

10th OECD Conference on Measuring Regulatory Performance: Key findings and conference proceedings

Measuring the implementation of
regulation

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Key findings and conclusions

Regulatory policy, alongside the ability to tax and spend is a key method by which governments are able to make a positive difference to the lives of their citizens and improve social welfare. The *OECD Recommendation on Regulatory Policy and Governance* (2012) provides that members agreed to adhere to principles of open government and evidence-based policy making.

The Recommendation states that members should “integrate Regulatory Impact Assessment into the early stages of the policy process” and further requires that members should “conduct systematic programme reviews of the stock of significant regulation... to ensure that regulations remain up to date, cost-justified, cost-effective and consistent and delivers the intended policy objectives”. The link between *ex ante* impact assessment; inspections and enforcement; and *ex post* evaluation relies heavily on information, that is, data. The entities that are generally responsible for data collection are regulators and businesses. Assessing compliance is obviously an important part of any sound regulatory framework, but the data required can potentially have other uses.

The 10th OECD Conference on Measuring Regulatory Performance was concerned with data collection, collation and dissemination throughout the regulatory lifecycle.

The following emerged from discussions as being important to better considering the implementation of regulations:

- It is paramount to establish objectives to be achieved with each regulation, but it is more important to measure its performance, to determine if they are effectively being achieved or, where appropriate, whether it is necessary to make adjustments. Therefore, there must be a permanent commitment for the adoption of measures that allows for performance evaluations of regulation. In turn, this provides useful information to help determine if regulations are fulfilling their purposes, or to assess if this information is sufficient to determine modifications that must be made to regulations in a timely manner. Data collection and corresponding resources to track progress in achieving the objectives of regulation need to be already built in at the design stage of regulation.
- It is necessary to make regulatory enforcement more oriented towards promoting compliance and reforming inspections to make them more targeted and based on risk-assessment and risk management. This requires a cultural change which is not always easy to achieve. The delivery phase is in many countries still not being fully considered as an important part of regulatory policy. The newly introduced OECD Toolkit for Regulatory Enforcement and Inspections should help countries evaluate their inspection systems and conduct important reforms in this area.

- It is essential that during regulatory design, due consideration is afforded to the means by which regulations are to be complied with. This helps to frame the data which will be required of regulated entities to demonstrate compliance. It is important to ask whether data requirements remain fit for purpose after a period of time as the regulatory environment is constantly evolving. In order to improve the implementation of regulation, there needs to be closer engagement between regulators and regulated entities, and governments need to have a better understanding of business operations. Policymakers and regulators should question whether data they ask for are necessary, as well as asking if similar data are collected by other areas of government. Both policymakers and regulators need to better ensure that the data which are collected are fully utilised by regulatory agencies and analysts alike.
- The introduction of big data to the public sector has the potential to be a game-changer for regulatory policy. The most obvious potential is via improved inspections and enforcement, saving both public and private resources, by introducing and improving risk-based approaches to regulatory compliance and enforcement. But big data also presents opportunities throughout the whole regulatory lifecycle. For *ex post* evaluations — the central theme of the 9th OECD Conference on Measuring Regulatory Performance in Lisbon, Portugal in 2017 — big data enables analysts to view market participants' behaviour through a number of dimensions, for instance temporal and spatial. This may identify particular 'hotspots' where increased regulatory focus is needed. It may in turn assist in the improvement of regulatory design over time, as policymakers have an improved evidence-base upon which to make policy decisions. One substantive challenge to the potential fulfilment of these opportunities is the issue of data privacy.
- Policymakers have on occasions not consulted with regulators, and the result has been the creation of regulations that cannot be complied with and that cannot be effectively enforced. Regulatory design can be improved where policymakers involve regulators early during the regulatory development phase. Regulators are generally closer to regulated entities than policymakers and may be able to assist policymakers to gauge the size of regulatory problems, as well as provide advice on potential impacts. That said, engagement and communication between regulators and regulated entities can be improved.
- It is necessary to evaluate the effectiveness and efficiency of regulatory enforcement and inspections. This evaluation must be based on real-life data, however, the choice of indicators is crucial. Neither indicators such as the number of inspections or the number of identified violations should be used, at least not in isolation (they might be useful for internal control purposes). Outcome and impact indicators should be used as they provide more accurate information on how regulation performs and delivers on its goals. It is necessary that the goals are set already when regulations are developed. Proper sources of information and data are needed without imposing unnecessary burdens on regulated subjects, and it is therefore necessary to increase the level of trust between regulators and regulatees. Regular reporting mechanisms as well as independent evaluation of enforcement and inspection institutions are important.

