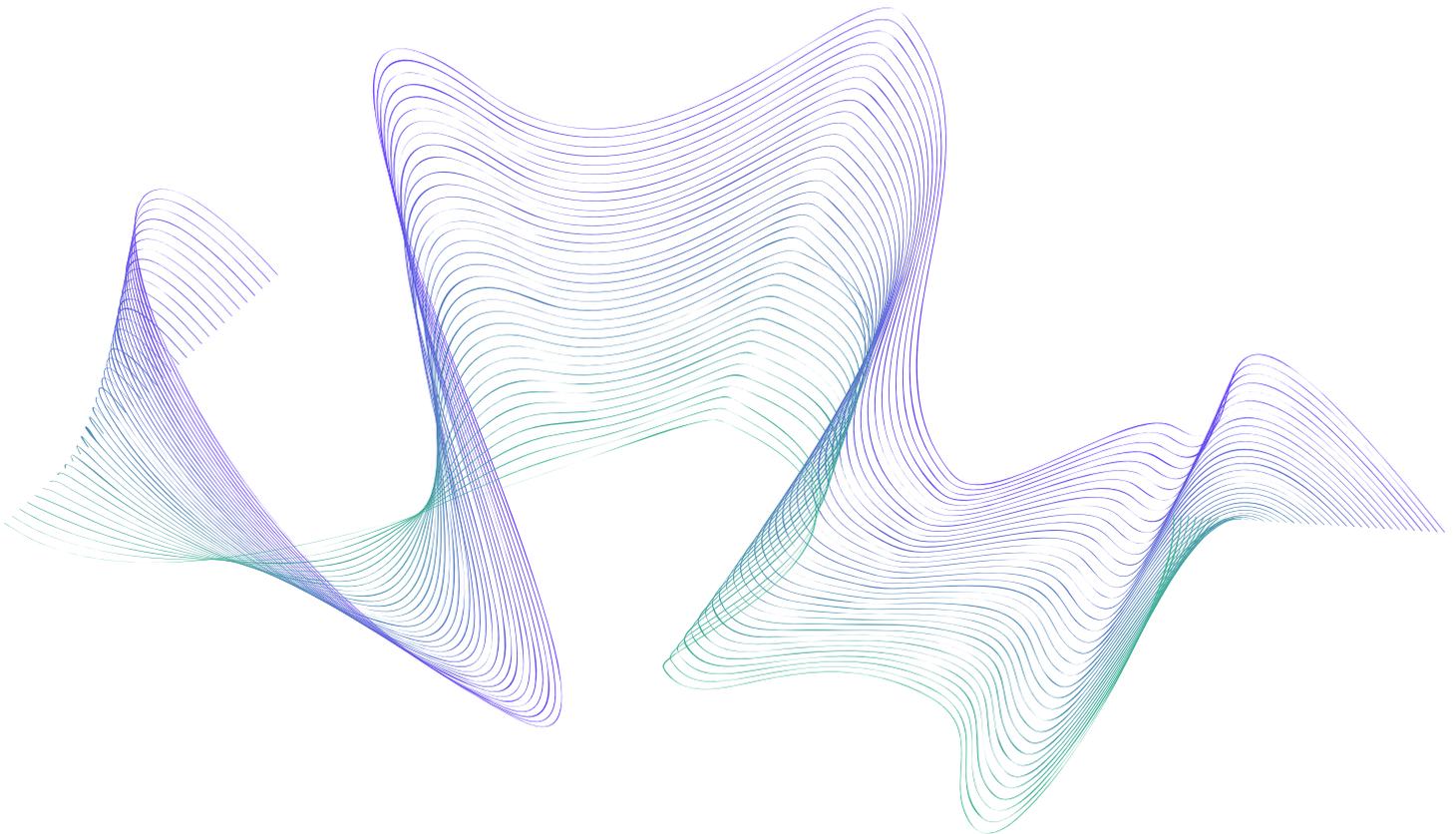




Measuring Regulatory Performance

**RE-BOOSTING GROWTH: OVERCOMING CHALLENGES
TO MEASURING AND REDUCING COMPLIANCE COSTS**

Policy Findings and Workshop Proceedings



POLICY FINDINGS AND WORKSHOP PROCEEDINGS¹

Introduction

On 11-12 June 2012, delegates to the Regulatory Policy Committee (RPC), OECD officials, member and non member countries, as well as international experts met in Berlin to examine the methodological and strategic issues for reducing the costs of regulation. The workshop attracted around 70 participants, including 23 member countries, the European Commission, the Asia-Pacific Economic Cooperation (APEC) Secretariat, the World Bank and the Business and Industry Advisory Committee (BIAC). It was chaired by Nick Malyshev, head of the OECD's Regulatory Policy Division. This was the fourth 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.

The main objective of the workshop was to share approaches and techniques to measure compliance costs and to identify strategies for cutting regulatory costs that contribute to re-boosting growth and delivering improved welfare outcomes. The workshop enabled the exchange of experience and good practices among countries. It focused on the technical challenges of measuring compliance costs and benefits of regulations as well as on the political challenges for reducing costs to stimulate growth and maximize welfare outcomes. The format included country presentations and open discussion both in the plenary sessions and in the specific breakout groups.

To help frame the discussion, the workshop started by focusing on the potential for boosting growth through reducing compliance costs of regulations. Good practices in methodologies and institutional arrangements to implement the measurement of compliance costs were identified, including challenges and ways to overcome them. Insights were provided on strategies to maximise the benefits of regulatory interventions and on approaches to measuring benefits. The workshop also discussed practical and effective strategies for ensuring an actual reduction in regulatory expenditures that can stimulate growth and maximise welfare outcomes. During the break-out sessions, participants developed concrete policy findings for designing strategies which were discussed at the final plenary session and are presented in this summary paper. Presentations are available online (www.oecd.org/regreform/measuringperformance).

