam**

The Government of Viet Nam conducted a comprehensive review of administrative procedures under the name of “Project 30” in the years 2007-2010 with the goal to simplify at least 30% of administrative procedures and reduce administrative costs by at least 30%. One of the goals was also to decrease opportunities for corruption in Vietnam.

All administrative procedures and forms had to be inventoried and reviewed to check their necessity, legality and user friendliness. Proposals for their simplification were then developed as a result of this assessment. All administrative procedures had to be standardised and published through the National Database of administrative procedures.

Simplification of administrative procedures was carried out throughout the whole administration, at all 4 levels of government including sub-national levels. The method of the “regulatory guillotine” was chosen for reviewing the administrative procedures combined with the quantification of compliance costs using a modified version of the Standard Cost Model. The responsible institutions (ministries, agencies, provinces) conducted the review themselves.

Almost 6000 administrative procedures were simplified, repealed or replaced.

*Source: Administrative Simplification in Viet Nam: Supporting the Competitiveness of the Vietnamese Economy, Cutting Red Tape, OECD (2011).*

## **5. Is regulatory enforcement and inspection effectively designed for fighting corruption?**

Regulatory agencies can play an important role in preserving public trust, integrity and order in society. By regulatory agencies (or regulators) is meant public agencies primarily in charge of operating regulations (i.e. implementing, monitoring, enforcing and assuring compliance with), such as sectoral regulators in utility sectors, environmental protection agencies, etc. Inspection that covers a very broad range of public policy fields from environment and health to security and tax is one of the key tools for regulatory authorities to ensure that their regulated areas are well-functioning, accountable, transparent and responsive and also not open to waste, fraud and corruption. As a powerful policy tool, inspection allows regulatory authorities to check and monitor the activities of their regulatees whether they are legitimate, efficient, proper to public interest or waste, criminal and corrupt. Also, inspections and controls both ex-ante and ex-post conducted by regulatory agencies increase the level of the enforcement and compliance of the rules and regulations. This not only promotes the rule of law, but also reduces the informality and illegality which are accepted as main drivers for corruption.

To fight against corruption in an effective and proactive manner, it is critical to eliminate incentives and opportunities causing corruption. In this respect, a regular, effective, risk-based and professionally performed inspection can easily detect systemic risk and failures which offer significant opportunities for waste, fraud and corruption. Moreover, inspectors who are credible, well-trained and skilled suggest comprehensive and effective solutions in the inspection reports to fix such problems and failures. They also inform the respectful public institutions like Public Prosecutor's Office regarding fraud, bribery and corruption when occur and bring those who involved corruption before the judiciary. This is very discouraging and having deterrence effects for potential corrupt activities.

### **Reform of inspections in the banking sector in Turkey**

In November 2000 and February 2001, Turkey experienced two severe economic crises, which mainly resulted from the fragility of the banking sector. Besides some major problems such as the liquidity and capital inadequacy of the banks, it is well accepted that the lack of effective inspection and surveillance mechanism over the banking sector and huge corruption emanating largely from shareholder exploitation and distortion are the main reasons of the financial crisis. Between 1997 and 2003, 25 banks were taken over by the State Deposit Insurance Fund (SDIF). According to SDIF, the total amount of corruption stemming from the banking crises was about USD 27 billion to tax payers.

To overcome this systemic financial crisis, the Banking Regulation and Supervision Agency (BRSA), introduced the “Banking Sector Restructuring Program” in May 2001. One of the main pillars of the programme was to strengthen the surveillance and supervisory framework based on effective and functioning on-site and off-site inspection. Within this scope, BRSA has adopted risk oriented supervision; tightened branch inspection and process controls; enhanced the scope and efficiency of the audits by increasing the number of auditors conducting on-site supervision; and made amendments in legislation to implement information systems audit in banks.

All these measures taken to improve the efficiency and effectiveness of regulatory inspection and oversight have produced a number of successful outcomes. The banking sector has continued to grow in a rapid and healthy way since 2003. The sector’s capital adequacy, asset quality and profitability have increased. Nonetheless, no massive corruption case has been detected in the sector. No bank has been taken over by SDIF due to shareholder exploitation and distortion as happened before. While the current global economic crisis forced several countries to propose rescue packages, the Turkish government did not transfer any public funds into the banking system.