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- In creating feedback loops between inspections and the regulatory making process in order to improve evidence-based policy, communication is a key tool. This includes meeting the need to provide guidance to the regulated parties to comply with regulation and the relevance of consulting stakeholders and other government agencies in the regulatory design stage, especially the agencies in charge of inspections and enforcement. In this process, the regulatory impact assessment tool (RIA) should also be flexible: the regulator should reach out to other agencies, not only for help designing the legislation, but also defining a data collection plan for measuring regulatory performance. Additionally, there is a need for an independent evaluation of the regulation and of the enforcement and inspections activities in order to build effective feedback loops between the performance of regulation and the development of evidence-based policy.
 - On the link between international regulatory cooperation (IRC) and enforcement and inspection, coordination between regulators and inspectors (for example, sharing information on firm's behaviour) can help the enforcement of the law, for instance in the financial sector and in the anti-corruption realm which has strong ties to IRC commitments. Cooperation between different countries or jurisdictions can help reduce the costs that producers have to bear when facing more than one inspection process. However, the lack of trust and transparency concerns between regulatory agencies has been an obstacle towards the achievement of more international regulatory agreements.

Conference proceedings

Introduction

The 10th OECD Conference on Measuring Regulatory Performance, held in Mexico City on 5-6 June 2018, brought together more than 100 participants from 14 countries to discuss ways to measure the implementation of regulation. Participants included Delegates to the OECD Regulatory Policy Committee (RPC) from member countries, academics and experts, as well as OECD officials. The conference was chaired by Gary Banks, Chair of the OECD Regulatory Policy Committee.

The conference aimed to help countries ‘bridge the gap’ between *ex ante* impact assessment and *ex post* evaluations, through a better understanding of why it is important to measure the implementation of regulation, as well as how and what data may be required to effectively achieve this. The conference therefore represented a good opportunity to introduce the OECD Toolkit for Inspections and Enforcement to the regulatory policy community. The outcomes of the discussions will support key OECD work, such as the OECD Best Practice Principles on *ex post* evaluations of regulations, and the Regulatory Policy Outlook series.

Welcoming remarks were provided by Gary Banks, Chair of the OECD Regulatory Policy Committee, Mario Emilio Gutierrez Caballero, Commissioner of the National Commission for Better Regulation, Mexico, and Julio Alfonso Santaella Castell, Head of the National Institute of Statistics and Geography, Mexico. Ildefonso Guajardo Villarreal, Minister of Economy, Mexico, opened the conference with a keynote speech on recent progress in Mexican regulatory policy. The keynote speech was followed by Mario Emilio Gutierrez Caballero, Commissioner of the National Commission for Better Regulation, Mexico, and Julio Alfonso Santaella Castell, Head of the National Institute of Statistics and Geography, Mexico to speak on the topic of “Improving implementation of regulation — what’s next?”. Martin Lodge, Professor of Political Science and Public Policy, London School of Economics, United Kingdom, was a discussant and the session was moderated by Alexander Elbittar, Research Professor, Centre for Research and Teaching of Economics (CIDE), Mexico.

The OECD Secretariat introduced the OECD Toolkit for Inspections and Enforcement, which was followed by a panel discussion with experts, moderated by Nick Malyshev, *Head of Regulatory Policy Division, OECD*. In a closed-door workshop, conducted under the *Chatham House Rules*, OECD Delegates and experts worked together to identify challenges and possible solutions to measuring the implementation of regulation.

