

*OECD GUIDING PRINCIPLES
FOR REGULATORY QUALITY
AND PERFORMANCE*

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OECD GUIDING PRINCIPLES

FOR REGULATORY QUALITY AND PERFORMANCE

The goal of regulatory reform is to improve national economies and enhance their ability to adapt to change. Better regulation and structural reforms are necessary complements to sound fiscal and macroeconomic policies. Continual and far-reaching social, economic and technological changes require governments to consider the cumulative and inter-related impacts of regulatory regimes, to ensure that their regulatory structures and processes are relevant and robust, transparent, accountable and forward-looking. Regulatory reform is not a one-off effort but a dynamic, long-term, multi-disciplinary process.

The first set of OECD policy recommendations for regulatory reform was endorsed by Ministers in 1997. They have provided guidance to member countries to improve regulatory policies and tools, strengthen market openness and competition, and reduce regulatory burdens. The country reviews of regulatory reform launched in 1998 and the monitoring exercises of implementation launched in 2004 document the considerable progress that has been made and identify lessons about implementation to promote a strong competition culture and liberalisation of entry barriers, the use of regulatory impact analysis and consideration of alternatives to regulation, and the integration of market openness criteria in regulatory processes.

From 1997 to 2005:

The Evolution

of Regulatory Policy

The concept of regulatory reform has changed over the last decade, a change that is reflected in the title for these principles. The focus in the 1990s was on steps to reduce the scale of government, often carried out in single initiatives. Isolated efforts cannot take the place of a coherent, whole-of-government approach to

create a regulatory environment favourable to the creation and growth of firms, productivity gains, competition, investment and international trade. Removing unneeded regulations, notably in sectors that meet public needs, is still important, but does not tell the whole story. When governments turn elsewhere for provision of services, regulation is necessary to shape market conditions and meet the public interest. “Regulatory quality and performance” captures the dynamic, ongoing whole-of-government approach to implementation.

The *1997 Recommendations* have stood the test of time. Based on the lessons of experience drawn from 20 country reviews and other studies, these recommendations have been carefully examined and updated to help countries face the challenges of the 21st century with a renewed commitment toward better regulation. The original 7 principles have been retained, but the explanatory notes and subordinate recommendations have been expanded. Issues which receive greater attention in 2005 than in 1997 include: policy coherence and multi-level co-ordination; *ex ante* assessment of proposals for policy; competition policy for network utilities that meet public needs; market openness; risk awareness; and implementation. This agenda calls for a cross-sectoral, pro-active approach to make regulations more responsive yet predictable. The *OECD Guidelines for Regulatory Quality and Performance* highlight the dynamic, forward-looking process by which regulatory policies, tools and institutions are adapted for the 21st century.

More non-member countries are taking an interest in regulatory reform issues, as demonstrated by the recent review of Russia, the first of a non-member country, the participation of Brazil and Chile as observers in the Special Group on Regulatory Policy, conferences on regulatory policies in China in 2003 and 2004, the Regulatory Governance Initiative as part of the Investment Compact for South East Europe, and the completion of the *APEC-OECD Integrated Checklist for Regulatory Reform*. Regulatory Reform is a key theme in the Programme on Good Governance for Development in Arab Countries, supported by the OECD and the UNDP. The implementation of policies for better regulation however is difficult in many transition and developing countries, when

institutional and democratic systems are still fragile. Bilateral and multilateral development assistance programmes are helping to build capacity for regulatory impact analysis and regulatory policy systems in many countries, where over time, regulatory processes and standards can be expected to improve transparency, accountability and economic outcomes. The 2005 Principles will therefore have an impact beyond OECD member countries, wherever governments strengthen domestic policies and institutions in ways that improve investment and trade.

This set of principles was discussed by the Competition and Trade Committees and the Working Party on Regulatory Management and Reform in the context of stocktaking exercises to identify lessons about implementation drawn out of the 20 country reviews completed through 2003, and summarised in the synthesis report "Taking Stock of Regulatory Reform". The Special Group on Regulatory Policy approved the Principles at its 4th meeting on 15 March 2005, and the Council of the OECD endorsed them on 28 April 2005.

