# Table of Contents

Preface ........................................................................................................ 1
Why Better Regulation? ................................................................................ 2
A flagship report: Regulatory Policy and the Road to Sustainable Growth ...... 3
The need for better rules ............................................................................. 4
What do citizens want? .............................................................................. 6
What do businesses want? ........................................................................... 8
Rethinking Smart regulation ...................................................................... 10
Evaluation: The new frontier ...................................................................... 12
Keep it simple ............................................................................................ 14
Go digital! .................................................................................................. 15
Keep it open ............................................................................................... 16
Keep it fair ................................................................................................ 18
The challenge to govern better ................................................................. 20
Establishing institutions for regulatory oversight .................................... 21
Preventing regulatory capture ................................................................... 23
Ensuring sustainability through better rules .............................................. 25
Green growth ............................................................................................ 26
Addressing risk .......................................................................................... 28
International regulatory co-operation ....................................................... 30
The OECD Regulatory Policy Committee .................................................. 33
The OECD’s mission ................................................................................... 40
Preface

In October 2010, the OECD held its first Conference on Regulatory Policy, an event that crowned a two-year project of co-operation with the European Commission to carry out regulatory management reviews of 15 EU member states. Hosting over 350 participants from 51 countries, the Conference offered an opportunity to redefine the agenda in the regulatory field, at a time when the role of regulations is under increased scrutiny in the aftermath of the crisis.

That scrutiny is understandable: the crisis exposed massive flaws in regulation, as well as in supervision and enforcement. And these flaws have not yet been fully addressed. Moreover, a robust regulatory environment is key to returning to a stronger, fairer and sustainable growth path. Effective regulatory governance is essential to win back the confidence of citizens, consumers, and entrepreneurs, and their trust in governments.

Effective and efficient regulations help foster innovation and entrepreneurship and good regulatory management contributes to the rule of law, through enforcement, inspection systems, and down-to-earth assessment of compliance. But regulations have to be simpler. More effort should be put into impact assessment. Regulatory policy making must take into account environmental and social impacts and risk management, as well as the need – and strategies – for international regulatory co-operation.

At a time of weak recovery, high unemployment and constrained room for manoeuvre by macroeconomic policies, there is clearly much at stake in getting the regulatory framework right.

This OECD Conference represented a real step forward in the endeavour to meet this challenge.

Angel Gurría
Secretary-General, OECD
Why Better Regulation?

Policies to promote Better Regulation have been an important development for public governance in the OECD area, and beyond, over the past thirty years. Regulation is, after all, one of the three key levers of state power – along with fiscal and monetary policy – and of critical importance in shaping the welfare of economies and society.

But as countries emerge from the crisis, they are under new and intense pressure to strengthen their regulatory systems so as to avert financial instability in the future. Never has the need to achieve the right balance between risk and reward, between cost and benefit, been so pressing. Ineffective regulation will slow recovery, inhibit growth, undermine efforts to address complex issues such as climate change, and reinforce citizens’ scepticism of government.

“Building a better world economy requires finding ways to design, apply and enforce better rules.”

Angel Gurría, Secretary-General, OECD

OECD’s role in promoting quality regulation

Acting as a “club of best practices” and a hub for global policy dialogue and exchange of experiences, the Organisation has played a pioneering role in bringing the issue of regulatory reform to the fore. Through its policy principles and guidelines, analysis, peer reviews, and now this major Conference and flagship report, the OECD continues to make a real contribution in the field of regulatory policy.

The 2010 Regulatory Policy Conference

The Conference highlighted the importance of regulatory management and governance in the entire policy cycle: design, enforcement, monitoring and performance evaluation.

Conference website:

www.oecd.org/regreform/policyconference
The Conference was organised in partnership with the Agency for Administrative Simplification (ASA) and the Belgian Presidency of the EU; the European Commission; the Bertelsmann Stiftung; and the Board of Swedish Industry and Commerce (NNR).

A flagship report: *Regulatory Policy and the Road to Sustainable Growth*

The OECD introduced a major flagship report that integrated lessons from a two-year cycle of reviews of 15 EU countries, as well as other OECD reviews and reports. This report aims to set a framework for a debate over how regulatory policy can help meet public policy challenges. It encourages the need to “think big” about the relevance of regulatory policy in support of growth and social welfare as countries emerge from the crisis.

**Main conclusions**

- Regulatory policy is developing across the OECD area, and paths are converging.
- Regulatory policy has made a significant contribution to growth and the rule of law, helping economies and companies to flourish.
- Recovery from the crisis and sustainable growth both require the support of effective regulation.
- Evidence-based impact assessment, strong institutional capacities and giving voice to users are critical for success.
- Strong regulatory governance is the next frontier.

**What this brochure does**

Drawing on the fresh experience of global experts in Better Regulation participating in the Conference, this brochure brings together cutting-edge messages, findings, questions and insights.
The need for better rules

Key questions facing policy makers

- Is the stock of existing regulation truly necessary, or simply burdensome?
- Is impact assessment based on robust evidence?
- Has there been genuine consultation over new regulation, or merely lip service paid?
- Is there real transparency, or a risk of regulatory capture?
- Are the benefits of proposed regulations fully understood, or solely their costs?

What the answers require

To arrive at good regulation, it is necessary to understand the costs – economic, social, and ultimately political – of bad regulation:

- Administrative and compliance burdens linked to red tape
- Misallocation of effort, investment and production
- Reduced incentives for people to be innovative and industrious

Policy makers must constantly be reminded of these costs, because bad regulation is often chosen as the easy answer:

- It is much easier to achieve than good regulation.
- It will generally face less political resistance, especially where certain groups can benefit at the cost of the wider community.
- It is often rewarded with public acclaim, as tangible evidence that government is “doing something”.

Because so many elements are working against good regulation – cultures, incentives, lack of information, etc. – a systematic professional approach is needed to ensure better rules.
Better rules are human rules

“Human rules, that leave room for responsibility and awareness of citizens and companies, are probably the best rules we can imagine.”