Keynote speech

The Minister of Economy of Mexico Ildefonso Guajardo welcomed participants to the conference during his keynote speech, and recognized the work that Mexico and the OECD have been doing to improve regulatory policy. He mentioned that since 1989, in the former

Ministry of Commerce (now the Ministry of Economy), the first efforts were made in regulatory quality, which led to the creation of the Federal Commission for Regulatory Improvement (COFEMER) in 2000. Minister Guajardo also underlined that these achievements allowed a process of transformation and adoption of the best practices in public policies in Mexico that helped confront the disruptions of a more competitive world.

Minister Guajardo also stated that facing changing conditions requires solid institutions that provide certainty and lower the regulatory burden that citizens, economic entities and entrepreneurs face. In these regards, he mentioned that Mexico had lowered the regulatory burden of formalities at the federal level from the equivalent of 4.25% of Mexico's GDP to 2.58%. He emphasized that in this objective of improving and giving certainty, Mexico has generated a series of structural reforms in areas such as energy, fiscal, and educational reforms, among others, as well as the creation of autonomous bodies such as the Federal Economic Competition Commission and now the National Commission for Regulatory Improvement (CONAMER).

Minister Guajardo stressed that within this context, fundamental elements of preparing for the implementation of the regulatory policy were promoted by Mexico. These elements included the General Law of Regulatory Improvement, and the creation of the National Observatory of Regulatory Improvement, which along with the private sector, such as the Business Coordinating Council, will allow for the assessment and implementation of this new legal framework.

Finally, Minister Guajardo thanked the OECD for choosing Mexico as the host of the tenth edition of this conference and he thanked the attendees again.

Improving implementation of regulation — what's next?

Panellists: *Mario Emilio Gutierrez Caballero, Commissioner of the National Commission for Better Regulation (CONAMER), Mexico; Julio Alfonso Santaella Castell, Head of the National Institute of Statistics and Geography (INEGI), Mexico.*

Discussant: Martin Lodge, Professor of Political Science and Public Policy, LSE, United Kingdom.

Moderator: Alexander Elbittar, Research Professor, Centre for Research and Teaching of Economics (CIDE), Mexico.

The panel comprised two senior Mexican Government officials. The Commissioner of CONAMER spoke about the evolution of the regulatory environment in Mexico and the oversight body in charge, from its beginnings as a unit within the Ministry of Economy to its current guise as the National Commission for Better Regulation. The latest reforms to enhance the policy of regulatory improvement in Mexico began with the amendment to article 25 of the Mexican Constitution, in order to explicitly include regulatory policy as a public policy goal of the Mexican Government. This reform led to the recently approved General Law on Regulatory Improvement. The content of this law and its development in the different levels of government were explained, as well as the objectives that are to be achieved with it. Various regulatory improvement and administrative simplification programs were also presented, which have been implemented by the national government, such as the administrative simplification program, the one-in two-out decree, and the Daily Justice Program (Justicia Cotidina).

The head of INEGI explained how the forums of the Justicia Cotidiana program were carried out during 2014, and that in order to meet the need to measure regulatory quality, the National Survey on Regulatory Quality and Government Impact on Enterprises (ENCRIGE) was undertaken. The ENCRIGE offers information regarding the perception, experience and satisfaction of the economic units regarding the procedures and services offered by the government. Its objective is to measure the regulation's impact and its impact on the competitiveness of the Mexican economy by assessing the satisfaction of businesses on the quality of formalities from the three levels of government (Federation, States and Municipalities) and from the three powers (executive, legislative and judicial). ENCRIGE also evaluates corruption perceptions on basic public services. The survey was created in 2016, had a national coverage, and included 42 municipalities. The following sectors were considered for the survey: mining, manufactures, construction, electricity, services, transportation, commerce, and communications.

The discussant reflected on the importance to engage with measurement tools and raised questions on four issues:

- *Incentives*: what are the incentives for organisations that seek to improve better regulation to expand or sustain this kind of agenda?
- *Agencies' objectives*: does it imply enhancing the professional nature of the performance of regulators?
- *Oversight*: how many resources are there? How many resources can be leveraged in order to sustain the program?
- *Updating the measurement of regulatory performance*: How do we understand what is changing?

