



Background Document on Oversight Bodies for Regulatory Reform

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INTRODUCTION

1. The aim of this paper is to describe and analyse the characteristics and good practices of oversight bodies in charge of regulatory reform. The 2005 *OECD Principles for Regulatory Quality and Performance* pleads for a whole-of-government approach for regulatory policy. This requires coordination of different institutions involved at different levels of government and the commitment to assign adequate resources to them.
2. Oversight bodies have been key pieces in the process of regulatory reform, working as ‘engines of reform’, maintaining a whole strategic point of view, coordinating inside the administration. Oversight bodies’ general role, besides supervision, control and coordination, consists in forcing regulators to demonstrate and justify the relevance of their regulation (potential and existing), using accountability and assessment mechanisms, as well as offering them technical advice and promoting regulatory reform throughout government whilst guaranteeing regulatory quality.
3. Appropriate institutional arrangements have been recognised as essential components of a comprehensive strategy for regulatory reform. In some cases the set up of institutions to carry out this task has not been fully accomplished, due to a lack of strategic perspective, not enough resources and an unclear distribution of responsibilities and tasks. Most OECD countries however have integrated oversight bodies dealing with regulatory issues into the administration.
4. This paper is divided in two sections. First, a description of the roles of oversight bodies will be discussed. Second, their most relevant characteristics will be highlighted. A number of OECD examples will provide a better picture of the different institutional arrangements chosen by member countries.

KEY FEATURES OF AN OVERSIGHT BODY FOR REGULATORY REFORM

1. ROLES OF OVERSIGHT BODIES

5. Effective and credible mechanisms inside the government for managing regulation are indispensable for reform (OECD 2002). OECD evidence shows that a well-organised and monitored process, driven by “engines of reform” with clear accountability for results, is important for the success of the regulatory quality policy. While in 1996 only 14 OECD countries had set up a dedicated body (or bodies) responsible for promoting the regulatory policy and monitoring and reporting on regulatory reform and regulatory quality in the national administration from a whole of government perspective, 23 countries had one in 2005, according to preliminary results from the most recent survey on regulatory quality indicators. These institutions have brought important improvements for the regulatory systems and the reform processes.

Main functions of an oversight body

6. In OECD countries, there is a **wide range of institutional bodies** that function successfully. The most remarkable aspect of the use of oversight bodies is their variety in roles and structures: “most are located within administrations, although advisory commissions, regulatory reform committees of Cabinet, parliamentary committees and intergovernmental committees are also relatively widespread” (OECD: 2002). According to OECD reviews on regulatory policies in country members, oversight bodies can play several roles:

Coordination and supervision

7. A key role of oversight bodies is to **coordinate** and **supervise**, making sure that regulatory reform meets quality standards, complies with a general economic strategy and that Regulatory Impact Analysis (RIA) is undertaken appropriately. In that sense, channels of communication between regulators and bodies must be properly settled. Furthermore, the level of government from which the body coordinates is important, as well as the used tools (see Box 1).

Box 1. Co-ordination and supervision

In **Korea** a Regulatory Reform Committee has been set up by law with a “general mandate to develop and co-ordinate regulatory policy and to review and approve regulations.” Its main functions are to give some strategic perspective in the regulatory reforms, to undertake research, to monitor improvement efforts of each agency and to make sure there is coherence between their actions. The Prime Minister, a significant group of experts and six Ministers participate in this body, and it is one of the cases where more power has been given to this kind of institution, multiplying the ‘engine of reform’ effect.

In the **Netherlands** extensive inter-ministerial coordination and supervision has been put in place. A Regulatory Committee coordinates fairly independent Ministries. As for supervision of policy makers and regulators, a programme to audit law-making processes has been established. Independent audit units review every two years the performance

of ministries and their staff involved in the legislative process, delivering recommendations to the responsible Minister.

