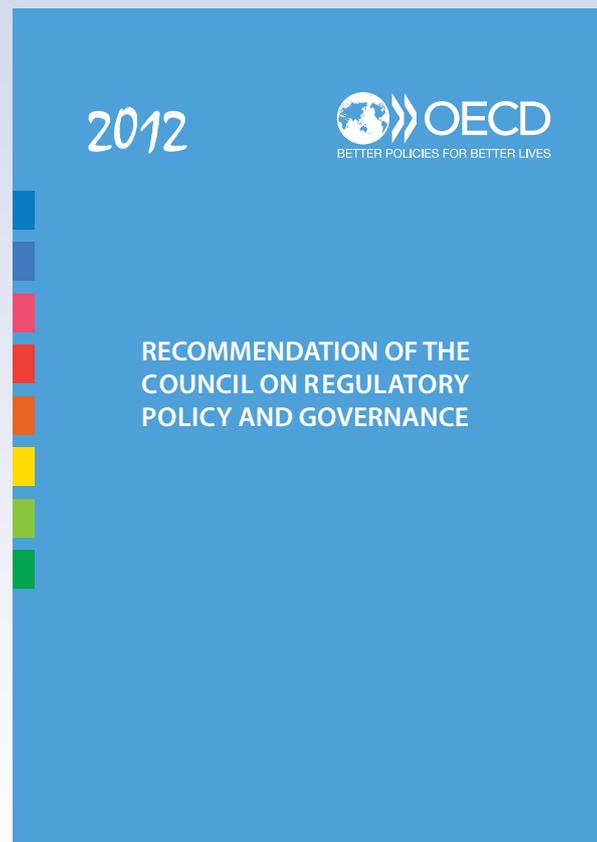




# 5th Expert Workshop on Measuring Regulatory Performance

**ASSESSING PROGRESS IN THE IMPLEMENTATION  
OF THE 2012 RECOMMENDATION OF THE  
OECD COUNCIL ON REGULATORY POLICY AND  
GOVERNANCE**

**Policy Findings and Workshop Proceedings**



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## INTRODUCTION

On 3-4 June 2013, delegates to the Regulatory Policy Committee (RPC), OECD officials, member and non-member countries, as well as international experts met in Stockholm to discuss the implementation of the [2012 OECD Recommendation of the Council on Regulatory Policy and Governance](#) (Recommendation) in OECD countries and how to benchmark progress over time. The workshop attracted around 70 participants from 22 member countries, the European Commission, the World Bank and the Business and Industry Advisory Committee (BIAC). It was chaired by Prof. Gary Banks, Chair of the OECD Regulatory Policy Committee and Dean and Chief Executive of the Australia New Zealand School of Government. This was the fifth in [a series of expert meetings](#) hosted by OECD countries that focuses on a substantive regulatory policy issue of concern to OECD countries. It is the preeminent meeting on the calendar of the RPC outside of the biannual meetings in Paris.

OECD delegates and experts worked in plenary and breakout sessions to discuss the requirements, goals and aspirations for implementing each of the twelve principles in the Recommendation. Participants identified effective practices and priorities for implementation, and discussed obstacles and ways to overcome them. The expert meeting will support the goals of the Regulatory Policy Committee to monitor progress on the implementation of the Recommendation in OECD countries and to provide comparative information on country practices in Regulatory Policy. The results of the meeting will inform the design of a survey to collect information on the implementation of the Recommendation in member countries and to track progress over time.

To help frame the discussion, the workshop started with a discussion of the benefits of a systematic implementation of the Recommendation. Challenges in implementing the Recommendation and potential ways to overcome them were identified, and speakers shared specific country experiences to improve regulatory policy. The workshop also discussed challenges and opportunities for tracking improvements in regulatory policy, drawing on lessons learnt during previous data collections at the OECD and elsewhere, and identifying advantages and limitations of different approaches to track policy improvements across countries and over time. During the breakout sessions, participants identified effective country practices in systematically implementing principles in the Recommendation and priorities for implementation, and discussed obstacles and ways to overcome them.

The Secretariat is grateful to the Swedish Government Offices, Ministry of Enterprise, Energy and Communications, and the Swedish Agency for Economic and Regional Growth for hosting the workshop and to the steering group on Measuring Regulatory Performance for their invaluable support in the preparation of the workshop. The OECD Secretariat would especially like to thank Mr. Roger Bengtsson (Ministry of Enterprise, Energy and Communications) for the good co-operation in the organisation of the workshop.

