

Executive Summary

There is a gap between the level of risk that is aspired to by policy makers and the level that is achievable through regulation. Not all risks can be reduced to zero and tradeoffs in risk reduction measures are inevitable. This publication aims to identify areas for the improvement of risk governance through an analysis of the legal, procedural and practical challenges for risk regulation. Each chapter provides advice on policy steps that governments can take to improve the efficiency and effectiveness of regulatory management arrangements for reducing risks.

Chapter 1 discusses a range of challenges faced by governments in designing coherent risk regulatory policy and steps to overcome these challenges. It describes the features of a deliberate risk-based approach to the design of regulatory management and compliance strategies, and argues that this can improve the welfare of citizens by providing better protection from hazards and more efficient services from government. A focus on risk and regulatory policy is also consistent with the Better Regulation Agenda of most Governments and can reduce costs for business. However, most OECD countries have not developed a coherent risk policy framework for managing regulation. The chapter argues that the provision of guidance and review is necessary if progress is going to be made to improve risk governance systems right across the administration. A central oversight role can for example ensure that approaches being taken by individual agencies are efficient and effective, adequately account for risk-risk tradeoffs, as well as share lessons from individual agencies with other parts of government.

Chapter 2 discusses risk regulatory concepts and the law. It describes the increased utilisation of risk regulatory concepts in administrative decision making in a wide array of contexts and in many different jurisdictions over the past decade. The concepts have been introduced for different policy reasons, regulate administrative power in a diverse range of ways and are not defined homogeneously. This complexity of risk regulatory concepts is reflected in the many different legal dimensions that they are applied. In addition risk regulatory concepts have been subject to specific criticisms which make clear that they should be used with care, critical reflection, and an awareness of the complexities involved. Chapter 2 reviews the relationships between risk regulatory concepts and different legal dimensions. It proposes a process of analysis that highlights the fact that the operation of risk regulatory concepts is not straightforward and is always embedded in a particular cultural and legal context. This has implications for models of public administration, and is useful in understanding procedural decision making and how a regulatory decision maker is held to account.

Chapter 3 discusses strategic issues in risk regulation and risk management focussing on the obligation of public officials to make decisions about policies where future uncertainties are economically significant and unavoidable. In this context there is a need

for clear and consistent principles for dealing with uncertainty. Chapter 3 argues that the theory of decision making under uncertainty provides the appropriate conceptual framework for thinking about uncertain events and their consequences, and thus also for thinking about risk. It illustrates the practical consequences of confused thinking about the principles of decision making under uncertainty, including a discussion of the limitations of the precautionary principle as a general decision rule.

Chapter 4 presents a critical overview of the key elements of risk regulation and governance institutions, regarding risks to health, safety, environment, security, finance, among other areas. It emphasises the challenges for risk regulation of increasing interconnectedness in a multi-risk world, including: the need to assess the joint effects of simultaneous exposure to multiple risks; the increasingly rapid spread of risks across networks; and the ubiquitous ancillary impacts of risk regulation such as risk-risk tradeoffs. A range of institutional responses are called for including: comprehensive regulatory impact assessment of the full portfolio of impacts of risk reduction efforts; both *ex ante* (prospective) regulatory impact assessment to inform initial policy decisions, and *ex post* (retrospective) regulatory impact assessment to inform subsequent policy revisions and to improve *ex ante* assessment methodologies; even-handed use of regulatory analysis both to discourage undesirable policy proposals and to encourage desirable policy proposals; greater use of economic incentive instruments in regulation; and better co-ordination and oversight of risk regulation policies across agencies within each government, and across governments internationally.

Chapter 5 discusses how management-based regulation can be used by regulators to achieve public risk management objectives at lower cost by giving greater flexibility to the private sector without sacrificing public health and welfare. Public policy challenges increasingly arise from new kinds of risks that seem to evade resolution through traditional forms of regulation. Management-based regulation may help regulators better address both existing risks and new ones by deploying regulatory authority in a way that leverages the private sector's knowledge about its particular circumstances and engages firms in developing their own internal procedures and monitoring practices that respond to risks. This flexibility also raises the question of whether this regulatory strategy can actually deliver value to society. The chapter argues that empirical evidence indicates that management-based regulations can lead firms to make risk-related behavioural changes and induce positive behavioural change within an industry. The chapter explains how management-based regulation fits within a government's overall policy toolkit and examines the conditions under which management-based regulation is both a viable and superior policy strategy.

Chapter 6 identifies key aspects of the risk-based frameworks of eleven regulators in four countries across four sectors. It is an empirical study of the choices, practices and lessons from the experience of regulators applying risk regulatory frameworks. Desk-based research (and selected interviews) was conducted with respect to food, environmental, and financial regulators in the UK, Ireland, the Netherlands, Portugal and Australia, and occupational health and safety in the UK and the Netherlands. Regulators implementing risk-based frameworks must make real choices as to the types and levels of risk they are prepared to tolerate. The risk-based frameworks that they adopt also have risks, and a regulator's risk tolerance is ultimately driven by the political context. The chapter explores the motivations for an adoption of risk-based frameworks, sets out the main elements of risk-based frameworks and explores key questions that arise in practice with respect to

each of these elements. The chapter concludes with an evaluation of the main issues and challenges which have arisen in the implementation of risk-based frameworks and identifies lessons from the experiences of regulators.

Chapter 7 proposes steps that governments can take to improve the integration of risk management with the design and management of regulations and the functions of regulatory bodies through the development of formal guidelines. Themes that should be addressed in guidelines include optimal risk taking, processes for preparing formal risk assessment reports, the analytic treatment of scientific uncertainty about risk, ranking risks and risk-reduction opportunities, precaution and the value of information, ancillary risks and benefits, transparency of governmental procedures, cross-department co-ordination, public/stakeholder participation and capacity building. The chapter notes that the governments of Canada, the USA and the UK as well as the European Commission have already developed formal policy statements on risk.

Individually, each chapter provides policy insights for improving risk regulatory approaches both in the design of regulation and its implementation. Taken together, the selection of themes discussed in the chapters is intended to provide countries with the materials to review or develop a governance framework for risk and regulatory policy across the administration.