Vincent Van Quickenborne, Minister of Economy and Reform, Belgium

Ensuring rules for shared benefits

“The challenge facing the social market economy is to ensure that all people will soon be able to share in the benefits of education, of health, of work, and of participation in political and social life… From a regulation vantage point, setting the rules – very few rules – for labour markets in times of globalisation and European integration is indeed a challenge bigger than ever before.”

Gunter Thielen, Chairman of the Board, Bertelsmann Stiftung, Germany

Reconciling short-term and long-term interests

A long-term sustainability perspective is required to balance broader tradeoffs and foster an efficient development perspective.

“New regulatory frameworks must reduce the burden on the economy and on infrastructure investment, but the precautionary principle cannot be left behind. The challenge for Brazil in fostering sustainable growth is solving that dilemma – the equilibrium between short- and long-term interests, reconciling the need for green growth and for environmental protection with the challenges to build infrastructure for future growth.”

Luiz Alberto dos Santos, Deputy Minister for Analysis and Follow-Up of Governmental Policies, Civil House, Presidency of Republic, Brazil
What do citizens want?

Their voices to be heard

“Consult, consult, consult. It is essential at all phases of the regulatory cycle: at the beginning, when a ‘problem’ arises; in the middle, when options are being considered; and, just as importantly, at the end, to rid the devil from the detail.”

Gary Banks, Chairman, Productivity Commission, Australia

Open comment and consultation

“Watch how you consult. What about consulting those who can’t be consulted, can’t be heard…such as children? Old people? Take in the entire picture, beyond consultation – because those who are consulted are well organised and focused on their interests, and their interests are not the whole reality.”

Luigi Carbone, Deputy Secretary-General of the Presidency of the Council of Ministers, Executive Chair of the Better Regulation Unit, and Counsellor of State, Italy

Participation as full partners

“Open government brings about its own fears: if too many people are participating in the policy-making process, that process could be dominated by the noisy, the aggressive and indeed the powerful. A challenge for open government is to ensure that doesn’t happen.”

Edward Donelan, Senior Adviser – Regulatory Governance, SIGMA (Support for Improvement in Governance and Management), OECD
Transparency

“The proposed and final rules you find on Regulations.gov are fed into the portal by the Federal Register, the daily newspaper of the US government, which publishes all regulatory actions. The three million documents that are available to the public include the public comments that the agencies receive, and supporting materials such as regulatory impact assessments. So for example, you can see the comments that others have submitted on the rule that you are looking at and want to comment on.”

Alexander Hunt, Branch Chief, Office of Information and Regulatory Affairs, United States

Easy access: regulation in one click and in clear language

“There are two important aspects to clarity. When we asked civil society organisations to cite one thing they would want to see improved in the administration, they said, ‘Use clearer language – we don’t understand what you’re asking us to respond to.’ The other thing is to be very clear about the process. At what point do things happen? When can you take part? Where are decisions made? Who makes them? And if some decisions have already been made, what are the parts that you can actually influence or give voice to?”

Katju Holkeri, Head of Governance Policy Unit, Public Management Department, Ministry of Finance, Finland; Chair of the OECD Public Governance Committee
What do businesses want?

**Simple rules**

“All trade is based on simplicity, regardless of the size of the company.”

Kenneth Bengtsson, Chairman, Confederation of Swedish Enterprise

**A client-focused approach ensuring clarity and predictability**

“Business is a primary user of government services and depends upon certainty and the efficiency of regulatory frameworks. In this period of slow growth and slow expansion of employment, effective regulation will help to boost investor confidence and support sustainable business activity and employment creation.”

Tadahiro Asami, Secretary-General, Business and Industry Advisory Committee (BIAC)

**An understanding of the life cycle of businesses**

- Regulation impacts businesses throughout their entire life cycle. The aim is to have efficient regulation at each stage of business activity. Start-up should be a simplified process, with online registration through a one-stop shop.
- Businesses are concerned not just with the administrative cost, but with the cumulative and total cost of complying with regulation.
- Fitness tests determine whether regulation has achieved its initial objectives, and at what cost.

**A competitive and business-friendly environment**

Setting up such an environment is a shared responsibility between government and business. Who should take the lead? How can countries create momentum for these initiatives? How can the resistance from different sectoral interests be overcome?
Politically courageous decisions required for genuine change

• Release of potential economic value through elimination of unnecessary transaction costs.
• Burden reduction that is not limited to quantified burdens but extended to irritants, paying attention to perception as a measure of success.

“Administrative burdens, compliance costs and other impacts never result from one source, but from a combination of regulation, administration, and real-life conditions.”
Stephan Naundorf, Advisor, German Federal Chancellery, Germany

Questions for policy makers

• Are businesses truly participating in the decision-making process? Or do they feel that the key issues are being ducked, and they are left with discussions about issues peripheral to them?
• In simplifying existing business regulations, is the focus on those most burdensome, with due account taken of all costs? Are results evaluated?
• Is impact assessment in place to ensure that any new corporate regulation is efficient? Should impact assessments be subject to independent scrutiny?
• Are there areas where the policy approach should move from a “better regulation” agenda to deregulation?

What businesses don’t want...
Rethinking Smart regulation

**Smart regulation** doesn’t just look at the quality of new proposals through impact assessments. It takes into account the whole policy cycle – from rationale to adoption of the design, implementation, and monitoring *ex post*.

“We need to act at sub-national levels of government – states and municipalities, where problems of fairness, compliance and accountability are often more acutely felt, and where there are often fewer checks and balances.”

Angel Gurría, Secretary-General, OECD

Aspects of a **Smart** approach:

- A solid evidence base. Difficult to measure as they are, benefits must be weighed along with the costs.
- Since the current stock of legislation will have more effect at any one time than the laws coming in, that stock should be revised so as to be improved – or dropped.
- Fitness checks. *Ex post* evaluation to determine what does or does not work, applied not just to single legislation but also to full policy areas.
- Joint responsibility: sub-national levels of government must accommodate **Smart** rules as well.
- Wide stakeholder involvement – taking account of citizens, companies (including SMEs), and consumers.