## Keynote speech

The keynote speech of the workshop was given by Ms. Annie Lööf, the Swedish Minister for Enterprise. She emphasized the importance of sound regulatory policy: While poorly designed regulation imposes costs and burdens on citizens, businesses and the public sector, a well-designed regulatory framework contributes to long-term sustainable economic growth and well-functioning markets and societies. It also helps to tackle future challenges in a globalised world by stimulating research and innovation. The OECD Recommendation sets out the measures to support the implementation of systemic regulatory reform, making the OECD an excellent platform for enabling international discussions and co-operation on making regulation easy to comply with, effective and cost-efficient.

## Session summaries

### *The benefits of a systematic implementation of the OECD Recommendation on Regulatory Policy and Governance*

The Chair of the RPC, Gary Banks, delivered a speech in which he outlined the aims and ambitions of the Recommendation and the context in which it was developed. In particular, to underpin the development by governments of a systemic approach to regulatory reform that could address the underlying causes of regulatory failure which have been so consequential for OECD governments. The remarks by the chair delivered insights into the consistent challenges of regulatory reform across OECD countries, and referenced the history of how the OECD has sought to support members in addressing these challenges in the past through the development of regulatory policy. This includes the focus of the 1995 Recommendations of the Council of the OECD, the 1997 Report to Ministers, the work of the working party on regulatory management and reform and the 2005 Guiding Principles on Regulatory Quality and Performance. The Chair drew out the systemic and strategic features of the Recommendation on Regulatory Policy and Governance and identified how the important elements can support the ambitions of countries to improve economic welfare. The full text of the speech is available on the [OECD website](#).

### *The benefits of implementing the Recommendation: A business perspective*

This session provided insights on the views of businesses on the implementation of the Recommendation. The first speaker underlined the importance of removing obstacles to business operation and focusing on the improvement of results for end users when implementing regulatory reforms. Adopting such a perspective will lead to long-term growth and job creation. In the past, BIAC members perceived OECD policy recommendations as useful, but experienced only very limited implementation of these recommendations in their countries. Hence, the implementation of the 2012 OECD Recommendation will be essential to help restore trust in policy-making and market confidence and has full support of the Business and Industry Advisory Committee (BIAC).

The second speaker emphasized that regulations may entail burdens and costs for businesses, which discourages entrepreneurship and increases unemployment. As an example, he cited a Swedish regulation, according to which machines to smooth ski slopes must go through a veterinary inspection before shipping because they are classified as agricultural machines. This makes the administrative burden for shipping those machines unduly high. Given the increased international competition in a globalised economy, it is important to improve the regulatory environment at the same speed as competitors, using a comparative international framework, such as provided by the OECD Recommendation. While the Recommendation covers important aspects of regulatory policy already, it should stress more clearly that easing regulatory burden for businesses should be a top priority, since “we cannot eat regulations”. Businesses could be used as sources of information in the improvement process.

In the subsequent discussion, OECD staff explained that the Recommendation was written in the spirit of prioritizing reforms to ensure the good functioning of markets, since this approach will provide beneficial societal and economic outcomes at the same time. Participants also considered and discussed the issue that businesses often report that reforms have not made a tangible difference to the environment in which they operate. This may reflect the issue that business perceptions of the outcomes of regulatory reform may not match the evidence of policy results from reforms.

### *Overcoming challenges in implementing the Recommendation*

This session discussed the challenges faced by regulatory agencies and governmental better regulation units in implementing the OECD Recommendation, and potential ways to overcome them. There is a risk of tensions arising between regulators and better regulation units in central government, resulting from a number of challenges they have to deal with. The policy requirements advocated within the OECD Recommendation may contribute to alleviating these tensions.

For regulatory agencies, regulatory objectives are often inadequately specified, and powers conferred upon them are frequently insufficient or not clearly defined. In addition, they need to respond to conflicting demands from those to whom they are accountable. Their work is hampered by limitations on resources and personnel, a lack of appropriate data, means of data management and technologies for evaluating regulation. Poor leadership or Boards that do not understand the regulators' task or their target industry will impair often already weak internal governance mechanisms and operation procedures. A persistent political rhetoric about negative effects of regulation that is frequently not balanced by messages about its positive effects undermines their legitimacy and reputation.

The challenges better regulation units face in their work, in turn, are very similar to those regulators are confronted with. The scale and topography of the regulatory landscape are unclear, i.e. there is no clear definition of what a regulator is, the status of their formal legal powers over agencies vary, and the jurisdictions of regulators are frequently changing and sometimes overlapping, which makes the attribution of responsibility difficult. At the same time, governing regulators at a distance is delicate, given varying degrees of responsiveness by regulators to the better regulation agenda, varying regulatory capacities of regulators themselves, and an asymmetry of information and expertise vis à vis the regulatory agencies.

