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The First Five Years: Taking Stock

Meetings/events

2012 OECD Recommendations on Regulatory Policy and Governance (Principle 7: Regulatory Agencies)

> G20 roundtable on outreach energy regulators (Kazan, Russia)
> Ad hoc NER meeting on how regulators can measure their performance
> Establishment and first formal meeting of the NER - work on best practice principles on the governance of regulators

Publications

2012

> Best Practice Principles on the Governance of Regulators
> Regulatory Policy and Behavioural Economics

2013

> Design of the Performance Assessment Framework for Economic Regulators (PAFER) to help regulators assess and strengthen performance

2014

> Contributed to the first initial mapping of the application of behavioural insights to regulation
> Contributed to the design of the first set of indicators on the governance of regulators for the Product Market Regulation (PMR) dataset with parallel work on the governance of water regulators
OECD Network of Economic Regulators: The First Five Years

> First application of the PAFER - peer review of Colombia’s Communications Regulator

> Launch of the NER work on the culture of independence - survey of the practical aspects of the independence of regulators and development of case studies on accountability and co-ordination

> Release of the PMR indicators on regulatory management practices of sector regulators

> NER members contributing to the first OECD Seminar on Behavioural Insights for behavioural insights practitioners

> Behavioural Insights and New Approaches to Policy Design

> Driving performance at Colombia’s Communications Regulator

> The Governance of Water Regulators

2015

> Peer review of internal governance of three energy regulators in Mexico (ASEA, CNH, CRE)

> Peer review of Ireland’s Commission for Regulation of Utilities

> Guidelines on creating a culture of independence and safeguarding from undue influence

> Update of PMR indicators on the governance of regulators and launch of data collection

> Contributed to the first world-wide mapping of the application of behavioural insights to policy and regulation - Second OECD behavioural insights international conference

> Launch of project on how to apply behavioural insights to creating a safety culture within regulated agencies and the regulated industry

> Launched the review of the engagement process for setting charges and quality standards by the Water Industry Commission for Scotland

> Behavioural Insights in Public Policy: Key Messages and Summary from the OECD International Events

> Behavioural Insights and Public Policy: Lessons from Around the World

> Creating a Culture of Independence

> Colombia Update: What Happened Next?

> The Role of Economic Regulators in the Governance of Infrastructure

> Driving Performance of Mexico’s Energy Regulators

> Driving Performance in Mexico’s three energy regulators (ASEA, CNH, and CRE)

> Driving Performance at Ireland’s Commission for Regulation of Utilities

2016

> Peer review of Latvia’s Public Utilities Commission

> Peer review of the external governance of three energy regulators in Mexico (ASEA, CNH, CRE)

> Presentation of report Being an Independent Regulator, based on survey results from 48 regulators in 26 countries

> Discussion of survey results on the role of regulators in the governance of infrastructure from 33 economic regulators from 24 OECD and partner countries

> First application of behavioural insights to Colombia’s consumer protection regime

> Driving Performance at Latvia’s Public Utilities Commission (PUC);

> Protecting Consumers through Behavioural Insights: Regulating the Communications Market in Colombia

> Governance of Regulators Practices: Accountability, Transparency and Co-ordination

> Being an Independent Regulator

> Rara Avis? Searching for Regulatory Independence in its Natural Habitat

> Regulatory Management Practices in OECD Countries

2017

> Peer review of Ireland’s Commission for Regulation of Utilities

> Guidelines on creating a culture of independence and safeguarding from undue influence

> Update of PMR indicators on the governance of regulators and launch of data collection

> Contributed to the first world-wide mapping of the application of behavioural insights to policy and regulation - Second OECD behavioural insights international conference

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> Driving Performance at Ireland’s Commission for Regulation of Utilities
What makes a regulator ‘world class’?

The OECD Network of Economic Regulators (NER) addresses this question through objective data, rigorous analysis, and dialogue. A subsidiary body of the OECD Regulatory Policy Committee (RPC), the NER was established in 2013 and serves as an open and unique forum for regulators from across the world, from both OECD and non OECD member countries.