Possible stumbling blocks to implementing a **Smart** approach:

- *Ex ante* and *ex post* evaluations are handled by different institutions; the methodologies are not the same.
- The time frames for *ex ante* and *ex post* are not the same, and so come under varying degrees of political pressure.
- Revision of existing rules and the preparation of new rules are managed separately.
- Reform initiatives are not sufficiently or clearly linked to high-level economic, social or environmental goals.
Keys to rethinking Smart

Joint action on the flows and stocks of regulation

“The European Commission has switched from better regulation to Smart regulation – and it’s not just a word. In the past, ‘better’ focused on the quality of new proposals, with impact assessments. ‘Smart’ recognises that while better regulation has an important role to play in achieving a better life for citizens and a better environment for businesses, we need to get it right. Smart regulation now looks at the whole circle, recognising that legislative proposals reflect the revision and improvement of existing legislation.”

Marianne Klingbeil, Director for Better Regulation; Acting Chair of the Impact Assessment Board, Secretariat-General, European Commission

The need for more evidence

“There is a need to pursue research on the difficult and multifaceted relationship between regulatory management and economic performance. Operational methodologies need to be agreed and databases built to be able to make timely strategic changes in our regulatory policy.”

Viola Groebner, Director for Industry Policy and Economic Analysis, Directorate General for Enterprise and Industry, European Commission

The critical role of ex post evaluation

The importance of ex post evaluation cannot be overstated; it will feed back into the next round of policy making. Ex post should be given levels of investment and effort commensurate with those accorded ex ante evaluation.

“Governments have a natural tendency to think that if they implement something, it solves the problem once and for all – and they don’t look at it again until it’s a disaster.”

Adam Jasser, Undersecretary of State, Secretary of the Economic Council, Prime Minister’s Plenipotentiary for the Reduction of Bureaucracy, Poland
“As policy development is a circle, there is no single entry point. In fact, I would argue quite strongly that ex post evaluation is perhaps the very first thing that should be done, rather than the last thing.”

Chris Shapcott, Director, Regulatory Reform, National Audit Office, United Kingdom

**Challenges**

- Evaluation must be transparent from the beginning and throughout the whole process.
- It requires funding as well as political support.
- The people who developed the regulation may still be in their posts and have a commitment to the regulation.
- There is no counterfactual case to set against the regulation: the only alternative is the hypothetical continuation of what existed before. It’s easier to find evidence of regulatory failures than to find evidence of overregulation.
A checklist for policy makers

- Who evaluates, and how are evaluations carried out? How can you ensure that the main actors take ownership?
- Regulations differ greatly in the impact they have. Are evaluations targeted, with a clear indication of what triggers the cost and who is making the claims?
- Is it useful to shorten the process by clustering all regulations to be evaluated into subject groups?
- Is independent scrutiny of impact assessments – to prove they are not merely self-justification – as important as having robust, relevant results?
- Does ex post evaluation reveal that ex ante was based on assessment of the wrong variables, or of variables that changed?
- What is the optimum period for carrying out evaluations?
Keep it simple

The role of e-government

Information and communications technology (ICT) is not in itself an objective but rather a means – a powerful tool to transform public services, improve regulations, simplify procedures, and provide services in a more user-friendly way for citizens and firms. Simplification helps e-government, and indeed should precede it: citizens expect online services to be simple, otherwise electronic administration will be just as inaccessible as traditional public services. At the same time, e-government helps simplification, with technology cutting red tape and helping to close a virtuous cycle.

A few of the many digital benefits

- A single portal can provide all the information citizens need to know about government services.
- Businesses can have a single point of contact with the public sector to access all government reporting forms and find relevant information from all government agencies.
- Entrepreneurs can set up a company at a single contact point and in less than one hour rather than several weeks, without filling in any paper application form.
- Interoperability between different information systems can allow citizens to renew two or more documents issued by different public services in one go. This avoids having to ask for papers from one part of the administration for use in another.
- Through a single online form, companies can deliver electronically their annual accounting, statistical, tax and financial information to several different public services.
- Industrial licensing processes can be simplified, to offer businesses all relevant information in advance (deadlines, taxes, etc.). Businesses can simulate all stages of the procedure, request the licence if they so choose, and follow up on its progress.
Go digital!

“Simplification is often primarily seen as changes in regulation, but there are many ways to simplify. Smart digital solutions can make it easier for companies to comply with the rules.”

Eva Meiling, Deputy Director General, Danish Commerce and Companies Agency, Ministry of Economic and Business Affairs, Denmark

Key questions facing policy makers

- Are e-government initiatives planned and co-ordinated with sufficient attention paid to ensuring interoperability?
- Are simplification tools really understood by lawmakers and duly taken into account prior to drafting and digitising?
- Is there an unwillingness to relinquish ownership of data? Is a change in culture necessary to tear down silos?
- Is there sufficient focus on users? An e-government initiative needs to fit the purpose and to be understood by users to be successful.
- Are all stakeholders assuming ownership and taking active part in developing solutions?

“E-government portals are the solution of the future for cutting red tape radically and allowing the once-only principle to become reality. But that future requires sharing data, solving technical and legal problems, overcoming existing structures – in fact, a change in culture.”

Geneviève Pons-Deladrière, Head of Unit, Secretariat-General, European Commission
Keep it open

Openness through user-focused regulation

Governments determine when legislative measures are practical and feasible, and whether projects are acceptable or not. Consultation makes it easier to implement legislation.

Open government grants citizens and others access to information and allows them to participate in the process of formulating policy – a process that had been the preserve of experts, until it was acknowledged that the experts did not necessarily hold the right answers.

In tapping into the collective wisdom or knowledge in societies and groups across countries, the government collects additional factual information to make enlightened legislative decisions. Those decisions will have greater legitimacy.