In order to abate these problems and manage the resulting tensions, it is helpful to adopt a broad systemic view of regulatory governance as put forward in the Recommendation, acknowledging that regulatory systems cross national boundaries and comprise a great number of individual regulatory agencies and regulatory policy tools. Consequently, there is a need for greater coordination: vertically between different levels of government and horizontally, e.g. through co-operation between regulatory agencies across regulatory domains. At the same time, better regulation units need to see different regulatory agencies as a part of one system. Furthermore, better regulation units should increase their understanding of the work done by regulatory agencies and the problems they face. If regular co-ordination and communication between regulators and better regulation units are maintained, greater trust will develop between them. Capacities of regulatory agencies can be enhanced, e.g. through the dissemination of effective practices and techniques, data sharing and institutionalized evaluation of regulation. Finally, governments themselves need to become better at better regulation, organizing regulatory bodies in a functional and serviceable way, improving the performance of their regulatory policy tools like RIA or ex-post evaluation and through performance evaluation and monitoring of the regulatory agencies. The full presentation can be accessed [here](#).

### *Plenary panel discussion – Improving regulatory policy and governance*

In this session, four experts with many years' experience of working in the field of regulatory policy shared their specific country experiences to improve regulatory policy, putting this into the context of implementing the Recommendation and explaining their vision for improving regulatory policy in the future.

One panellist, a member of the United Kingdom Regulatory Policy Committee (RPC), an independent body advising government on the quality of analysis supporting new regulations, emphasized the use of quantitative evidence for positive outcomes of regulatory policy. Through being able to demonstrate measurable improvements that can be attributed to its activities, the RPC continues to contribute towards improving the implementation of efficient and effective regulatory policy and in recognition of this has been allocated more resources for its work. The panellist from Canada highlighted the important role of independent international agencies that can review government activities and leverage external criticism to bring about domestic improvements and help build capacity for progress, as experienced with the [OECD Review of Regulatory Reform of Canada in 2002](#). He also emphasised that close work with and continued education of regulators about opportunities for improving regulatory practices was essential for obtaining good results.

The panellist from Sweden underlined the significance of adopting a whole-of government and outcome-based approach to regulatory reform, which focuses on the needs of end users of regulation rather than processes and tools. Co-ordination and communication between different responsible agencies and levels of government are necessary to produce a coherent regulatory environment that is beneficial to businesses and citizens. National government needs to provide leadership to bring together these different actors and to analyse which regulatory actions on the different levels of government are impacting businesses most. The panellist representing the European Commission deemed transparency an important factor for securing the benefits from regulatory oversight, remarking that building a strong connection with wider society will also help to shape the expectations of regulators of the need to improve regulatory quality. Oversight mechanisms must not be a tick-the-box exercise, and hence have to provide something back to the regulators in order to be effective. In order to maintain the effectiveness and efficiency of regulatory policy tools and institutions, their performance should be evaluated on a regular basis.

According to the panelists, the most crucial aspects for improving regulatory policy are transparency, early-stage consultation and participation of stakeholders in the regulatory process, and especially a bigger investment in obtaining the perspective of businesses. At the same time, more joined-up regulation across countries and within the European Union will enhance regulatory coherence and quality. Reviews of the regulatory stock should be treated as equally important as impact assessments of new regulation. One panellist expressed the view that the first four principles in the Recommendation (on an explicit whole-of-government policy for regulatory quality, open government and transparency, regulatory oversight and integrated regulatory impact assessment) were the core of the Recommendation, and their implementation should be prioritized. Overall though it was identified that co-ordination across government to improve regulatory policy is essential, and the principles advocated in the Recommendation should be seen as a whole operating in concert.

The Chair summarized the session by pointing to two essential elements for improving regulatory policy that could be distilled from the discussion: Both legislative drafters and political leaders must understand the importance and use of regulatory policy, in order to assure the necessary commitment and resources for creating high-quality regulation. Furthermore, regulatory agencies should be incentivized to perform effectively and efficiently as a part of the regulatory system.

### *Challenges and opportunities for tracking improvements in regulatory policy*

In this session, the OECD programme co-ordinator for Measuring Regulatory Performance shared lessons learned from previous data collections to track improvements in regulatory policy, highlighted international good practices in constructing indicators, identified strengths and limitations of indicators and explained the methodology for assessing progress in implementing the Recommendation in countries.