The panel was closed with some remarks about the importance of committing to and utilising measurement tools, so as to keep improving regulation in order to achieve their underlying objectives.

Introducing the OECD Toolkit for Enforcement and Inspections

Participants: *Mr. Daniel Trnka, Senior Policy Analyst, OECD; Eduardo Rossi, Regulatory Specialist from the Superintendence of Electric-Power Services Oversight of Brazil; Tessy Torres, President of the Board of the Environmental Evaluation and Enforcement Agency of Peru (OEFA); Milda Kaupeliene, Director of Company Law and Business Environment Improvement of the Ministry of Economy of Lithuania; and Javier Govea Soria, General Director of Commercial Inspection from the Agency for Safety in Energy and Environment (ASEA), Mexico.*

Mr. Daniel Trnka explained that motivations for the OECD to develop a toolkit for enforcement and inspections began in 2014 with the publication of the *OECD Best Practice Principles for Improving Regulatory Enforcement and Inspections*. The objective was to develop a more practical instrument in providing criteria to enable (self-)assessment of the inspection and enforcement systems of countries and/or individual agencies. A number of challenges were explained such as defining what would constitute a 'good' regulatory system, as well as the necessary data requirements to assess various inspection systems. The main characteristics of the Toolkit were explained, including the criteria to assess the inspection systems and the necessity to provide evidence for complying with each criterion.

Mr. Eduardo Rossi briefly explained the recent experience of the Superintendence of Electric-Power Services Oversight with reforming its inspection process. It was noted that until 2015, the agency had a traditional inspection system based on universal checking. In contrast, the new approach now tries to address the inspection process based on risk monitoring, and assisting companies in solving problems and implementing various changes. It was highlighted that the new approach is not fully implemented, especially regarding cultural change, but that it has nevertheless achieved some promising results so far. He explained that although the new approach is supported by the OECD Principles, sometimes it is difficult to measure them. Thus, they are enthusiastic about the new Toolkit to help better measure the implementation of regulations.

Ms. Tessa Torres began by stressing that in her experience the enforcement phase has not yet had the attention it deserves in the regulatory making process. For instance, the responsible inspection agency in Peru is currently unaware of eventual new duties until the relevant regulations are issued. The OEFA has been heavily engaged with the OECD principles as they have recognised that it was not possible to conduct universal inspections, and also that there was a strong need to implement risk-based criteria. One possible suggestion was that in the future the Toolkit could consider some more universal criteria such as training and transparency, as well as avoiding overlaps. In this regards, it was suggested that indicators could be developed to assess progress in achieving these objectives over time.

Ms. Milda Kaupeliene explained that Lithuania started an inspections reform process in 2009 as part of the better regulation initiative with the aim of reducing administrative burdens. The reform was based on business concerns that regulation was excessive, difficult to understand, and that firms did not feel the real effects of regulation improvements. The first step was the identification of 72 inspectorate agencies and their partial consolidation. It was noted that the Toolkit is a useful tool that will help institutions improve their inspection processes.

Mr. Javier Govea welcomed the OECD Toolkit and explained that ASEA started their recent reforms with the construction of databases which then allowed for the creation of a risk administration model. The database identified actors and impact variables such as storage capacity, facilities, population, etc. which were later linked to a probability of incidents. Data are now the new driver in selecting the facilities to be inspected instead of the subjectivity of public officials. A second tool that ASEA has developed relies on the creation of compliance catalogues which identify the potential legal consequences that inspectors must apply for the activities they found. The catalogue then promotes different actions to solve potential problems: corrective actions, measures of urgent application (for example, potential danger to people) and security measures (for example, potential danger to facilities). The new approach focuses on correcting market participants' behaviour rather than the application of fines.

