Regulatory Reform

REGULATORY INCONSISTENCIES – AN INITIAL DISCUSSION OF EMERGING CHALLENGES

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Written comments on this document are also welcome and should be sent to: Peter Ladegaard
fax: 33 (1) 45 24 87 96 or e-mail: peter.ladegaard@oecd.org

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REGULATORY INCONSISTENCIES

AN INITIAL DISCUSSION OF EMERGING CHALLENGES

1. Regulatory reform continues to accelerate. The OECD work demonstrates that these reforms can be effective steps to boost competition, sectoral efficiency, innovation, and increase government effectiveness in maintaining high standards of environmental, consumer and safety protections.

2. Over the past few months, however, in the broad support for regulatory reforms some more skeptical voices have emerged. Among others, regulatory reforms have been criticized for not being sufficiently flexible to accommodate unexpected economic developments and for not delivering anticipated welfare effects.

3. Given OECD’s well-known experience in this policy area, public debate could benefit from analytical contributions to strengthen the reform agenda. The Ad-Hoc Multidisciplinary Group on Regulatory Reform could be a platform to open a discussion on these concerns in Member countries and to identify ways of how to respond adequately to the criticism.

4. To facilitate and structure such an approach this note lists some of the issues and questions that could be addressed.

Is the Regulatory Reform agenda seriously challenged?

5. Several high profile “policy failures” in various OECD countries have been linked by some to regulatory reform itself. In some cases questions have been raised about the fundamental reliability and effects of regulatory reform (i.e. market liberalisation, privatisation) in delivering on issues such as reliability of supply of key infrastructure services, safety and universal coverage.

− Do the problems stem from reform itself, or the way reform was carried out?
− Do some sectors have characteristics that make some of these reforms inherently more risky or complex than previously assumed?

Is there scope for improvement of risk assessments and regulatory decision-making?

6. Some regulatory reforms seem to have met difficulties because of internal inconsistencies in the policy design, because key elements of the existing regulatory framework were not reformulated, or because some unforeseen development conflicted with an (implicit) assumption underlying the reform design.

− Is sufficient attention being paid to the internal and external coherence of reform efforts and to implicit assumptions about market conditions that may prove incorrect and cause unforeseen consequences?
− Is there a way to reduce incoherence arising from the political process where trade-offs are made to achieve agreement to reforms?
− Is the nature of harm that could result from failures in publicly guaranteed services reflected in the way they are regulated?
− How can risks of failures in implementing reform be assessed?

How could regulatory instruments and techniques be improved?

7. OECD analysis as well the recent "failures" suggests that regulatory reforms should be designed to be flexible against fundamental market changes.

− As international benchmarks of reform are developed and adapted in different contexts, what are the institutional needs that need to accompany such cross-fertilisation? How much success is related to an improvement in the capacities, including essential skills in designing, implementing and monitoring reforms?

− How to provide sufficient flexibility to regulatory systems against fundamental market changes? Should and could this be build more efficiently into the regulation “ex ante”, or could better monitoring and correction tools be developed allowing for an ongoing adaptation? In particular, how can regulatory structures be made more responsive to early warning signs of emerging regulatory failure?

Could regulatory reforms be communicated better?

8. Strong public reactions on arising regulatory problems could be an indication lack of awareness of the regulatory policies, risks and benefits.

− How to engage the media and civil society in a balanced discussion about risks, successes and shortcomings or reform?

− How to communicate to the public the need to weigh transitional costs against medium term benefits for society?

How could the OECD horizontal programme on Regulatory Reform contribute best to the ongoing public debate?

9. − Is there a need for dedicated analytical work on the alleged regulatory failures? And, if so

− What should be the focus and form of such work? (e.g. an overview paper for further discussions; a seminar looking at lessons learned and implications for design of future reforms; a public event; or other).