Many of the methodological challenges in measuring progress in regulatory policy over time are the same as for other governance areas. There are thousands of governance indicators including regulatory indicators and there is a wide literature on measuring governance and constructing indicators. Many debates and conferences have been held over the past decades on challenges in measuring governance and ways to overcome them. Out of this has emerged a rich body of insights and good practices in developing cross-country comparable indicators that the RPC can draw on for the development of their own assessment tools.

It is important to be realistic about what cross-country comparative indicators can do and what they cannot do. Well-designed indicators help to demonstrate and communicate progress, identify areas for reform, provide incentives for improvements, can be used for research on the quality and impact of regulatory policy and help identify relevant country practices and trends. By their very nature cross-country comparable indicators cannot be context specific – it is impossible to design an indicator that is at the same time context-specific for Germany, Greece, Norway and Mexico. Indicators hence cannot replace in-depth country reviews, as complex realities cannot be summarized away into one number. Debates and research have also clearly shown that every type of indicator has its own strength and weaknesses – there is no “perfect” indicator. Perception based indicators can be informative about outcomes and actual quality of policies and practices, but can be subjective and more challenging to use for over time comparisons. Facts-based indicators are more objective, replicable and comparable over time, but they often say less about the actual quality of policies and more about outputs and the de jure situation. Ideally different types of indicators are combined to draw on their combined strength and overcome some of the limitations.

There are many good practices that make the difference between a well-designed, meaningful and transparent governance indicator and a badly designed indicator open to misinterpretation and misuse. First of all, indicators should be fully transparent. This is not an empty word, it means concretely that all underlying data should be available, the methodology should be understandable to a non-technical audience and the meaning of the indicator should be clear and not subject to interpretation. Few existing governance indicators fulfill this criterion. Second, changes over time in a country’s score on the indicator should reflect actual changes. Again, this is often not the case. For example changes in the economic situation of a country can lead to more negative results on a perception survey on the quality of governance in the absence of an actual change in governance. Third, survey instruments should be piloted and investments should be made in data quality to ensure information is comparable across countries and over time. This can be very resource intensive, in particular if countries with different languages and legal systems are involved. And fourth, indicators should be relevant and give the right incentives for improvements in governance.

There are many existing regulatory indicators and the Secretariat will use where possible existing data. However, existing indicators do only very marginally cover elements of the principles in the Recommendation, they often fail to meet the quality criteria outlined above, are out of date or do not cover all OECD countries. Yet, currently, in the absence of up to date data on improving regulatory policy, countries are being assessed in the media solely on the basis of these existing indicators. There is therefore a need to collect information that can be used to demonstrate progress in improving regulatory policy.

The Secretariat has put forward a project plan, drawing on international lessons learned for assessing progress over time. It foresees a survey of government officials on effective practices in implementing the Recommendation, working with the Steering Group to design and pilot the survey questions and using an international peer exercise drawing on the network of the Regulatory Policy Committee to validate, challenge and confirm survey results. It also includes expert assessments to provide greater depth and more information on the actual implementation of regulatory policy based on local knowledge. The presentation of data and country-specific information should be user-friendly and include examples of effective practices. The project plan will be adjusted in the two year period if funding falls short of the budget foreseen in the plan.

### *Plenary on implementing Principle 1 on an Explicit Policy on Regulatory Quality, Principle 3 on Regulatory Oversight, and Principle 6 on Reviewing Performance of Regulatory Reform Programmes and Regulatory Policy*

The three principles covering an explicit policy on regulatory quality, institutions for oversight of the quality regulatory impact assessment and the review of regulatory reform programs, were grouped together in this plenary session as they are complementary to a systemic approach to reform (please see [here](#) for the full presentation). Having a clear and explicit “whole of government” policy framework sets out the priorities of the government for the review and reform of regulation including the roles and responsibilities of key players. It should establish responsibility for assuring the quality of regulation as a permanent role of governments and parliaments. The role of the oversight body is to take the primary administrative role in ensuring that regulatory proposals are properly examined for their potential to deliver purported public benefits, and programs for review of regulatory policy inform the government (and interested parties) about how effectively the elements of regulatory policy are being applied in practice.