Key elements of an open government

- Accountability is linked to clarity: doing what you promise and not promising what you cannot do.
- Transparency enables people to find information they can readily use.
- Shared knowledge, widely disbursed in society.

Let people participate

“If regulation is to be empirically informed, it must be in large part because of the knowledge and participation of the people.”

Michael Fitzpatrick, Associate Administrator, Office of Information and Regulatory Affairs, United States
E-rulemaking and the use of new technologies

New technologies can do much to enhance transparency and accountability, by playing a role in the consultation process. Apart from project results, information published on the web can include:

- Whether or not initiatives were concluded on time.
- Impacts – savings for business, citizens’ perceptions, other statistical data.
- Delays that occurred, and the reasons they occurred.

ICT can also play an awareness-raising role. Those who will be subjected to future norms would be informed ahead of time and could modify their behaviour accordingly, in a sort of early warning system. However, ICT needs to be properly understood as a technical facilitator that does not exonerate governments from their responsibility of seeking consensus.

“There is a risk that the use of new technologies will encourage the idea of ‘instant democracy’, which is incompatible with the role that government should play as a stabiliser in our society.”

Luzius Mader, Deputy Director, Federal Office for Justice, Switzerland

Challenges

It is important for the whole of government to have a high-level joint strategy for the engagement and participation of citizens.

A proper amount of time should be allocated to the process; by the same token, it must be recognised that the citizens’ own time is valuable.

Engagement has to be embedded into the process, and indeed the culture. Civil servants will be slow to move if they don’t see examples or commitment on the part of leadership.

A prime challenge is getting stakeholders to participate and engage in discussion. Simply having consultation on the website is not enough. (“There’s no need to follow up – it’s on the web!”)
Keep it fair

The need to quantify social impacts

“It is often suggested that equity is a ‘soft’ or qualitative consideration, which cannot be measured. In fact, the opposite is true. A wide range of equity metrics is currently used in academic scholarship and, to some extent, by governments or NGOs. Equity is measurable; the real difficulty is choosing between these metrics.”

Matthew Adler, Leon Meltzer Professor of Law, UPenn Law School, United States

Multi-dimensional approaches to impacts

Policy makers need to assess policies through different metrics in relation to:

- Changes in income, inequality and poverty levels. Possible tools include cost-benefit analysis with distributional weights; cost-effectiveness; inequality metrics such as Gini coefficients; poverty metrics; and social gradient metrics to determine correlations between a particular attribute and a particular measure of social status, e.g. health status.
- The distributions of well-being across the population (using a numerical measure of “utility”), through the social welfare function.
- Sharing of the tax burden. This can be expressed as a percentage of individual incomes.
**Challenges to assessing social impacts**

- Difficulty in precisely defining the “population” concerned and the typology of impacts.
- Difficulty in integrating multiple measures from multiple stakeholders (government, local authorities, operators, social security organisations).
- Difficulty in measuring diffuse and long-term benefits, whereas costs are often tangible and immediate.
- Availability of statistical and economic tools.
- The need for short-term compromises among political groups, which may not be compatible with the measure or the explanation of impacts.
- The perception of unfairness, where one political party suspects another of having specific advantages and so resists reforms.
- The lack of transparency when integrating social impacts, which may lead to sub-optimal decisions and low acceptability of reforms.

**Action in the post-crisis context**

“In the wake of a massive failure of regulation, we should review the fundamental goals of regulatory policy. The point is not the number of regulations, but their quality that matters most. Regulations should be judged on their necessity, effectiveness, efficiency and whether they are as equitable and sustainable as possible.”

Ron Blackwell, Chief Economist, American Federation of Labor & Congress of Industrial Organizations (AFL-CIO), United States

**How can the process be facilitated?**

- By introducing a dose of politics into the typology of impacts, with limited objectives and medium-term impacts.
- Through public discussion of the potential distributive and social impacts of key decisions with all relevant stakeholders.
- By improving the structure and organisation of social ministries so they can use the impact studies that exist, synthesise the data and derive sustainable, socially innovative strategies.
- By trusting the agencies with technical knowledge of social impacts, as they are uniquely placed to provide correct assessments.
The challenge to govern better

Governments need to adopt a forward-looking perspective. Regulatory policy has evolved to form a set of principles and a discipline of regulatory management that together produce better regulation and reduce burdens to foster productivity. Regulatory management is now a permanent feature of governments, one that is central to their performance and ability to meet the expectations of citizens, business and civil society.

Yet, as countries emerge from one of the deepest financial and economic crises, governments cannot afford to resume business as usual. To fully achieve its intended results, regulatory management must be supported by strengthened regulatory governance based on competence, vigilance and dedication to the public interest. A shift in focus, integrating regulatory management with regulatory governance, follows from the recognition that optimal social outcomes depend on the collaborative actions of private institutions as well as government agencies. This combination should promote a robust regulatory environment and help win back consumer confidence and trust in government.

Governments need to establish new institutional, political and analytical insights:

- Regulatory policy must be backed by effective governance to ensure regulatory oversight. This implies setting up institutions and agencies, with proper mandates, leadership and strength.
- Proper enforcement is necessary to prevent regulatory capture, maintain integrity and promote public trust.
Establishing institutions for regulatory oversight

Regulators are normally closely linked to political agendas, and thus cannot review their own work. Independent scrutiny improves the quality of impact assessments, and indeed that of proposals. Such scrutiny should also help give momentum to revision of the existing stock of regulations.

Governments will need to establish specific bodies for regulatory oversight. Both the mandate and power of these bodies must be enshrined in some sort of legal instrument. The mandate may cover solely the cost measurement of administrative burdens, or address broader issues such as the full understanding of compliance costs from an economic welfare perspective.