In **Denmark** there was a significant change in the regulatory philosophy before the end of the 1990s, moving from “deregulation” to the search of “regulatory quality”. A Regulation Committee was established to oversee and manage the overall legislative programme and to make sure the impacts of regulation were properly assessed. It is another example of inter-ministerial coordination since the Prime Minister’s Office and the Ministries of Finance, Justice, Economic Affairs and Trade and Industry are deeply involved.

In **Mexico**, a great part of the economic activity is performed by micro and small enterprises. The COFEMER (Federal Regulatory Improvement Commission) launched an specific Rapid Business Start-up System (SARE) co-ordinating all levels of government to try to bring more flexibility in the start-up of companies, complying with all due requirements in a shorter period of time. This case provides a good example of coordination at different levels of government.

The challenge function

8. The **challenge function** empowers the oversight institution with the competence of questioning regulation and its reforms by assessing quality of regulatory policy through RIA and the gatekeeper function. This means the capacity to veto a regulation which does not fulfil the requirements of quality, giving the oversight body an important amount of power. This feature has not reached all institutions and it is still pending in many OECD countries.

Box 2. The challenge function

In **Denmark**, the Regulation Committee has insisted on the necessity of developing ways of assessing regulatory impacts. RIA is performed in a number of areas (financial, administrative, business, environmental and EU impacts) under the Committee’s advice when laws have a substantial economic impact. Then, the Ministry of Finance gives guidance through benefit and cost-effectiveness analysis.

In the **United Kingdom** there have been recent changes in the regulatory reform framework since the approval of Budget 2005. The Better Regulation Task Force was replaced by the Better Regulation Commission (BRC) to provide independent advice to government, from business and other external stakeholders, about new regulatory proposals and about the Government’s overall regulatory performance. The Commission will continue the challenge role carried out by the Better Regulation Task Force, as well as take on new responsibilities following the announcements in Budget 2005, including vetting departmental plans for simplification and administrative burden reduction.

Australia’s Office of Regulatory Review (ORR) is located within the Productivity Commission, which was established in 1998 as the Government’s principal advisory body on all aspects of microeconomic reform. The ORR vets and reviews draft regulations to ensure that they are properly formulated and that they include assessments of, among others, administrative costs for government, business and other affected parties.

9. This function would be better performed if there were improvements in **efficient accountability and assessment** of results of regulation. There have been great advances in this area with the introduction of regulatory tools such as RIA, but still much more attention must be placed in measuring the quality of regulations.

Advocacy

10. **Advocacy** means to take especial consideration to maintaining the right path for the long term strategy. Oversight bodies can be very useful in the promotion of regulatory reform and quality. Overlapping and duplication of functions can be avoided through information activities inside and outside government. Oversight bodies can help to raise public awareness of reform outcomes and benefits.

Advice and support

11. Provide **advice** and **support** helps to create and maintain a cultural change in regulators. This generally under-prioritised task could be achieved through extensive guidelines, continuous training and providing specific expertise even with external consultants if necessary.

Box 3. Advocacy and support to regulators

In the **United Kingdom**, the Better Regulation Commission plays a continuous advocacy role of reform throughout the regulatory institutions. There has been an extensive effort in compiling information into reports and giving conferences to public staff of regulators.

In **Japan**, the Administrative Evaluation Bureau promotes the appropriate implementation of policy assessments by regulators, and coordinates and publishes reports on the progress of the implementation of policy evaluations. At the same time it provides government-wide training in regulatory policy evaluation.

2. ATTRIBUTES OF OVERSIGHT BODIES

Common characteristics of oversight bodies

12. The main features of oversight bodies that contribute to regulatory quality can be summarised in the following points: the capacity of co-ordination of institutional frameworks from a whole-of-government perspective, independence and sufficient authority, political support at a high political level, and integration into a broad concept of reform.

13. From an administrative perspective, most countries believe that **strong oversight bodies at the centre of government are essential to progress** (OECD: 2002). In many OECD countries, oversight bodies have been placed at the centre of government, sometimes at the same level of ministries and other regulators supervised, next to the Prime Minister/ President Office or directly linked to a budgetary agency. Special gains have been registered in countries with a strong presidential system, where the institutional structure provides more power to a centred oversight body. Korea, United States and Mexico are conspicuous cases of improvement in their regulatory systems propelled by central bodies clearly supported by presidential offices.