Areas for examination for the assessment of the implementation of Principle 1 concerning the explicit policy on regulatory quality would firstly focus on the existence of a whole of government policy on regulatory reform and then on the important elements in the policy and the level of correspondence with the Recommendation. They would for example examine the comprehensiveness of the policy and how it promoted the following: Ex ante and ex post evaluation, promotion of competition policy and efficient markets and performance based regulation. In addition, the policy could be assessed for its political endorsement, identification of ministerial accountability, and a strategy for communication. There were calls for the assessment to extend to the implementation of the policy and to provide evidence of its application in practice.

The examination of Principle 3 on regulatory oversight would firstly concentrate on the institutional function for regulatory oversight to promote the quality of new and existing regulations. Important aspects to take account of include the existence of a standing body close to the centre of government which provides oversight of the quality of the preparation of regulatory impact assessment. Necessary functions are that the oversight body prepares and advocates guidance on economic and social policy analysis and most critically has sufficient independence with respect to its technical assessment to provide a negative opinion and return the regulatory proposal for more work if it is inadequate.

Principle 6 is concerned with the public assessment of the performance of the regulatory policy programs. It emphasizes the need for governments to set performance criteria for their investment in regulatory policy and to periodically assess and report on its delivery. The assessment of this principle would examine: whether there are clear criteria for policies and programmes to evaluate effectiveness covering all important program elements including: RIA, Ex post evaluation, admin burden reduction, the performance of regulators, and consultation, transparency and inclusiveness. It would also consider if data collection strategies have been put in place, whether regular public reports are made on performance and if there is a role for an external review function – such as by the supreme audit body.

### *Breakout Group 1: Principle 2 on Communication, Consultation and Engagement*

Principle 2 does not only refer to public consultations, but also to user-centeredness, openness and transparency in all phases of the regulatory policy cycle. Participants agreed that it is necessary to use a systemic approach and to be proactive in seeking feedback from stakeholders – publishing legislative drafts on a webpage and passively waiting for comments is not enough.

Participants highlighted a number of key elements in effective consultation, communication and stakeholder engagement. A clear, enforceable, measureable, government-wide policy on active stakeholder engagement in developing and reviewing regulations is crucial and needs to be accompanied by mandatory, yet flexible guidelines for stakeholder engagement.

Since stakeholder engagement can be costly and subject to “review fatigue”, it needs to be well-targeted and efficient. This can be achieved by applying the principle of proportionality (i.e. that resources dedicated to consultation and the depth of the process are proportional to the impact of the regulation), by good planning and by consulting early in the process. The earlier in the process stakeholders are taken on board, the less likely it is that there will be demands for substantive changes when the final draft is ready. Engaging stakeholders throughout the process of developing regulations also increases a sense of ownership and therefore also compliance. It should hence be mandatory to undertake consultation early in the process, before legislation is drafted, ideally when the problem is defined and the goals for a government intervention set. Effective practices include issuing a green paper or consulting on a legislative intent or consultation document before legislation is drafted. Active stakeholder engagement should also be incorporated into the planning of the legislative drafting process from the start (e.g. if it is known from the beginning that two months need to be devoted to public consultations, the consultation period does not have to be rushed through). Stakeholder engagement should be an integral part of the RIA process, making it mandatory to consult with stakeholders on all RIAs. RIA statements should be also a part of consultation documents.

Although reaching some of the affected parties (SMEs, citizens with disabilities, etc.) might be a demanding task, governments should nevertheless try to get their views as well. ICTs should be used as widely as possible. However, the tools must be user-friendly: It is better to work with existing social networks to seek for users’ feedback rather than to expect that they will frequently visit a ministry’s website to check whether there is a new draft to consult on. Participants also highlighted facilitating access to regulation using user-friendly tools and plain language in communication. In addition to consulting when developing new regulations, it is equally important to involve stakeholders when reviewing existing regulatory stock to take into account the users’ perspective, hence sufficient resources must be available for this process.

Engagement policies need to be properly implemented to ensure that stakeholders’ views are actually used to inform decision-making, and not just to justify a decision already taken. Establishing a monitoring and review system for engagement policies including a set of evaluation indicators was identified to be an important element of ensuring that consultation practices are effective. While it is very complicated to quantify the value added of the efforts to engage stakeholders, in particular because it is difficult to know what a legislative draft would have looked like if there had been no consultations, countries can use qualitative methods and indicators to evaluate and improve the quality of the review process. Capacity building for consultations and engagement across the administration needs to take place and a network enabling the sharing of good practices across the administration should be established. Political backlashes can be avoided by convincing those politically responsible of the importance of engagement through evaluation and gathering evidence on its impact.