**Key issues to be considered**

- How can governments institutionalise regulatory oversight and make it a permanent feature of regulatory practice?
- How can regulatory oversight be organised? With an arm’s-length central agency within government or with an independent body external to government?
- Where can the body in charge of regulatory oversight be placed? At the centre of government, or close to a powerful ministry with budgetary or economic functions?
- How can the advocacy functions be organised to reach out to a wider public?
- Which strategies can governments choose to strengthen regulatory oversight? Through seizing the opportunities of crises to reform or through incremental change?
- What should be the scope for regulatory oversight: regulations *ex ante* and *ex post*? Should it consider broader compliance costs? Should it include a capacity for strategic foresight?
- What is the potential for governments to consider a broader regulatory governance perspective, including integrity, conflict of interest and enforcement?

“These bodies have to be located where it makes the most sense from the perspective of the country – that is, close to a centre of power. The problem with being located in the centre of government, however, is that you could be just one issue among many others.”

Stephane Jacobzone, Senior Economist, Regulatory Policy Division, OECD
Developing partnerships and networks with regulators

These bodies need to develop partnerships and to act as facilitators, not regulators. The degree to which they can challenge varies (soft advice, formal approval, etc.). They may be endowed with a legal veto power, to ensure appropriate *ex ante* assessment. Clear time frames and expectations are necessary to define relations with regulators. The oversight bodies are not in fact issuing regulations and should not substitute for ministries, where most of the work will be done. It is important to allay fears that these bodies will end up becoming political institutions, which they should not.

“We are only looking at how certain political objectives are implemented. We are not taking a position on whether the political objectives make sense or not.”

Dr. Johannes Ludewig, Chair, National Regulatory Control Council, Germany

Performance criteria for regulatory oversight

- **Forging a political constituency** – Have the bodies been able to “make a difference” and respond to clients’ needs? Are they serving a balanced constituency comprised of citizens and businesses?

- **Policy coherence and co-ordination** – Have the bodies contributed to better coherence? Are there fewer administrative buttons? Does the government’s left hand know what its right hand is doing?

- **Stability** – Can these bodies survive political cycles? Have they established sufficient credibility over time so that regulators take them seriously?

- **Adaptability and responsiveness** – Have they reacted appropriately to new circumstances and picked up on new tools and approaches?
Preventing regulatory capture

Regulators must know what regulated companies want, but always balance that knowledge with consumer protection interest. Policy makers also need to identify the possible sources of capture of the regulatory agenda. This often requires maintaining a delicate balance, between client-friendly regulatory processes and compliance mechanisms to improve efficiency, and the need to preserve the integrity and efficiency of the regulatory framework.

The risk of capture can increase:

• If regulators are inadequately equipped/financed.
• If powerful stakeholders can use their influence to turn the laws to their advantage.
• If regulatory systems allow excessive appeals and layers of decisions, so that regulatory decisions become delayed in years of controversy before they become effective.
Being business-friendly can:

- Save wasted time and effort.
- Promote a better relationship between regulators and the regulated.
- Better deliver long-term sustainable compliance.
- Lift burdens and promote growth.
- Facilitate a focus on the rogues.
- Be more cost-effective (for regulators, the regulated, and taxpayers).

The engagement of regulators and a sense of accountability to the regulated entities are both clearly important here. But a third group is also involved: the intended beneficiaries of regulation, i.e. citizens and consumers. A client-sensitive approach can help realise the better regulation principles of transparency and proportionality. But:

**It isn't just about being “friendly” – it's about co-producing better regulatory compliance and outcomes.**

And it isn’t just about being “cozy” or “too close.” It’s about:

- your model of regulatory governance;
- the rights and responsibilities of the parties within that model (regulators, regulated entities, the intended beneficiaries);
- the relationships between those parties; and
- the way this system is managed and optimised in given marketplaces and given sectors.

“When you have public hearings, regulatees know that the whole thing is going to go on record, and the input they give you becomes fair and balanced. One-on-one, they try to influence you in a certain direction – but they know that in a public process, everyone can challenge their views.”

Colin Dimakatso Mashile, Head of Unit, Policy Development and Research, Markets and Competition Division, Independent Communications Authority of South Africa (ICASA)
Ensuring sustainability through better rules

The search for sustainability, associated with green growth and risk management, calls for broad and anticipatory thinking in policy making. The question is how to incorporate these concerns into regulatory frameworks that can manage longer-term eventualities in an effective and coherent manner. Poorly designed or applied regulations may prove especially costly for future generations.

Think long-term

“Human rationality is bounded: individuals misperceive long-term impacts, and in some cases consider long-term as a luxury.”

Andrea Renda, Senior Research Fellow, Centre for European Policy Studies, Belgium

Key questions for meeting sustainability challenges

- Is sustainability integrated in the regulatory impact assessment (RIA) process? Should it be addressed separately? RIA normally looks at specific proposals and impacts, whereas sustainability depends on a broader set of factors. *Ex ante* analyses of sustainability may be required for certain policy actions.

- Are policy makers considering, jointly, social issues (inter-generational altruism), economic issues (reduction of public debt), and environmental issues (preserving resources for the future)?

- Are the impacts adequately quantified from a sustainability perspective? Impacts related to sustainability are difficult to quantify and monetise (*e.g.* biodiversity), even when available quality data exist. The value of public goods such as biodiversity is often underestimated, as non-market impacts are monetised based on the sum of individual preferences. Potential enforcement costs and administrative burdens are not always sufficiently quantified.
Green growth

Governments need to rethink growth to build a greener world. Can countries use resources more efficiently and promote growth while minimising environmental impacts? The debate involves regulation, and financial and tax incentives.

“As to methods for green growth, there should be fewer penalties and more incentives.” Dr. Chanho Park, Director-General, Korea Legislation Research Institute

The benefits of quality regulation

- It reduces penalties, removing barriers to innovation and its diffusion.
- It fosters non-discriminatory approaches for given sectors – differentiated according to annual or phased reduction targets – based on countries’ particular industrial profiles.
- It helps select attainable greenhouse gas emission (GHG) targets, taking into account rates and levels of compliance.
- It facilitates the implementation of an international carbon market.
- It helps grant companies and industries flexible implementation while attaining policy goals.