1 *Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.*

Commit to regulatory reform at the highest political level, recognising that key elements of regulatory policy – policies, institutions and tools – should be considered as a whole, and applied at all levels of government. Articulate reform goals, strategies and benefits clearly to the public.

Establish principles of “good regulation”, drawing on the *1995 OECD Recommendation on Improving the Quality of Government Regulation*. Good regulation should: (i) serve clearly identified policy goals, and be effective in achieving those goals; (ii) have a sound legal and empirical basis; (iii) produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account; (iv) minimise costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Create effective and credible co-ordination mechanisms, foster coherence across major policy objectives, clarify responsibilities for assuring regulatory quality, and ensure capacity to respond to a changing, fast-paced environment. Ensure that institutional frameworks and resources are adequate, and that systems are in place to manage regulatory resources effectively and to discharge enforcement responsibilities. Strengthen quality regulation by staffing regulatory units adequately, conducting regular training sessions, and making effective use of consultation, including advisory bodies of stakeholders.

Encourage better regulation at all levels of government, improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government; apply regulatory quality criteria such as transparency, non-discrimination and efficiency to regulation inside government, and encourage private bodies such as standards-setting organisations to adopt criteria for regulatory quality based on the *OECD Recommendations*.

Adopt a dynamic approach to improve regulatory systems over time to improve the stock of existing and the quality of new regulations, and ensure that reforms are carried out in a logical order and that related markets are liberalised together, where practicable. Make effective use of *ex post* evaluation.

2 *Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.*

Review regulations (economic, social, and administrative) against the principles of good regulation and from the point of view of those affected rather than of the regulator; update regulations through automatic review procedures such as sun-setting.

Consider alternatives to regulation where appropriate and possible, including self-regulation, that give greater scope to citizens and firms; when

analysing such alternatives, consideration must take account of their costs, benefits, distributional effects, impact on competition and market openness, and administrative requirements.

Use performance-based assessments of regulatory tools and institutions, to assess how effective they are in contributing to good regulation and economic performance, and to assess their cost-effectiveness.

Target reviews of regulations where change will yield the highest and most visible benefits, particularly regulations restricting competition and market openness, and affecting enterprises, including SMEs.

Review proposals for new regulations, as well as existing regulations, with reference to regulatory quality, competition and market openness; ensure compliance with quality standards when drafting or reviewing regulations preferably overseen by a body created for that purpose.

Integrate regulatory impact analysis into the development, review, and revision of significant regulations, and use RIA to assess impacts on market openness and competition objectives; support RIA with training programmes, and with *ex post* evaluation to monitor quality and compliance; include risk assessment and risk management options in RIAs. Ensure that RIA plays a key role in improving the quality of regulation, and is conducted in a timely, clear and transparent manner.

Minimize the aggregate regulatory burden on those affected as an explicit objective to lessen administrative costs for citizens and businesses and as part of a policy stimulating economic efficiency. Measure the aggregate burdens while also taking account of the benefits of regulation.

3 *Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.*

Establish regulatory arrangements that ensure that the public interest is not subordinated to those of regulated entities and stakeholders.

Consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage

while developing or reviewing regulations, ensuring that the consultation itself is timely and transparent, and that its scope is clearly understood.

Ensure that firms in an industry are not subject to firm-specific benefits or costs arising from regulation, unless such benefits or costs are demonstrably necessary to benefit the public or to prevent the exercise of market power.

Create and update on a continuing basis public registries of regulations and business formalities, or use other means of ensuring that domestic and foreign businesses can easily identify all requirements applicable to them. Electronically accessible, interactive Web sites should be a priority to make rulemaking information available to the public, and to receive public comment on regulatory matters.

Ensure that administrative procedures for applying regulations and regulatory decisions are transparent, non-discriminatory, contain an appeal process against individual actions, and do not unduly delay business decisions; ensure that efficient appeals procedures are in place.

Ensure that regulatory institutions are accountable and transparent, and include measures to promote integrity.