### *Breakout Group 2: Principle 4 on Integrated Regulatory Impact Assessment and Principle 9 on Risk and Regulation*

Regulatory impact assessment, integrated as far as practicable with the policy making process and the administrative means for making primary and subordinate laws, is a key element in a country's regulatory management framework. This was formally recognized in the 1995 Recommendation of the Council on Improving the Quality of Government Regulation. The 1995 Recommendation [C(95)21/FINAL] includes a reference checklist for regulatory decision-making that outlines the necessary criteria to ensure the quality and transparency of government regulations. It includes ten questions to use evidence to address whether regulation is justified and the best form of government action. This approach remains fundamental to the integrated use of RIA in policy making and therefore the principles of the 1995 Recommendation are further referenced and reinforced in the first principle in the 2012 Recommendation. Other elements of integrated RIA spelt out in Principle 4 of the 2012 Recommendation include the need for early consultation, an assessment of costs and benefits, a consideration of non regulatory approaches and a preference for markets.

Participants to the workshop emphasized a number of key elements in the effective integration of RIA. These included: the requirement that it be applied to all significant laws and subordinate regulations through a clear administrative mandate; that it require the quantification of costs and benefits; that it involve notification of a roadmap of regulatory plans; that there is public consultation on the draft RIA and that the results of the RIA are also made public; that there is a preference for non-regulatory approaches and the efficient use of markets, where appropriate, (including an examination of the do nothing option); and that critically it was required to pass scrutiny by an oversight body with a right to comment on and return draft assessments for which the analysis is not adequate. Furthermore, training on RIA and capacity building within agencies conducting the RIA process should be provided.

The issue of risk and regulation was addressed in this session with respect to the requirement that RIA should aim to identify that regulatory responses are targeted and proportionate to the nature and extent of the problem that the regulation is intended to address. Governments should therefore require that RIA includes a risk assessment of significant regulatory proposals.

Particular difficulties identified in the process relate to the challenges of securing full political support for RIA, promoting transparency early in the policy making process and getting public engagement in the development of regulations. The technical challenges of undertaking economic assessment and collecting relevant data were also highlighted. These can be addressed by having clear forward planning for policy initiatives where regulatory responses are likely to be required, procedures for early public engagement and an effective oversight function close to the centre of government to monitor and support the effective use of RIA.

### *Breakout Group 3: Principle 5 on Reviews of the Regulatory Stock: ex post Regulatory Evaluation*

While all participants agreed that systematic evaluation of existing regulations through ex post impact analysis is necessary to ensure that regulations are effective and efficient, few countries are actually doing it systematically. In particular, few countries assess whether underlying policy goals of regulation have been achieved, whether any unintended consequences have occurred and whether there is a more efficient solution to achieve the same objective. A more frequent practice in OECD countries is partial ex-post assessment focusing exclusively on regulatory burdens. And some countries have undertaken pilot projects in ex-post assessment, which have not yet been transformed into a systematic approach.

Participants discussed that for countries that are at the beginning of building a system of ex-post analysis, broad periodic stock takes might be useful to begin with. These may focus on administrative or compliance burdens, but targeting anti-competitive regulation can have an even larger payoff. Such stock takes can then identify regulatory areas that are complex and require more in-depth review. Participants highlighted that such in-depth reviews can have very high returns. Broad red tape estimations, frequent stocktakes and regulatory budgets were seen to have a relatively low impact compared to the resources required. Participants agreed that effective consultation is necessary to ensure that reviews are effective and credible publicly. Stakeholders can be involved both in the process of identifying areas that may require reform and during the actual review process. Participants also underlined that end-users of regulation that may not be responsive to the usual consultation procedures need to be pro-actively engaged.

For any type of review, participants said it is indispensable to assess whether the underlying policy goals of regulation have been achieved. Workshop participants also highlighted that it is important to move away from an incremental assessment of the impact of individual regulations towards assessing regulatory coherence and the impact of regulations together with other policy tools. They suggested that systematic implementation of Principle 5 does not necessarily imply that ex-post analysis has to cover always all sectors, but that systematic can also mean regular review of policy areas that are identified to be of particular economic or social importance. Such in-depth reviews of particular areas can have very high returns. To be considered systematic implementation of Principle 5, such a targeted approach requires a standing capacity to regularly undertake reviews, criteria for selecting policy areas and sufficient resources for analysis.