14. A central supervising and coordinating body can help avoiding negative effects derived from a “bottom-up” organised administrative system, in which the regulators are asked to supervise themselves, which might bring possibilities of misleading behaviour.

Box 4. Oversight bodies at the centre of government

In **Mexico**, the COFEMER, under the Ministry of Economy and supported by the *Federal Regulatory Improvement Council*, plays the role of an oversight body ensuring regulatory quality, working as “an engine of reform in the Executive branch”, bringing expertise, training, guidance, improving transparency, increasing quality in regulation and making sure regulators undertake RIA. All Ministries and federal agencies responsible for regulation must report Biennial Programmes, analysing the potential impact of future regulation. COFEMER revises and assess all drafted

regulation, and even though it does not have complete veto over them, it can ask regulators to change these drafts. Everything is made public through its web-site. Political commitment has been essential, enhanced by the support from businesses and encouraged by an improvement in transparency of the mechanisms of decision making and regulatory policy design.

In **Korea** the Regulatory Reform Committee, established directly under the authority of the President in 1997, has worked easily as a 'motor of reform'. The firm commitment of the President has overcome general domestic opposition to reform.

In the **United Kingdom** the Better Regulation Executive (BRE), within the Cabinet Office, has overall responsibility for the Government's commitments to regulate only when necessary, to set exacting targets for reducing the cost of administering regulations and to rationalize the inspection and enforcement arrangements for both business and the public sector.

15. Other countries, smaller and consensus-based, have chosen a different strategy: the set up of more decentralised mechanisms. However, "a rejection of a central regulatory oversight body does not imply the absence of co-ordination on regulatory policy issues" (OECD:2002), but it is a result of the relatively decentralised model of government administration.

Box 5. Oversight bodies in decentralised systems

Denmark, like other small countries, is relatively more informal, consensual, and decentralised in its policy structures. Strong policy coordination through Ministerial Committees has connected a relatively weak central government with the rest of the framework. The Regulation Committee was intended to coordinate ministerial institutions and ensure that they accurately identify policy problems, assess impacts and consider alternatives to "command and control" regulation.

In **Norway** and **Switzerland**, there is no central unit responsible for managing and co-ordinating regulation and its reform. The Economic Policy Directorate of the Swiss State Secretariat for Economic Affairs is mainly in charge of promoting regulatory quality, RIA and the analysis of the economic impact of legislation in co-ordination with the sections on Regulatory Analysis, and of Growth and Competition Policy. In the Norwegian case, the regulatory policies and supervision tasks are fragmented across ministries. The four most important institutions are: the Ministry of Finance, responsible for supervising all regulations which may affect the budget, or produce substantial changes within the central government organisation, or have significant socio-economic consequences; the Ministry of Justice, responsible for ensuring the technical and legal quality of primary legislation; the Government Committee for Modernisation and Simplification which is co-ordinating and supervising projects under the Modernising the Public Sector programme, including initiatives to simplify regulations and reduce administrative burdens on businesses; and the Office of the Auditor General which evaluates the fulfilment of policy objectives and with orientation in the regulatory reform agenda. No institutions are in charge of the challenge function to incentive and supervise the use of RIA.

16. Mixed institutional arrangements for oversight bodies are possible, combining the different responsibilities of supervising, advising, challenging and co-ordinating and creating a network of bodies operating at different levels of government. When responsibilities are spread over different institutions, coordination mechanisms are needed. The institutional framework of Canada tries to strengthen the oversight activities by creating a complex but well structured framework (see Box 6).

Box 6. Canada's regulatory institutional framework

Canada has some of the responsibilities which could be centered in an oversight body spread through a number of long-established bodies with horizontal responsibilities for aspects of regulatory governance.