4 *Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.*

Eliminate sectoral gaps in coverage of competition law, unless evidence suggests that compelling public interests cannot be served in better ways. Competition law enforcement and sector regulation to promote competition and trade liberalisation should be co-ordinated to ensure consistency.

Enforce competition law vigorously where collusive behaviour, abuse of dominant position, monopolisation or anticompetitive mergers risk frustrating reform. Employ effective tools such as leniency programmes to detect and deter hard-core cartel violations. Sanctions imposed against anti-competitive conduct should be sufficient to deter violations; that is, they should be proportionate to the violators' expected gain, the risk of detection and the risk of public harm.

Provide competition authorities with the authority and capacity to advocate reform, and support public awareness of the role and benefits of competition.

5 *Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.*

Ensure that regulatory restrictions on competition are limited and proportionate to the public interests they serve.

Periodically review those aspects of economic regulations that restrict entry, access, exit, pricing, output, normal commercial practices, and forms of business organisation to ensure that the benefits of the regulation outweigh the costs, and that alternative arrangements cannot equally meet the objectives of the regulation with less effect on competition.

Promote efficiency and the transition to effective competition where economic regulations continue to be needed because of potential for abuse of market power. In particular: (i) in appropriate cases such as privatisation and the reform of markets that are in the process of opening up to competition, separate potentially competitive activities from regulated utility networks, and otherwise restructure as needed to promote competition; (ii) promote non-discriminatory access to essential network facilities to all market participants on a timely and transparent basis; (iii) promote inter-connection of networks between geographically neighbouring areas; and (iv) use price regulation mechanisms including price caps and other mechanisms such as price monitoring and disclosure regimes to encourage efficiency gains when price controls are needed.

Promote choice by consumers of the firm with which they deal so that they can switch firms at efficient cost and without undue restrictions.

Periodically review the state ownership stake or financial interest in undertakings with market power and whether they unduly impair competition or impede pro-competitive reforms.

Periodically review the need for universal service obligations, their effectiveness and the need to maintain restrictions on entry and prices.

6 *Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.*

Better integrate the consideration of market openness principles within the design and implementation of regulations and the conduct of RIAs, taking account of the increasing role of domestic regulatory environments in determining market openness in light of advances in trade and investment liberalisation.

Implement, and work with other countries to strengthen international rules and principles to further liberalise trade and investment paying particular attention to transparency, non-discrimination, avoidance of unnecessary trade restrictiveness,

harmonisation towards international standards, streamlining of conformity assessment procedures and application of competition principles.

Reduce as a priority matter those regulatory barriers to trade and investment arising from divergent and duplicative or outdated requirements by countries.

Support the development and use of internationally harmonised standards as a basis for domestic regulations and their review and improvement in collaboration with other countries, to assure they continue to achieve their intended policy objectives efficiently and effectively.

Elaborate clearly defined criteria for accepting foreign standards, measures and qualifications as equivalent to domestic ones when they pursue the same regulatory objective. Provide transparent and accessible avenues for foreign producers and service suppliers wishing to demonstrate equivalence.

Expand recognition of other countries' conformity assessment procedures and results through, for example, mutual recognition agreements (MRAs), unilateral recognition of equivalence, promotion of supplier's declaration of conformity or other means. Encourage the development of domestic capacity for accreditation and ensure its ease of access.

7

Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Apply principles of good regulation when reviewing and adapting policies in areas such as reliability, safety, health, consumer protection, and energy security so that they remain effective, and as efficient as possible within competitive market environments; pursue liberalisation when the benefits of competition

and market openness are consistent with the achievement of other key policy objectives; broaden the scope for regulatory quality to include public services. Recognise that as policy objectives multiply, the task of designing and evaluating regulations becomes more challenging.

Assess risk to the public and to public policy in a changing environment as fully and transparently as possible, thereby contributing to a better understanding of the responsibilities of all stakeholders.

Review non-regulatory policies, including subsidies (both direct and indirect) and procurement policy, and adjust them where they unnecessarily distort competition and market openness.

Ensure that programmes designed to ease the potential costs of regulatory reform are focused and transitional, and facilitate, rather than delay, the process of adjustment.