Any strategy to improve ex-post evaluation needs to take into account political and technical challenges. First, policymakers may concentrate on solving today's problems and on implementing their campaign promises and not on what was regulated some time ago. Second, reviewing regulation requires financial resources and experts, which are scarce. Third, tackling too many areas of regulation at once can impede focus and momentum, and lead to "review fatigue". Fourth, regulations that are costly to an economy can also provide benefits to some groups or be perceived to be more widely beneficial, so that reform may accordingly be resisted. Discussions provided a number of insights into how these challenges can be overcome. Participants agreed on the importance of prioritisation and sequencing to avoid review fatigue and undertake analysis with limited resources. Consultation and research can greatly assist in the prioritisation process. Setting up a standing capacity with reference to regularly undertake reviews can also help to ensure reviews are undertaken systematically. The suggestion to analyse only on the costs of regulations was found to be problematic, because it leaves out whether regulations achieve their intended policy objectives and it was not clear how a decision on revising regulation can be made solely on the basis of information on its costs. Participants agreed that evidence of the potential gains and leadership to "sell" reform to the community are both needed to avoid resistance and ensure political impact of the reforms. Examples of bad regulation can be published and stakeholders should be transparently involved in the process to gain acceptance for regulatory reforms.

#### ***Breakout Group 4: Principle 10 on Regulatory Coherence across Levels of Government and Principle 11 on Regulatory Management Capacity at Sub-national Level***

The session highlighted the issue that the exercise of regulatory authority by multiple levels of government creates the potential for horizontal and vertical gaps in the capacities of government to operate effectively and in harmony. Governments do not always operate in concert to achieve national economic and social policy goals, such as the creation of common markets and the equal protection of citizens and of the environment. A particular focus is on the role of sub-national governments in taking responsibility for the delivery of regulation through the administration of enforcement and compliance. The emphasis here was on the identification of successful strategies for addressing these gaps and promoting coordination among governments to achieve common goals for the improvement of regulatory quality. New regulatory

tools or programmes may successfully be tested in a sub-national jurisdiction and thus help to improve a country's overall regulatory policy framework.

Key elements to examine include having effective and inclusive standing coordination mechanisms between national and sub-national governments or municipalities (depending on the federal or unitary model of government) which include a focus on improving the design and delivery of regulatory services. The agenda of the coordination function should be aimed at identifying opportunities for the development of a national reform agenda that addresses the need for improvements to regulatory management at the sub-national or municipal level. This would also allow for input from business groups and citizens and not be confined to a government to government dialogue. Evidence of this would be reflected in coordination mechanisms and benchmarking of performance for competition and cooperation as well as common administrative procedures such as for example one stop shops which seamlessly integrate the experience of dealing with regulation in different jurisdictions for businesses and citizens. A more ambitious goal would be for sub-national and national governments to seek agreement of which level of government should have responsibility for regulation in particular sectors to promote consistency and streamline compliance requirements.

A particular area of interest among EU members is in effective mechanisms for supranational coordination and preventing gold plating of EU directives. A major challenge for EU member states is having input into the design of EU directives and having the capacity to prepare effective impact assessments when transforming laws nationally. A further challenge for business is in the differences in the enforcement practices among jurisdictions for the implementation of the same EU directives, suggesting that coordination of enforcement is also an issue of concern.

#### *Breakout Group 5: Principle 7 on the Organisation of Regulatory Agencies and Principle 8 on Administrative and Judicial Review*

The performance of regulatory agencies (or regulatory authorities, as they may be termed) is crucial for the effective implementation of regulatory policy. However, the definition of such agencies is not always clear. According to the participants, these agencies characteristically are charged with implementing and enforcing regulations and sometimes operate at arm's-length from government. They all have some enforcement or inspection role and may also have some powers to make regulations, however policy making power should always remain with the ministry. The degree of independence of regulatory authorities varies depending on the type of regulatory function that is performed and may also vary among countries. What is seen as critical is the clear distinction and separation of powers, and systems and processes to mitigate against undue influence and regulatory capture to maintain trust, i.e. the independence of regulatory decisions from such influences.

The key element to examine in the implementation of Principle 7 is that there should be a complete public register, clearly identifying all regulatory agencies including their regulatory competences. In addition there should be an overarching policy on the framework, structure, governance and functioning of regulatory agencies. Clear guidance should be established for decision-making by regulators including how they are financed, and manage personal and human resources (especially in relation to their leadership and management). The policy remit should also help to prevent political interference with their day-to-day work and with longer term objectives.

The policy should ensure the appropriate level of autonomy of the regulatory agencies in the performance of their functions, but also include mechanisms to hold them accountable. In particular, it is important that the objectives of regulatory agencies are clearly defined and performance indicators clearly specified in a transparent way. In general, some discussants considered that regulators that require a level of independence to properly perform their functions should report to parliaments rather than to the

executive branch or political representatives. It is also necessary to define where the powers of independent regulators and competition authorities may overlap and if this is the case, establish mechanisms to dispute issues that may arise from these overlaps.