The NER brings together regulatory authorities intervening in the communications, energy, transport, and water sectors, in addition to other economic, competition, consumer, environment, and safety areas. The members share their first-hand experiences and best practices, discuss challenges, identify innovative solutions, and balance the competing priorities that frame the features of a “world class regulator”.

Participation across different sectors in the NER

Since its inception, participation in the NER has been growing. After five years of existence, the NER regularly hosts over 70 regulatory authorities from across sectors and countries. The NER also welcomes other national, regional, and international regulators’ networks and international organisations.

![Figure 1. Regulatory authorities participating in the NER, by sector (2017)](image)

*Note: “Other” includes health and safety, consumer protection and competition authorities.*
Regulators play an important and increasingly complex role in the delivery of regulatory regimes to achieve the best outcomes for society. A regulator’s ability to operate effectively hinges on its governance arrangements. Strengthening governance therefore helps reinforce the legitimacy and integrity of the regulator, supporting high level policy objectives that contribute to better outcomes for the economy and society at large.

**Key outputs and impact:**

- The NER and the Regulatory Policy Committee (RPC) developed the *Best Practice Principles for the Governance of Regulators* in 2014. The seven Principles (Figure 2) provide a framework for regulatory decisions that are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence. The Principles form the basis of much of the NER’s subsequent work and analysis on the institutions, processes and practices that support the organisational performance of regulatory agencies.

- The Principles have provided the basis for developing the first set of indicators on the governance of regulators included in the OECD Product Market Regulation dataset.

- Countries and regulators have been building on the principles and using them as a set of evaluation criteria and guidance for reforms, for example in Australia (Australia Productivity Commission, COAG Energy Council Secretariat, Department of the Environment and Energy National Audit Office, Environment Protection Authority of the Victoria State Government, Water Services Association of Australia), in Iceland (Prime Minister’s Office) in New Zealand (Productivity Commission), or at the European level (European Regulators Group for Audiovisual Media Services, ERGA).
Measuring performance enables opportunities, better targeting of resources, and for improving the delivery of outcomes for citizens, businesses, and society. The OECD supports regulators in these efforts through in-depth peer reviews that assesses and strengthens their evaluation processes and governance frameworks. The reviews apply the OECD Performance Assessment Framework for Economic Regulators (PAFER), a methodology that identifies the drivers of performance and areas of opportunity following multiple key dimensions.

**Figure 3. Key dimensions of the PAFER**

- **Role and objectives:** Does the regulator have a clear role and set of objectives aligned with functions and powers to inform actionable performance indicators?
- **Input:** Are the regulator’s organizational and financial resources sufficient for delivering planned activities on time and on budget?
- **Process:** Are regulatory tools and processes (e.g. measurement of accuracy, timeliness, accessibility, participation, risk analysis, use of evidence) effectively used?
- **Output and outcome:** How effective are regulatory decisions, actions and interventions? What are the direct impacts of the regulator’s decisions on the regulated activity, and broader impacts on the regulated sector?

**Key outputs and impact:**
To date, the OECD Secretariat has collaborated with economic and technical regulators from around the world on PAFER reviews to improve their regulatory performance and quality.