Challenges

- Ensuring credibility – This requires information, with national inventories of regulations and emissions, and public or third-party verification.
- Overcoming technical difficulties – anticipation of behaviour, the many different issues to be tackled, aggregating and weighing factors with a long-term perspective. Addressing lack of resources (time, budget, staff).
- Coping with conflicting demands (the need for required political commitment, the need to find compromises, the proliferation of arguments).
- Developing global standards – Principle-based regulation (rather than strict rule-based regulation) induces voluntary participation and leads to improved convergence toward green growth targets.

“I could easily present quotations from business people saying, ‘Please regulate us! Please give us the regulatory framework to enable us to bring our products onto the market.’ This is not only a matter of environment policy; it is a matter of innovation policy, industry policy, infrastructures, and overcoming market failures in the transition to a green economy.”

Dr. Klaus Jacob, Research Director, Freie Universitaet Berlin, Germany
Key questions for better regulation to support a green growth strategy

- Should there be one top-level committee that serves as “control tower” to improve the efficiency of policy implementation? This can prevent overlap and gaps among government bodies and help build a joined-up approach across departments.

- Is there an integrated approach to the deployment of regulatory institutions, tools and processes?

“Regulatory policy for green growth should be accomplished through all governmental processes – not just the administrative and implementation processes, but the judicial process as well.”

Prof. Hitoshi Ushijima, Faculty of Law, Chuo University, Japan

- Are the conditions for effective impact assessment in place, including transparency and quality control?

- How can gaps in implementation be addressed – including lack of quantitative analysis, late decision making, and lack of interdepartmental co-ordination?

- How can policy makers avoid the backfire from naive policies for “Green Growth,” which have the potential of doing exactly the opposite of what they are supposed to do?

- Are the environmental benefits of economic growth underestimated?

- Have the costs of switching energy sources been properly estimated, with realistic evidence for high consumer discount rates?

The role and limit of state intervention

“Is the role for the state necessarily to subsidise supposedly green sectors? I don’t think so. It depends on how good you think the state is at identifying the ‘green sectors’ and how immune you believe the state is to political pressures.”

Prof. Jason Johnston, University of Virginia School of Law, United States
Addressing risk

The dangers of “reactive regulation”

Reactive regulation often results from high-profile incidents and the ensuing calls for “action to be taken.” This is especially the case if the public perception is one of procrastination or mismanagement, or if the situation is exacerbated by the media and social networks.

Reactive regulation is often poor because it hasn’t been given adequate thought and may lead to top-heavy systems. This also reflects a tendency for risk actors and stakeholders to cover themselves, and limit their responsibility. Accordingly, reactive regulation is likely to result from follow-up inquiries unless they are specifically commissioned to only establish facts and causes.

The need for anticipatory crisis management...

“Being pressed into kneejerk responses and the associated loss of reputation is avoidable, by training for crisis management that recognises the realities of modern media and social networks. After an incident, a government or company board must create space and time to get the right answers.”

Simon Webb, Executive Director, The Nichols Group, United Kingdom

... and for proper risk assessment and management

Risk assessment and management are necessary to develop proper policy responses. Governments will always be held responsible and are politically accountable. Still, there is a need to:

- Balance the costs of regulation to prevent risks, with the costs of failure to prevent risks (terrorist attacks, natural disasters, systemic failures such as the 2008 financial crisis, diseases, etc.).
- Communicate the nature of risks and the limitations of what can be done about some of them.
Sharing knowledge for a safer world

While the world is generally getting safer, public concern about risks remains and even continues to grow, for a number of reasons:

- Rising longevity.
- Increasing wealth, which makes people more risk-averse.
- Advancing technology.
- Increasing public awareness of local and global threats.

As society becomes safer and more prosperous, ultra-low-probability but catastrophic events become relatively more important – yet public perception may not spur policy to address these rare extreme risks.

The modern world also presents new policy challenges with multiple, interconnected risks that spread, moving rapidly across networks and borders. Governments and policy makers need to learn, borrowing and testing ideas and taking advantage of:

- Ex post impact assessment.
- Cross-country comparisons.
- A shared understanding of global events.

“No matter how sensible your story about risk assessment and better regulation is, it doesn’t stand a chance against the magic word SAFETY with all its powerful emotions, from the fear of disaster to the hope of salvation.”

Jan van Tol, Manager, Risk and Responsibility Programme, Netherlands

International regulatory co-operation is critical to risk management, and for closing regulatory oversight gaps.
International regulatory co-operation

The rationale behind co-operation

- It reduces barriers, which is good for trade, job growth and economic growth. It is extremely useful in assisting domestic and international companies, as well as consumers. It decreases costs and burdens, and increases productivity and investment.
- It may be the only way to reduce barriers, as no international organisation has the ability to tell a sovereign power that it must amend its regulation.
- It’s a public good. There are benefits to pooling resources and sharing scientific and technical expertise. It allows countries to contribute their own expertise and promote their best regulatory practices internationally, thus influencing standards elsewhere.
- It leads to better-informed decision making through access to the regulatory resources of international bodies and other countries.
- It makes for greater transparency and predictability of regulatory practices.

From bilateral to global initiatives

Global initiatives are better placed than bilateral initiatives to address the needs of today’s world economy. Goods are traded globally; supply chains are global; components move across borders many times before they arrive in a final product.

Bilateral initiatives can in fact give rise to global initiatives.

“Risk assessment is performed everywhere by individual jurisdictions, but the science behind it should be universal. If we can align the terms we use in classifying and describing it, then we know we’re speaking the same language. Co-operation on analysing and describing risk began early on and expanded into a wider global effort for risk assessment. Actual risk management is for the independent jurisdictions to decide for themselves.”