Regulatory authorities should systematically collect information on regulatory compliance and provide it to policy makers as an input for reviewing and revising regulations as well as drafting new ones. Regulators should be consulted early in the rule-making process, preferably before a new draft law is developed. It should always be clear how entities affected by regulatory decisions can resolve disputes with regulatory authorities and can appeal the decisions of a regulatory authority to a court or higher authority.

#### *Breakout Group 6: Principle 12 on International Regulatory Co-operation*

Principle 12 recommends that countries, in developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction. International Regulatory Co-operation (IRC) has the potential to reduce barriers to trade and investment and to help to achieve the same policy objectives at fewer costs. However, while a review of IRC practices carried out by the Secretariat (OECD (2013), *International Regulatory Co-operation: Addressing Global Challenges*) shows a wide variety of IRC mechanisms in OECD countries, few systematic practices and tools to make IRC an integral part of regulatory policy were identified.

Making IRC an integral part of regulatory policy involves considering the opportunities for IRC in developing new regulations, in reviewing the stock of regulations, and also going beyond the consistency of de jure regulations to dealing with the frictions that arise from implementation. In developing new regulation with likely trade effects or impacts on parties outside the jurisdiction, promising practices involve establishing a requirement in the RIA process to consider relevant international standards and to document the rationale for diverting from them; and opening consultation to foreign affected parties. In reviewing the stock of regulations, an interesting practice is to embed “consistency with international standards” as a key principle driving the review process. Dealing with the implementation challenges could involve establishing fora among domestic and foreign regulators to discuss the frictions and small differences emerging from enforcing regulations. Workshop participants also emphasised the opportunities offered by the various trade agreements under development to promote and realise international regulatory cooperation, given their focus on non-tariffs barriers to trade.

Any strategy to promote IRC will need to address the key challenges and bottlenecks arising from a regulatory policy culture eminently based on domestic jurisdiction and shift it to one that takes greater consideration of outside parties. This may involve as a first step establishing an effective coordination mechanism in government on IRC activities to centralise relevant information on IRC practices and activities and to build a consensus and common language. A realistic IRC strategy will also need to take into account the variety of IRC mechanisms and their respective benefits and costs in different country size and context. Finally, the workshop participants emphasised the fragmentation risks that the current IRC patterns (mainly based on bilateral or regional cooperation) may generate.

## *Conclusions*

At the conclusion of the meeting the Chair made salient observations about the important themes to emerge from the discussion. Principally these included achieving effective consultation and engagement with business and citizens, the need for independent evaluation and scrutiny, and the need for applying proportional evidence based impact assessment to the largest and most costly regulatory interventions.

Throughout the workshop delegates repeatedly reflected that countries are strongly interested in learning about the practical methods by which other countries are achieving success through using regulatory policy to improving the design, development and delivery of regulations and regulatory services. Examining the results of discussions in the breakout sessions and the plenary, the overall conclusion was that delegates consistently recognised and promoted the most challenging aspects of the recommendation as being of most vital importance in ensuring effective systemic reform. In every case, delegates wanted to be ambitious in the standards for regulatory policy settings holding countries to a high benchmark for all important systemic practices covering transparency, consultation and participation, evidence based policy processes, including oversight and challenge functions and evidence of political support.

The Participants to the workshop also reflected that the implementation of the recommendation has to have impact in practice and so it should not just be assessed on a pro- forma basis. While it was recognised that this creates additional challenges for developing a survey methodology that delivers accurate indicators which measure implementation it is important to recognise that the aspiration at least is very clear. Delegates see greater value in understanding and communicating where country practices may fall short than simply providing a scorecard of de jure settings that may present countries in a positive light, even though they are not applied in practice.

The conclusion for the development of an assessment methodology is that if the resources for the project are as constrained as they are anticipated to be, then the focus should be on assessing those elements that are likely be instrumental in bringing about systemic improvements to regulation. By implication this is also likely to encompass those areas that many countries find challenging to implement.

## BIBLIOGRAPHY

OECD (2012), *[Recommendation of the Council on Regulatory Policy and Governance](#)*.

OECD (1995), *[Recommendation of the Council on Improving the Quality of Government Regulation](#)*.

The full agenda, discussion notes, list of participants, speaker profiles and workshop presentations are available on the [workshop webpage](#).