<table>
<thead>
<tr>
<th>PAFER reviews</th>
<th>Examples of recommendations and impact</th>
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<tbody>
<tr>
<td>Communications Regulation Commission (CRC) (Colombia, 2015)</td>
<td>Roadmap for strengthening Colombia’s telecommunications regulator; recommendations for streamlining of the agency’s strategic objectives and performance assessment system, including re-considering the use of the balanced scorecard tool.</td>
</tr>
<tr>
<td>Public Utilities Commission (Latvia, 2016)</td>
<td>Insights into the organisational features for sharing of lessons and resources across different sectors under the regulator’s mandate; alternative fee-setting process to guarantee accountability and minimise risk of conflicts of interests.</td>
</tr>
<tr>
<td>Agency for Safety, Energy and Environment (ASEA); National Hydrocarbons Commission (CNH) and Energy Regulatory Commission (CRE) (Mexico, 2017)</td>
<td>More structured co-ordination mechanisms across the three regulators via the creation of the Energy Regulators Group; opportunities for economies of scale in sharing resources and knowledge to minimise burden on regulated entities.</td>
</tr>
<tr>
<td>Commission for Regulation of Utilities (Ireland, 2018)</td>
<td>Recommendations to help the regulator prepare for the future, including through more integrated planning, monitoring and reporting mechanisms and more systematic use of good regulatory practices.</td>
</tr>
</tbody>
</table>
Regulators oversee the functioning of markets for the improved quality and delivery of public services. In order to fulfil their role, they need to make and implement impartial, objective and evidence-based decisions that will inspire trust in institutions and the system. Undue influence, whether real or perceived, can undermine a regulator’s ability to achieve these goals, impinge on its independence, and ultimately, on its performance. In this sense, independence is key to the stability and delivery of the regulatory regime.

Moreover, independence is never a “done deal” or a static characteristic – on the contrary, it is frequently under stress as the regulator traverses pinch points that make it more vulnerable to undue influence. For this reason, regulators must seek to build an institutional culture of independence and accountability that will equip them to navigate these pinch points.

**Key outputs and impact:**

- First complete set of indicators of the formal arrangements for independence, accountability and scope of action of sector regulators for 2013 Product Market Regulation dataset (updated building on NER work for 2018 data collection).


**Figure 4. The five dimensions and structure of Practical Guidance against Undue Influence**

1. ROLE CLARITY
2. TRANSPARENCY AND ACCOUNTABILITY
3. FINANCIAL INDEPENDENCE
4. INDEPENDENCE OF LEADERSHIP
5. STAFF BEHAVIOUR

A. Basic and necessary institutional measures to create a culture of independence which establishes and maintains the capacity of regulators to act independently.

B. Aspirational steps that could be further taken to bolster a culture of independence and safeguarding regulators from undue influence.
Behavioural insights (BI) are lessons derived from the behavioural and social sciences, including decision making, psychology, cognitive science, neuroscience, organisational and group behaviour, and are being applied at an increasing pace by public bodies around the world with the aim of making public policies work better.

BI uses an inductive approach to policy-making that is driven by experimentation and piloting, which challenges assumptions of what is thought to be rational behaviour of citizens and businesses, and enables policy makers to develop innovative approaches to designing and implementing policies.

In line with the growth of BI as a tool to improve policies around the world, the network of behavioural practitioners engaged in OECD work continues to grow. Working with the ‘behavioural community,’ the OECD is producing forthcoming work on organisational behaviour and creating a culture of safety in the hydrocarbon sector, understanding consumer preferences, and supporting policymakers as they “nudge for good,” as often put by Richard Thaler, 2017 Nobel Prize in Economics winner for his work on behavioural economics.

**Key outputs and impact:**

- Behavioural Insights and Public Policy: Lessons from Around the World (2017), which includes the results of a survey of 60 government departments, regulators, city governments from 23 countries and international organisations, as well as over 110 case studies on the application of behavioural insights to public policy across 11 policy domains.

- The Colombian Communications Regulator (CRC) designed a new **behaviourally-informed consumer protection regime** based on solutions developed with the OECD, which came into force in September 2017 (see Protecting Consumers through Behavioural Insights: Regulating the Communications Market in Colombia (2016) and Colombia Update: What Happened Next? (2017).

- Tracking the institutional development of behavioural insights around the world, including over 190 institutions currently applying behavioural insights to public policy.