*Source:* From Crisis to Financial Stability (Turkish Experience), BDDK Turkey [www.bddk.org.tr](http://www.bddk.org.tr).

## Further Resources

### OECD

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#### STANDARDS AND PRINCIPLES

##### [Draft OECD Recommendation on Regulatory Policy and Governance](#)

Scheduled for adoption in 2012, the Draft Recommendation expands on existing OECD instruments on regulatory reform and management with a view to providing updated responses to the challenges of regulatory policy. The Recommendation covers regulatory policy, management and governance as a whole-of-government instrument that can and should be applied by sectoral ministries, regulatory and competition agencies.

##### [Recommendation of the OECD Council on Improving the Quality of Government Regulation](#)

The Recommendation contains the Reference Checklist for Regulatory Decision-making, a set of ten questions about regulatory decisions that can be applied at all levels of decision- and policy-making. These questions reflect principles of good decision-making that are used in OECD countries to improve the effectiveness and efficiency of government regulation by upgrading the legal and factual basis for regulations, clarifying options, assisting officials in reaching better decisions, establishing more orderly and predictable decision processes, identifying existing regulations that are outdated or unnecessary, and making government actions more transparent.

##### [OECD Guiding Principles on Regulatory Quality and Performance](#)

The OECD Guidelines for Regulatory Quality and Performance highlight the dynamic, forward-looking process by which regulatory policies, tools and institutions are adapted for the 21st century. They call for a cross-sectoral, pro-active approach to make regulations more responsive yet predictable.

## TOOLS, GUIDANCE, MANUALS

### [APEC-OECD Integrated Checklist for Regulatory Reform \(2005\)](#)

The Checklist that OECD-APEC economies may use to evaluate their respective regulatory reform efforts highlights key issues that should be considered during the process of development and implementation of regulatory policy, while recognising that the diversity of economic, social, and political environments and values of member economies require flexibility in the methods through which the checklist shall be applied.

### [Cutting Red Tape - Why is Administrative Simplification so Complicated? \(2010\)](#)

“Too much ‘red tape!’” is one of the most common complaints from businesses and citizens in OECD countries. This report presents policy options for administrative simplification that are in line with current trends and developments. It provides policy makers with guidance on the available tools and explains common mistakes to be avoided when designing, undertaking and evaluating administrative simplification programmes.

### [Risk and Regulatory Policy: Improving the Governance of Risk \(2010\)](#)

Risk-based approaches to the design of regulation and compliance strategies can improve the welfare of citizens by providing better protection, more efficient government services and reduced costs for business. This publication presents recent OECD research and analysis on risk and regulatory policy. The topics in this publication include challenges in designing regulatory policy frameworks to manage risks and different cultural and legal dimensions of risk regulatory concepts across OECD.

### [Regulatory Impact Analysis](#)

Regulatory Impact Analysis (RIA) is a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives. The OECD provides evidence from research on methodological issues and country experiences with the implementation of RIA as well as guidance material to improve the performance of RIA, its early integration with policy making and the promotion of more coherent regulatory policy across government.

## REVIEWS AND CASE STUDIES

### Country reviews of regulatory reform

The OECD has assessed the regulatory management policies of 23 member countries, as well as Brazil, China and Russia. The reviews aim at assisting governments to improve regulatory quality – that is, to reform regulations to foster competition, innovation, economic growth and important social objectives.

### Indicators of Regulatory Management Systems

The OECD surveys on countries' regulatory management systems (RMS) conducted in 1998, 2005 and 2008 answer questions on the nature and design of regulatory quality in OECD countries. Almost 200 indicators offer comprehensive insights into trends in regulatory reform and identify leading regulatory management practices. They are complementary to the OECD in-depth country reviews

### Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest (2011)

Reflecting the importance of getting regulation right, this report encourages governments to “think big” about the relevance of regulatory policy. It assesses the recent efforts of OECD countries to develop and deepen regulatory policy and governance.

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