Background to the workshop

The expert workshop held in Berlin is part of a series of workshops developed by the OECD programme on Measuring Regulatory Performance which examines how an investment in regulatory policy and management systems can help improve members' economies and societies and where further investments in better regulatory policy should be focused to pay dividends.

1. An earlier draft of the policy findings and summary of proceedings was circulated to all participants and comments were received from Australia, Canada, Germany, and the United Kingdom.

Box 1. The OECD Regulatory Policy Committee

The Regulatory Policy Committee (RPC) was created by the OECD Council on 22 October 2009 to assist member and non-member economies in building and strengthening their regulatory reform efforts. It is a platform to help countries adapt regulatory policies, tools and institutions, learning from each other's experience. The Regulatory Policy Committee is supported by staff within the Regulatory Policy Division of the Public Governance and Territorial Development Directorate. More information about OECD work on regulatory policy, including information about how governments can design, apply and enforce better rules can be found at www.oecd.org/regreform.

The OECD's Public Governance and Territorial Development Directorate's unique emphasis on institutional design and policy implementation supports mutual learning and diffusion of best practice in different societal and market conditions. The goal is to help countries build better government systems and implement policies at both national and regional levels that lead to sustainable economic and social development.

The annual workshop series of the Measuring Regulatory Performance programme brings together experts and RPC delegates for in-depth discussions under Chatham House Rules. The 2012 Berlin workshop on "Re-boosting Growth: Overcoming Challenges to Measuring and Reducing Compliance Costs" was the 4th expert workshop. Previous meetings focused on the Indicators of Regulatory Management Systems (hosted by the United Kingdom in London in 2009), on the use of perception surveys for measuring and communicating progress (hosted by Turkey in Istanbul in 2010), and on developing a framework for domestic regulatory policy evaluation (hosted by Spain in Madrid in 2011).

