A ‘Sustainable Regulatory Policy’: what determines success?

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Why have a ‘regulatory policy’?

- Good vs Bad regulation *matters*: to the living standards and wellbeing of citizens
- Good regulation requires good evidence-based *processes*, with the support of effective *institutions*
  - Complexity can be great
  - Political pressures are often unhelpful
- A systematic approach is needed to achieve ‘balance’ and consistency
OECD Council Recommendations

- Members commit at the highest political level to an explicit whole-of-government policy for regulatory quality.

- Establish mechanisms to actively provide oversight of regulatory policy.
The Regulatory Cycle

Stage 1 - Decision
- Rationale?
- Option assessment

Stage 2 - Design
- Degree of prescription, control and discretion
- Modification of existing rules
- Expost review requirements

Stage 3 - Delivery
- Risk management
- Skill development
- Coordination
- Monitoring and feedback

Stage 4 - Review
- Evaluate performance
- Still fit for purpose?

Consultation

Lessons from regulators on what works

Lessons from expost evaluation
How should we judge ‘success’?

• The regulatory policy is well designed
  - Key elements of process and governance across the ‘cycle’ are covered
  - The policy is clear and administrable
• It is actually followed in practice!
• And it can be expected to lead to better outcomes (the ‘endgame’)

Why is ‘sustainability’ an issue?

• Cycles of enthusiasm and indifference are common
• The ‘natural forces’ of government militate against sustained good practice
  - Pressure to ‘act first, ask questions later’
  - Power of the status quo
  - ‘Where there’s a will, there’s a way’ (around)
Preconditions for *sustainable regulatory policy*

- Recognition by government that good process *matters* is essential,
  - at the political level
  - and at the bureaucratic level
- But ‘failsafe’ systems are needed too
  - to entrench good intentions in regulatory *practice*
Can we emulate Ulysses in regulatory policy?
Mechanisms to constrain the 'regulatory reflex'

- The pragmatic goal: to make it *harder* to ‘act first…’
- Complementary mechanisms
  - Rules – of varying formality and prescriptiveness
  - Incentives and sanctions
  - Transparency (oversight and reporting)
Rules for rule-making: a hierarchy

• A public ‘compact’ (election mandate)
• Administrative codes on ‘best/better practice’
• Legislation that specifies
  - procedures
  - institutions
• A constitutional provision?
Supporting institutions

• Ministerial responsibility (ideally at Cabinet level)

• Default systems
  - Post-implementation reviews
  - ‘Sunsetting’

• Oversight bodies to vet new regulation (flow) and report on existing regulation (stock)
  - focusing on both process and impacts
“So is there a silver bullet?” (Alas, no)

• Good regulation needs prescribed processes and institutional support.
• But it also depends on the *spirit* in which requirements are implemented.
• ‘Culture’ can be as important to behaviour as the rules themselves.
• Leadership is needed to drive improvements, and remains the key to the ‘sustainability’ of regulatory policy.
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