- **Working with a network of over 500 behavioural practitioners**, including academics and policy professionals engaged in OECD work.
The governance of infrastructure encompasses the processes, tools, and norms used by government bodies to plan, make decisions and monitor the delivery and maintenance of public infrastructure. Economic regulators are part of an effective governance framework, as good regulatory design and delivery ensure that infrastructure such as road networks, electricity generation plants and water reservoirs are sustainable and affordable over the life of assets. Conversely, unstable regulatory frameworks can prevent long-term decisions. Regulators also play a key role in ensuring that projects are attractive for investors, yet they play only a limited role in policy formulation and investment planning.

Key outputs and impact:

- Survey on the **Role of Economic Regulators in the Governance of Infrastructure**: covering 77 sectors and subsectors, (including energy, transport, communications and water), the survey sought information on a number of aspects such as the role of regulators, infrastructure delivery modes. Based on the results of the survey, the 2017 report on this topic explored the role of economic regulators in encouraging the efficient delivery of infrastructure and related services.

- The NER report on the role of economic regulators contributed to the creation of the **OECD Framework for the Governance of Infrastructure**, produced by the Governance Directorate and endorsed by the G20. The Framework, "Getting Infrastructure Right – The Ten Key Governance Challenges and Policy Options" supports the Directorate’s work across all governance challenges linked to infrastructure.

- The OECD organises the **Forum on the Governance of Infrastructure** gathering decision-makers and stakeholders active in the key areas of infrastructure delivery, policy and planning, stakeholder participation, integrity, procurement, and institutional arrangements for multi-level investment projects.

- The NER Secretariat addresses issues around infrastructure and regulation throughout their work. For instance, the **Peer Review of Scotland’s Strategic Review of Charges** for the water sector is examining the link between the existing regulatory framework and asset conditions. The work looks into the extent to which the design of price and quality regimes affects infrastructure spending decisions, with a focus on maintenance. It also relies on behavioural insights research to better understand the inter-temporal preferences of water users.
What’s next for the Network of Economic Regulators?

**The future of regulation**
Governments and regulators are facing increasingly multidimensional challenges in a context of rapid technological change and transformation, complexity and uncertainty. These changes are posing a number of questions in particular with regard to:

1. Regulators’ **statutory role** in light of new mandates and functions;
2. The impact of **disruptive technologies**;
3. **Co-ordination and collaboration** among regulators, customers and operators;
4. The development and use of **performance indicators**;
5. **Data use and strategies** to improve the design, enforcement and evaluation of regulations.

The NER will continue to support regulators to address these challenges and identify commonalities across sectors and countries. Together, the NER can discuss possible ways of addressing these issues and explore how it can support regulators going forward.

**More in-depth reviews and assessments**
The NER will continue to be at the forefront of helping regulators strengthen organisational performance and develop innovative approaches to regulation in both OECD and partner countries.

- In the **United Kingdom**, a peer review of Scotland’s Strategic Review of Charges for the water sector is supporting innovative approaches to stakeholder engagement and understanding customer preferences.
- In **Peru**, the organisational performance of the communications regulator (OSIPTEL) and the energy and mining (OSINGERMIN) regulators will be at the core of two forthcoming PAFER reviews.
- In **Ireland**, the governance arrangements of the Environmental Protection Agency (EPA) will be the subject of a review following the review of Ireland’s Commission for Regulation of Utilities (CRU).

**Further lessons from behavioural insights**
The NER will continue to contribute to a key horizontal agenda and global movement on the use of behavioural insights to strengthen policy design and implementation by:

- Developing an **ethical framework** and **policy making toolkit** to support integrated solutions and ensure that policy makers are applying behavioural insights responsibly.
- Identifying behavioural barriers and testing behaviourally-informed solutions in **creating a safety culture** in the energy sector.

... and much more!
Published works

Governance of Regulators

Performance Evaluation
Independence, Accountability and Protecting from Undue Influence

Behavioural Insights

Infrastructure and Regulation
For more information on the activities of the Regulatory Policy Committee and the Network of Economic Regulators, please visit:

www.oecd.org/regreform/regulatory-policy/

www.oecd.org/gov/regulatory-policy/ner.htm