Simon Holland, Policy Officer, Directorate General, Enterprise and Industry, International Affairs Unit, European Commission
The challenges of building a common language to obtain society’s engagement in regulation internationally

- Reconciling different cultural perspectives – not just the substantive content of standards but also procedural differences, the varied approaches to developing standards.
- The necessary willingness to compromise on all sides.
- The scarce resources that have to be committed, since co-operation is a long-term investment.
- The need to prioritise, gauging the potential benefits and prospects of success.
- The need to overcome bureaucratic inertia.

Prevention is better than cure

The focus should be first on the development of new regulations with upstream co-operation, as existing mature regulations are more difficult to remove – particularly when they pertain to products familiar to manufacturers and clients.

This requires finding areas that are not yet regulated or where regulation is developing or changing rapidly. If brought together, regulators can find common approaches, producing – if not the same regulation – then regulations sufficiently similar for manufacturers to comply without further adaptation for different markets.

Exploit synergies with free trade agreements

One of the most productive ways in which to obtain regulatory co-operation is if it is embedded in free trade agreements, where there is a binding obligation upon signatories to engage in that co-operation.

“At the end of the day, the only reason for all of us to engage in regulatory co-operation is if there is a perceived benefit and a real benefit for our own people. And the idea of regulatory co-operation is, or should be, that there are mutual benefits to be had by peoples around the world. While there are real challenges imposed by domestic interests, if one is committed to finding a solution and the outcome is clear and value-added, you can sell it to your domestic constituencies.”

Michael Fitzpatrick, Associate Administrator, Office of Information and Regulatory Affairs, United States
Questions for policy makers

- If, in bringing regulation forward, a country’s agencies are coming up with strictly domestic solutions or approaches, should those agencies justify doing so, stating why an international approach was not used?
- How well-equipped are national regulatory bodies for international co-operation?
- How important are treaties as drivers of domestic regulatory reform?
- What is the role of international standard-setting organisations?
- Can co-operation avoid the effects of a “race to the bottom”, the lowest common denominator?

“The possibility existed to adopt a universal plug when electricity was new 110 years ago, and then again in 1945 when so many cities were destroyed in Europe and Asia. Both times the opportunity for international regulatory co-operation was missed, and what we ended up with is the problem we all face when we travel across the world: the need for a pocketful of adaptor plugs. There are significant risks to the green growth agenda and to global crisis management if such an opportunity is missed again…”

Josef Konvitz, Head of the Regulatory Policy Division, OECD
The OECD Regulatory Policy Committee

The Conference was the first major international event organised under the auspices of the OECD Regulatory Policy Committee, established by the OECD Council in December 2009. The Committee’s mandate is to help governments build and strengthen capacity for regulatory quality and regulatory reform. This calls for an integrated, horizontal and multidisciplinary approach within the OECD, and an active effort to communicate with a wide and diverse global audience.

- The Regulatory Policy Committee provides a unique forum for countries to share their standards of excellence for regulatory tools, discussing the interface between the technical and political aspects of policy design.

- Usually, Committee delegates come from agencies at the centre of government, and are responsible for promoting regulatory quality and reform across government and improving the regulatory environment for business and citizens.

- In addition to OECD country delegates, observers from Brazil, China, Egypt, India, Indonesia, South Africa, and Tunisia are invited on a regular basis.

The RPC is taking up the challenge of the Conference to revisit existing OECD principles and guidelines for regulatory policy and draft a new, even more relevant set in 2011.
Core thematic work

Cutting red tape

Excessive paperwork and bureaucracy can inhibit entrepreneurship and hamper competition, and in so doing undermine economic growth and a country’s competitiveness as well as irritate citizens. Most OECD countries have thus made policies to reduce administrative burdens – cutting red tape – a political priority. The OECD is assisting these efforts in several ways.

• Despite considerable political and financial investments, administrative simplification programmes have not always lived up to expectations and reduced the burdens that businesses face in practice. The publication *Cutting Red Tape: Why Is Administrative Simplification So Complicated?* (OECD, 2010) provides policy makers with guidance on options and common mistakes to be avoided when designing, undertaking and evaluating administrative simplification programmes.

• The OECD works directly with countries in providing assistance with implementation of its recommendations (Mexico, Greece), and evaluating national administrative simplification programmes (Portugal, Netherlands, Poland, Viet Nam).

Risk and regulatory policy

Ameliorating societal risks is a pervasive and important activity of government, and yet few countries have attempted to ascertain whether they actually have a systematic means to address those risks through regulation. A risk-based approach to the design and implementation of regulation can help produce more efficient regulatory policy. The publication *Risk and Regulatory Policy: Improving the Governance of Risk* (OECD, 2010) is intended to help policy analysts by presenting recent analyses of a wide range of issues related to risk management.
**Regulatory oversight and institutional design**

The OECD is assisting countries that are increasing capacity and strengthening institutional frameworks for oversight. The goal is to assign clear responsibility for oversight, with systems of “checks and balances.” The extent and type of oversight may vary, as well as its physical and institutional location. Oversight needs to be accompanied by advocacy, as illustrated in the OECD publication *Implementing Regulatory Reform: Building the Case through Results* (OECD, 2008).

The institutional framework for quality regulation also involves setting up autonomous regulatory authorities responsible for enforcement in key economic sectors, such as telecommunications or energy. Institutional design matters to ensure high-quality regulation, in terms of independence, accountability, transparency, clarity and access to information. (See *OECD Reviews of Regulatory Reform* for Switzerland, Norway, Mexico and Brazil, as well as [www.oecd.org/regreform](http://www.oecd.org/regreform).)

**Multi-level governance**

Governments from the supranational to the local level face a number of common challenges that arise from the fact that different levels of government play important roles in designing, implementing and enforcing regulations. Effective multi-level governance is necessary to reduce the duplication of rules, the possibility of overlap and low-quality regulations, and the risk of uneven enforcement. The publication *Multi-level Regulatory Governance* (OECD, 2009) provides a framework for analysis of common issues. The theme has also been addressed in reviews of Sweden, Italy and Australia, available at [www.oecd.org/regreform](http://www.oecd.org/regreform).