There is a group of bodies depending directly from executive authorities. *The Special Committee of Council* (SCC), the *Regulatory Affairs and Orders in Council Secretariat* (RAOICS) and the *Treasury Board Secretariat*, are supported by the Cabinet. The first is in charge of co-ordinating overall regulations, further consolidating and accountability for regulatory governance and its approval is required before Governor-in-Council regulations can be

made. RAOICS was created to strengthen oversight of regulatory policy assessing RIA, providing analysis and advising to SCC and the Cabinet. The Treasury Board Secretariat advises to regulators how to include regulatory information in regulators' reports and force them to demonstrate the effectiveness of the regulation.

At the Departmental (Ministerial) level, other institutions share other responsibilities: the *Department of Justice* supervises overall internal regulation quality, advises with regulatory alternatives, harmonisation of regulatory requirements, compliance and enforcement techniques and the use of performance standards. *The Deputy Ministers' Challenge Team on Law Making and Governance* (DMCT) acts as a forum for improvement in regulatory governance in six targeted sectors. *Sponsoring departments* are agencies within Departments that perform internal reviews of regulatory agendas and the drafting and quality control through RIAs of regulations.

Besides those two groups there are other two bodies "independent of the executive branch of the government", *The Standing Joint Committee for the Scrutiny of Regulations* (SJC) counts with members of both Houses of Parliament to provide parliamentary oversight of subordinate regulations and review final regulations, as published in the Canada Gazette, to ensure they meet a variety of criteria. *The Office of the Auditor General* gives the Parliament information, analysis, advice and assurance under the main role of promoting accountability, best government practices and effectiveness of regulation.

There is a fourth force from outside the government based on *think tanks* working in regulatory policy issues which help extending the challenge and advocate function with less strength than the institutional bodies but with a higher degree of independency.

17. Regulatory reform has been proved more effective in cases where it is considered as a **whole-of-government process**. Key institutions should be integrated into a comprehensive strategy, strengthening co-ordination mechanisms among regulators and ministries. Having bodies supported by relevant reform-oriented groups as Ministries of Finance, Competition and Trade authorities could help to diversify risks and to extend their capacity for reform.

Box 7. A whole of government perspective

In the **Netherlands** ministries have a significant responsibility for regulatory policy reform. Nevertheless, a series of oversight bodies were established: a Ministerial Committee chaired by the Prime Minister revises and coordinates the regulatory reform, and the Ministries of Justice and Economic Affairs have defined implementation responsibilities and give advice together with the Ministry of Environment supporting the environmental impact of regulation analysis. Besides, an independent Civil Service Commission gives a broader view and capacity to provide a whole-of-government perspective in the direction of the reform programme.

In **Japan** regulatory reform has been placed in a prominent position in the political priorities. Since 2002, under the Government Policy Evaluations Act (GPEA), the Cabinet Office and Ministries evaluate the policies for which they are responsible. Supported by a nationwide network that includes Regional Administrative Evaluation Bureaus and District Administrative Evaluation Offices, there is a centered oversight body, the Administrative Evaluation Bureau, implementing policy and administrative evaluation as well as counselling with a whole-of-government perspective.

18. The independence of oversight bodies could be better guaranteed if they are staffed with experienced experts and professionals of different fields of expertise. Oversight bodies should have information and capacity for independent judgement, and constantly look for exchange of experiences with other organs and countries. Strong political commitment is necessary to fulfil their tasks.

Box 8. Levels of authority hold by oversight bodies

One of the pioneer bodies responsible for assessing regulatory quality was established in the **United States**, the *Office of Information and Regulatory Affairs* (OIRA) under the *Office of Management and Budget Executive Office of the President*. This institution has a limited period of time to perform cost-benefit analysis to regulations, formal regulatory review (policy and analytical oversight) by executive order of most federal regulations at proposed and final stages, and it has to report to Congress for its activities. Another group of bodies established in the US are the

Congressional Committees, organised along programme lines.