Panel discussion: Measuring the implementation of regulation

Panellists: Monserrat Ramiro, *Commissioner, Energy Regulatory Commission, Mexico*; Jimena Marván Santín, *Head of Planning, Strategic Linkages and Processes, ASEA, Mexico*; Kim Wager, *Head of EU and International, Better Regulation Executive, BEIS, United Kingdom*; Juan Pablo Castañón, *President of Business Coordinating Council, Mexico*; Florentin Blanc, *International expert on regulatory enforcement and inspections.*

Moderator: Nick Malyshev, *Head of Regulatory Policy Division, OECD*.

A panel of experts, practitioners, and representatives from OECD countries discussed a number of issues relating to measuring the implementation of regulation. Specifically, they discussed why measuring the implementation of regulation is important, and identified challenges and opportunities to how it could be done.

The panellists explained that measuring the implementation of regulation is important as a verification tool of regulatory policy making. It was noted that the *raison d'être* of regulation is to correct market failures, broadly defined. As such, it is important to assess whether the failure has in fact been corrected — that is, whether consumers are able to obtain goods and services at reasonable prices, and whether consumer welfare has in fact improved. In order to make an assessment of whether the regulation has had its intended effects, we need data.

An important aspect clearly identified was that data are already collected. The central issue discussed was which data are necessary, noting that unnecessary additional data poses costs for both regulators and businesses. It was agreed that markets are dynamic and that regulation lags the market. Therefore, as markets change, information requirements may also change, so policymakers and regulators need to have sufficiently responsive regimes so as to be able to tailor their systems accordingly. In this regards, it was highlighted that regulators actually need to actively engage with regulated entities so as to ensure that they understand differing business models, and can adjust data requirements accordingly, eg data requirements are based more on risks posed by individual businesses rather than a one size fits all approach.

Some panel members noted that compliance is generally measured by the enforcers of regulations. Regulators may face different incentives compared with policymakers in terms of compliance with regulation. For instance, compliance with regulations may be judged by the number of enforcement actions taken, but this may not be a good barometer of actual compliance with the law. Enforcement actions may rise and fall depending on a number of factors such as the resourcing of the regulator, as well as the application of the regulation by the regulator. In and of themselves however, these may not necessarily indicate that particular regulations are working ‘well’ or ‘poorly’.

It was suggested that existing data could be better utilised, particularly across regulators. Businesses and regulators both bear unnecessary burdens where similar information is requested, for often quite similar purposes. Moreover, the introduction of big data into the regulatory sphere potentially allows for better explanations about the impact of regulations ‘on the ground’. It provides analysts with the ability to track business behaviour over time, and potentially across a number of other vectors, such as geographically and spatially. It was additionally noted that external sources of data are available such as social media, which may complement more traditional inspections and enforcement mechanisms.

Panellists agreed that data collection needs to be better integrated into the regulation making phase. Lessons learned about what does and does not work needs to feed back into future regulatory design. By focussing on data requirements at an earlier stage in regulatory design, we can more clearly articulate how the achievement of regulatory goals will be measured. It was suggested that data need to be collected which reflect regulatory outcomes, rather than inputs or outputs. It was acknowledged that while this is difficult to do, it is not impossible.

Closed-door workshop: Measuring the implementation of regulation

Introduction:

Gary Banks, *Chair of the OECD Regulatory Policy Committee*, Nick Malyshev, *Head of Regulatory Policy Division, OECD*, and Christiane Arndt-Bascle, *Head of Measuring Regulatory Performance Programme, OECD*.

The Chair's presentation recalled the importance of policymakers ensuring that the entire regulatory lifecycle is considered. In this context, it was highlighted that data requirements change throughout the regulation making, enforcement, and review phases. It was noted that there has been increased political support and acknowledgement of the importance of sound regulatory implementation during regulatory design. In regulatory enforcement, the main elements are:

- communicating with regulated entities so as to promote awareness and understanding of regulatory instruments
- monitoring the behaviour of regulated entities
- conducting enforcement actions in identified instances of non-compliance
- having appropriate appeal mechanisms, internal and external, available to regulated entities.