**Regulatory impact assessment (RIA)**

The OECD provides support for and comparative evidence on the use and development of RIA, a policy tool for systematically assessing the potential effects of regulatory proposals. RIA is evidence-based, draws on consultation with affected groups, and assesses economic, social and environmental impacts. The OECD has found that RIA needs to be embedded in policy-making processes to underpin the capacity of governments to ensure policy coherence through efficient and effective regulations. The publication *Regulatory Impact Analysis: A Tool for Policy Coherence* (OECD, 2009) provides practical guidance on how to improve the performance of RIA systems.
Regulatory reform for recovery

Economic recovery policies that do not discourage competition, trade investment or innovation should figure prominently in regulatory reform. As shown by recent OECD research on responses to the crises of the 1990s and early 2000s and their impacts, this kind of reform plays an important role in accelerating recovery and increasing resilience – see www.oecd.org/regreform.

Contribution to the OECD Innovation Strategy

The OECD Innovation Strategy calls for “efficient regulations”, which ensure that potential innovators are given the right incentives to develop and diffuse innovations that meet social objectives at least cost. Explicit recognition of the contribution of the OECD Best Practices for regulatory quality bears witness to the need for balancing risks adequately without hampering innovation.

Support for policy implementation

The OECD not only provides advice on the design of policies – it also supports reform implementation. OECD experts help build capacity to advance policy changes, analysing the political and institutional frameworks and identifying the relevant stakeholders to support reform. This is for example the case for Mexico:

- The OECD launched a co-operative initiative in 2008 to help Mexico improve its regulatory frameworks. Support has included costing of the most burdensome formalities and organising an international network of experts to advise the Mexican government based on the experience of other countries.
- The OECD provided advice to the Mexican Ministry of Economy for the design of the one-stop shop tuempresa.gob.mx, based on successful international practices. This involved a report assessing the administrative costs of business start-up formalities, which used best-practice examples to address implementation issues (www.tuempresa.gob.mx).
- The OECD is helping Mexico conduct an extensive review of federal regulations following an initiative to eliminate unnecessary regulations launched in 2010. The OECD also supports regulatory quality improvement at sub-national levels, with an OECD toolkit and major benchmarking initiatives across jurisdictions to assess and improve competitiveness. This toolkit was launched at a major event attended by the OECD Secretary-General and the Minister of Economy (www.oecd.org/regreform).
Global policy dialogue on regulatory reform

- The OECD has long-standing co-operation with the Enhanced Engagement countries (Brazil, China, India, Indonesia, South Africa). OECD regulatory policy principles and guidelines are a global point of reference.

- At the Ministerial Conference in Marrakesh in November 2009, the OECD Secretary-General indicated that “Countries need to develop stronger systems for regulatory management, including the use of impact analysis, public consultation when developing new rules, and strategies to minimise the burdens from existing rules”. The countries in the MENA-OECD Governance Programme have endorsed a Regional Charter for Quality in Regulation that reflects the OECD’s best practices, and a Regional Centre for Expertise in Regulatory Quality has been launched in Tunisia.


Tools and methods

Indicators of regulatory management systems

The OECD surveys of countries' regulatory management systems, conducted since 1998, offer comprehensive insights into trends in regulatory reform and identify leading regulatory management practices.

- *Indicators of Regulatory Management Systems* (OECD, 2009) found that while most OECD countries now report having adopted regulatory impact analysis, less than half systematically require quantification of the corresponding costs and benefits of new proposals.

Country peer reviews

The OECD has peer-reviewed nearly all member countries, and has also conducted peer reviews of major non-member countries such as Brazil, China and Russia. A review of Indonesia is currently under way.

- A review assesses how countries manage the design, adoption and enforcement of regulations in line with a conceptual framework, ensuring comparability while taking account of institutional and cultural differences across countries. The reviews may also adopt a multidisciplinary focus, analysing the links with trade and competition policies as well as sectoral regulatory policies.

- The reviews are a mutual learning process. The process extends over a year and enables the country being examined to learn from its peers about what has worked and what has not. There is a strong link between the credibility and integrity of the process and the impact of the recommendations, which can help governments set priorities and allocate resources, and win support at home for difficult measures.

- Peer pressure and a shared willingness of countries to understand the benefits of mutual learning are key to the success of the review process. Following the final peer review discussions at the OECD, the results are made public – frequently at a high-visibility event hosted by a minister, which ensures the impact of OECD work.

Likewise, between 2008 and 2010, an in-depth series of reviews were carried out in 15 member states of the European Union, focusing on regulatory management capacity, in close co-operation with the European Commission. (See www.oecd.org/gov/regref/eu15 and www.ec.europa.eu/governance/better_regulation/index_en.htm.)
“Good regulation can only be secured through systems within government that actually foster it – systems that make it harder to regulate poorly than to regulate well... As the OECD has highlighted, improved regulatory governance – institutions, processes and leadership – is crucial to better regulatory outcomes.”

Gary Banks, Chairman, Productivity Commission, Australia
The OECD is a unique forum where governments work together to address the economic, social and environmental challenges facing them. The Organisation is also at the forefront of efforts to understand and help governments respond to new developments and concerns, such as corporate governance, the information economy and the implications of an ageing population. The OECD provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice, and work to co-ordinate domestic and international policies.

The OECD’s mission

The OECD brings together from around the world governments of countries committed to democracy and the market economy, to:

- Support sustainable economic growth
- Boost employment
- Raise living standards
- Maintain financial stability
- Assist other countries’ economic development
- Contribute to growth in world trade.

Country participation

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission takes part in the work of the OECD.

OECD countries have agreed to invite Russia to open discussions for membership. The Organisation also shares expertise and exchanges views with more than 100 other countries. In particular, OECD's member countries have agreed to offer enhanced engagement to Brazil, China, India, Indonesia and South Africa.
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