The **Czech Republic** has a *Legislative Council* of the Government, which is the main institution in charge of overseeing the quality of legislation, although it has only an advisory power. Furthermore, the government may decide not to consult the Council, but in principle, this happens only on urgent legislation.

The General Legislative Policy Division of the Ministry of Justice of the **Netherlands** has the capacity of advising the Cabinet Office. In many cases the Cabinet has returned bills to Ministries in order to improve their regulatory quality.

Every department in the **United Kingdom** has to account for their regulatory performance to the Panel for Regulatory Accountability (PRA), institution chaired by the Prime Minister. This panel has the responsibility of assuring a sound level of quality by avoiding new administrative burdens. In order to achieve this mission all regulatory proposals likely to impose a major new burden on business require clearance from the PRA.

19. Oversight bodies with a **permanent mandate** are more numerous among OECD countries and indicate a greater commitment with reforms in the long term. A permanent mandate contributes to maintain more independence, since limited mandates could make them more vulnerable to political cycles. In order to avoid capture, stakeholders can take part in the design and support of oversight bodies, but the public interest must prevail.

Box 9. Mandate period and independency of oversight bodies

In **Mexico**, COFEMER was established by Federal Law on Administrative Procedures, functioning with technical and operating autonomy and an indefinite period of mandate.

In **Japan**, evaluations of the Administrative Evaluation Bureau have to go through mandatory investigation and deliberation by the Commission on Policy Evaluation and Evaluation of Independent Administrative Institutions (established in 2001), formed by independent experts from the private sector. At the end the Cabinet must respond to all Bureau's recommendations.

20. **A broad concept of reform is advisable**, as well as a strategic perspective of the regulatory policies and their reforms. Without that, oversight bodies may act on a case-by-case basis, facing problems of coherence, consistency, and some short-reaching policies. It is therefore advisable that they establish a strategy to build up constituency for their work, integrating different voices of the political, economic and social landscape.

Box 10. Oversight bodies' wide view

The Regulatory Process Action Plan sets out in **Canada** a structure and tools for regulatory reform, and a network of central and departmental oversight bodies is one of the key elements. Their work is based on the strategy framework established by the *Guiding Principles of Federal Regulatory Policy* and the *Citizen's Code of Regulatory Fairness*, which point towards minimising regulatory growth and carefully deregulate, "maximising Canadian's net benefit", increasing transparency, reducing regulatory burdens and coordinating provinces.

In the **Netherlands**, the Prime Minister developed economic and legal standard principles which must be applied by all Ministries and institutions involved in drafting regulation: clear definition of policies, sufficient justification of regulation, clarity in drafting, efficiency in terms of cost-effectiveness, sound measurement of impacts and enforceability of regulation.

21. OECD experience shows that the institutional design of oversight bodies should reflect the legal, economic, social and cultural characteristics of each country, taking into account how the regulation affects the system. There is no unique model and structure of institutions dealing with regulatory quality, but lessons learnt from other cases can contribute to success.

CONCLUSIONS

22. Oversight bodies are an essential regulatory institution, which enhances quality in regulatory processes and their reforms. Their mission is to supervise, co-ordinate, challenge and advice regulators while promoting reform, regulatory quality and its benefits. These institutions should have the capacity to co-ordinate, maintain a whole-of-government perspective and a broad concept of reform, holding sufficient authority and preferably benefit from a permanent mandate.

23. The path to building a well functioning oversight body is not a single straight line. The first task to build this institution is to assess the regulatory situation, its advantages and its challenges, and draw clear policy objectives. Oversight bodies should have an incremental approach in tasks, and should be constantly developing capacities and skills of human resources. As for their internal organisation there are several possibilities: a body structured in working groups for each function, some of them of permanent nature; but also enough flexibility to form *ad hoc* groups which could respond to a changing environment. In order to inform this process, a research unit might be created, evaluating and supporting the oversight body and other institutions involved in the regulatory system. “Regulatory quality is not merely an issue of maintaining levels of performance, but of achieving continuous improvement over time” (OECD: 2002).