The Chair presented some key themes for participants to consider during the closed-door workshop. These centred around: risk and proportionality; responsiveness via learning and incentives; continuous improvement and feedback loops; and institutional integrity and capability through governance and accountability, as well as appropriate culture and leadership.

The introduction to the closed-door workshop recalled the importance of the need for regulators and regulatory frameworks to be responsive, and noted that this is not yet reflected in current practices. In particular, it was highlighted that, for example, regulators annually assess all firms for compliance, despite the existence of regulatory champions, as well as perennially non-compliant firms. Fostering a more risk-based approach in inspections and enforcement has the ability to save both public and private resources (due to the avoidance of unnecessary compliance costs), and at the same time also potentially improve compliance rates as firms witness differences in regulatory treatment across various businesses.

The importance of sharing information between regulators was also highlighted. It was noted that regulators can be criticised for operating in silos when it comes to inspections and enforcement. Much data are collected, collated, and examined by regulators, but the information is not necessarily disseminated beyond the walls of the regulator. Yet information of a very similar nature may also be required by other regulators. This can impose unnecessary burdens on both regulators and businesses where similar information is requested in a different format that is only of benefit to the regulator.

The introduction to the closed-door workshop informed participants that the three breakout sessions would each have a focus as part of the regulatory lifecycle, namely at the regulatory proposal stage, the implementation stage, and the evaluation stage.

The first breakout session's focus was on *ex ante* impact assessment and the relevant data considerations during the regulatory proposal stage. This session was to investigate what data ought to be considered at an early stage in the development of regulatory proposals,

and to identify challenges and possible opportunities to better integrate the consideration of data requirements earlier in the regulatory process. It was recognised that this unambiguously increases the costs associated with regulations, but that that also meant that such costs could be better integrated into *ex ante* impact assessment. It further meant that future costs could be avoided by considering data requirements during the regulatory development phase.

The second breakout session was to focus on measuring the effectiveness of inspections and enforcement. The session therefore was to look at what type of data best illustrate whether regulations have been complied with. It was noted that data are not always indicative of broader trends, eg if compliance rates fall in a particular year that may be due to any number of possible reasons other than that the businesses had little to no interest in complying with the regulations.

The third breakout session was to focus on closing the regulatory lifecycle that is, creating feedback loops for evidence-based policy. It was noted that data are important to assess whether regulations' goals have been met, and whether they can be met through lower cost means. It was noted that potentially shifting the regulatory focus from inputs or outputs to outcomes is difficult, but that it is not impossible.

Following the break-out sessions, the key findings were discussed in the plenary with the involvement of all participants.

Data on implementation of regulations

Thinking early about regulatory objectives helps to answer questions about the data that will be required. Therefore, considering both regulatory objectives, as well as the necessary data to measure implementation, are both key aspects of regulatory design. Participants noted that it was important for both policymakers and regulators to better understand regulated businesses' perspectives in terms of regulatory design and the data that can best demonstrate compliance with regulations. Delegates further considered that information can be better utilised by policymakers in deciding whether regulation is required, and/or whether to use an alternative policy mechanism to achieve regulatory goals.

Participants noted that there are substantive barriers in the public sector to the sharing of information, both within and across ministries. One such barrier clearly identified was that privacy laws in the public sector represent a challenge to information sharing. They considered that the establishment of an officer within each ministry with overall responsibility for data collection and dissemination may help to ensure that necessary data are collected, and that existing data are best utilised across governments. The officers could then potentially establish a network across government so as to ensure that data are only collected once, while at the same time act as a conduit to share better information collection and dissemination practices.

It was agreed that big data currently presents a number of challenges and opportunities to the public sector. In Mexico specifically, it was noted that there are difficulties in terms of infrastructure, skills, and capacities. The infrastructure challenges are in terms of both the ability to collect and store such data. In turn, this led into the next challenge in terms of limited skills and financial capacities within ministries to analyse such data. It was noted that although the infrastructure challenge may be able to be overcome in the short to medium-term, the issues associated with skills are likely to take longer to overcome and will require additional training of ministry staff. However, participants noted that big data also presents big opportunities, particularly with regards to administrative savings within

and across ministries through better use of available data. The better use of existing data could potentially enable regulators to adopt a more risk-based approach to regulation, thereby reducing unnecessary burdens on both regulators and regulated entities.

Measuring the effectiveness of enforcement and inspections

Key elements for measuring the effectiveness of enforcement and inspections, with a specific focus on how to measure objectives, were identified. Among the indicators, outcome and impact indicators are the ones the regulators should use. They are the most useful in providing information on how the enforcement of regulation is occurring ‘on the ground’. An example about occupational safety inspections in Britain, France and Germany was provided, comparing the spending made on inspections in these countries. Germany spends five times more than Britain, but in terms of results, Britain has the lowest rate of fatal occupational accidents. Participants agreed that it is necessary to measure the real impacts of enforcement activities in the regulated area to assess whether these are in fact useful.

The Lithuanian experience of measuring enforcement and inspections was provided. Lithuania was described as one of the pioneers in inspections reforms, which started in 2008. The most difficult element was to drive a change in mind-set in both the inspectorate and the regulated entities. It was provided that the objective of the inspectorate has to be prevention, not punishment. Through advanced tools, Lithuania was able to foster compliance from businesses and improve feedback loops.

A close relationship between the regulated and the regulator is needed to improve the effectiveness of enforcement and inspections; and one way to foster the relationship is through feedback mechanisms on inspections. Feedback allows for the collection of information on how business perceives the regulation, and can help adjust the regulation where needed.

The regulator has to have an increased level of trust in the regulated. One suggested way of achieving this was to better rely on existing data. In order to be effective in inspecting and enforcing, a regular reporting mechanism is important, in order to avoid uncertainty. Regulators should be accountable and consistent in their decision-making. It is therefore important to have an independent body, such as a ministry or a coordinating body that is responsible for evaluating regulators’ activities.

Creating feedback loops for evidence-based policy

Participants agreed on the importance of communication as a tool for implementing high-quality regulatory policy. Two major issues were covered: the need to provide guidance to the regulated parties; and the relevance of consulting stakeholders and other government agencies.

It was suggested that regulatory agencies should provide guidance and assistance when implementing new regulations, as the regulated parties might not know how to fully comply with them. Understanding regulations and offering tailored information and incentives for citizens and businesses to comply is an important step in ensuring that resources are not unnecessarily wasted during later inspections and enforcement actions. Besides increasing the communication with the citizens and businesses, regulatory agencies must consider the opinion of stakeholders and other government agencies. Generally, the body responsible for drafting the regulation is not the same as the enforcement and inspection agency. This

situation may cause problems, as responsibilities are assigned without knowing exactly if the agency in charge of the inspection has the resources to fulfil its new tasks.

Participants from different regulatory agencies and oversight bodies mentioned that RIA should be a flexible tool. It was acknowledged that it is challenging for regulators to keep track of changes (particularly technological ones) and to understand how to regulate them properly. In this context, the regulator should reach out to other agencies, not only for help in regulatory design, but also in creating a data collection plan. An important point that is often ignored is the fact that the collection of information can be done at a local level in order to involve other agencies and to create feedback loops that adjust to each individual or regional context.

Finally, the group covered the role of enforcement practices on *ex post* evaluations of the regulation. Participants agreed on the need of an independent evaluation of both the regulation and the enforcement and inspections policy. In particular it was noted that Canada has an evaluation program in which a third party gathers information from the policymaker and from the enforcement agency and provides recommendations based on an assessment. This system provides a platform for all the actors involved in the regulatory cycle to express their concerns and challenges; as most of the time agencies related to the inspection and enforcement process are not fully taken into consideration.

International regulatory co-operation in regulatory enforcement

Introductory remarks: *Céline Kauffmann, Deputy Head, Regulatory Policy Division, OECD*

Speakers: *Jeannine Ritchot, Executive Director, Regulatory Policy and Cooperation, Treasury Board of Canada Secretariat; Arturo Rodríguez Abitia, Deputy Federal Attorney of Environmental Protection, Mexican Environmental Protection Agency (PROFEPA), Carlos Berzunza, Mexican Chamber of Cosmetic Products (CANIPEC), Mexico*

This session included the participation of representatives from the government agencies and the private sector. The introductory remarks focused on the lack of international coordination in terms of compliance and enforcement. It was stressed that most regulatory agencies tend to focus on the design of new laws and not on the compliance and enforcement of them. It was highlighted that co-ordination between regulators and inspectors (for example, sharing information on firm's behaviour) can help the enforcement of the law — particularly in the financial sector and in areas related to anti-corruption. It was put that regulatory agencies should not wait until a crisis develops before starting to co-operate with other regulators, and that it is important to design schemes that prevent accidents from happening in the first place.

The panellists agreed on the importance of increasing co-operation between different countries or jurisdictions as a way of reducing costs on producers when facing multiple inspection process. However, the lack of trust and transparency concerns between regulatory agencies has been an obstacle towards the achievement of more international regulatory agreements. Regulators can overcome these challenges by better embedding and elaborating on evidence-based regulation, promoting transparency and engagement by setting up a central oversight body. One example discussed was the Mexican Environmental Protection Agency (PROFEPA). PROFEPA participates in different regulatory fora and has signed recognition agreements, particularly with the United States, as a way of building a lasting and trusting relationship with other jurisdictions.

From the private sector's perspective, companies can often face very similar regulations in two or more countries. It was stated that this lack of co-ordination generates inefficiencies and makes it difficult for businesses to generate economies of scale. It was noted one way of reducing compliance costs is to improve the communication between the industry and the regulator. An example of the Mexican Chamber of Cosmetic Products was given, whereby the entity approached the regulators from the countries that form the Pacific Alliance in order to define a regulatory framework that is in line with the regulators' requests, without generating excessive administrative burdens for the industry.

Closing remarks

Mario Emilio Gutierrez Caballero, Commissioner of the National Commission for Better Regulation, Mexico, recalled the 9th OECD Conference on Measuring Regulatory Performance in Lisbon, Portugal, which focussed on *ex post* evaluations, and that the 10th Conference was able to build upon that foundation. The Commissioner thanked all participants for their attendance and valued input throughout the conference.

The OECD Secretariat thanked the Mexican authorities for hosting the 10th OECD Conference on Measuring Regulatory Performance. Key messages highlighted from the conference were that:

- It is important to take into account individual laws, both from a specific and a sectoral level. When regulations are viewed individually, they may be net beneficial to society, however collectively as a system the law becomes more complex and some of the benefits may dissipate.
- Policy objectives need to be made clear at the outset of the regulatory process. This helps to focus policymakers' minds to the types of data that will be required. The types of data relate to both compliance (and forming an evidence base for enforcement actions where relevant) and also to the data required to later assess whether regulatory goals have been met.
- Information is required on inputs, processes, outputs, and outcomes. It was observed that regulators are generally well-placed to collect input and process data such as financial and budgetary information. A question remains on how well regulators are currently able to assess outputs and outcomes. It was suggested that big data may present an opportunity to collect information in regulatory areas where it was previously impossible or prohibitively costly to do so.

H.E. Ms. Rut Krüger Giverin, Norwegian Ambassador to Mexico, proudly announced that the 11th OECD Conference on Measuring Regulatory Performance will take place in 2019 in Oslo, Norway. The Ambassador noted that the Measuring Regulatory Performance Programme is aligned with the Norwegian Government's priorities, and that Norway had recently undergone reforms to its regulatory management tools via: improved regulatory impact assessment; an increased focus on guidance for ministries; and the establishment of a regulatory oversight body.

The Chair and the OECD Secretariat thanked the Mexican Government and CONAMER for their organisation of the conference and their hospitality, as well as all conference speakers and participants for their active involvement in the discussions. They also thanked Norway for hosting the 11th Measuring Regulatory Performance in Oslo in 2019.