The OECD Secretariat is grateful to the German Federal Chancellery and the National Regulatory Control Council for hosting the workshop in Berlin 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 Ms. Eileen Fuchs (Federal Chancellery), Ms. Martina Hampel (National Regulatory Control Council) and Ms. Renata Lecki (Federal Chancellery) for their excellent co-operation in the organisation of the workshop.

Opening remarks and keynote speech

The workshop was opened by Dr. Johannes Ludewig, Chairman of the National Regulatory Control Council, Ms. Beate Lohmann, Head of the Department for Public Administration at the Federal Ministry of the Interior, and Dr. Rolf Alter, Director for Public Governance and Territorial Development at the OECD. The keynote speech was given by Mr. Eckart von Klaeden MP, Minister of State to the Federal Chancellor, Federal State Co-ordinator and Co-ordinator for Better Regulation.

The main speakers pointed out the relevance of regulatory reform which represents a critical policy option to stimulate recovery from the crisis without imposing additional fiscal burdens. This is particularly important in times where both fiscal and monetary policies are at their limits. Now more than ever, it is the role of governments and parliaments to ensure the quality of the regulatory framework to foster social welfare and economic growth while at the same time protecting societal values effectively. It is therefore necessary to reduce regulatory costs but they should always be juxtaposed with benefits, to optimise regulations' "value for money".

In addition to improved decision making through careful quantification and through cost-benefit analysis, countries should identify opportunities to design better regulations. Creating opportunities for innovation is all more important as bureaucracies have a tendency towards the status quo. Fostering transparency and open government, for example, involves stakeholders, increases the pressure to act, and leads to better outcomes. E-Government initiatives should also be integrated in the rulemaking reform, to make full use of the potential of one-stop shops and other programmes

Session summaries

Session 1 - Why reduce compliance costs? The impact of regulatory burdens on growth and welfare outcomes

The purpose of this session was to discuss the potential for boosting growth through reducing compliance costs of regulations and to help frame the subsequent discussions. The OECD Secretariat started the session by presenting the various ways regulation can impact – positively or negatively – on growth, and the need for countries to adopt complementary systemic and strategic approaches to improving the quality of regulation and reducing the costs on businesses and citizens. The systemic approach is fully elaborated in the *Recommendation of the Council on Regulatory Policy and Governance*. It describes the steps that countries should take to embed reform processes in government. Strategic measures are more situational, related to the specific challenges faced by the countries. They are targeted at addressing the causes of regulatory burdens that will make an impact on the economy and may have a structural reform component.

The second speaker provided a summary of analysis of the literature on how improvements to regulatory policy can lead to improved economic and social welfare. The discussant from (BIAC) stressed the importance of the *Recommendation of the Council on Regulatory Policy and Governance*, for improving the delivery of regulatory services from Government and the significant contribution that the business community can make to identifying and reducing costs.

Two key lessons resulted from this session. First, when dealing with the link between regulation and growth, government policy needs to consider two dimensions. “Systemic reforms”, which focus on improving the process of making and reforming regulations in general, and for which the new *Recommendation on Regulatory Policy and Governance* is a key tool. In addition, governments should focus on “Strategic reforms”, i. e. on reforming regulated sectors and programs targeted at reducing compliance costs. Both approaches work best if co-ordinated well from a whole-of-government perspective.

Second, further work to demonstrate the critical causative link between regulatory policy and improved economic and social welfare is needed. Whereas the existence of such a link is intuitive and accepted, the econometric evidence is fragmented and unfocussed with gaps in the literature. Future work would help identify the contribution of specific systematic and strategic approaches and thus help to better evaluate investments in regulatory policy.

Session 2a: Measuring compliance costs - Methodologies and institutional arrangements

Compliance costs are analysed in most OECD countries both ex ante – e.g. as part of the *Impact Assessment* procedures and the *One-In One-Out* approach in the United Kingdom - and ex post – e.g. as part of simplification efforts in Switzerland. Nevertheless, measuring compliance costs in monetary terms is only one means of assessing the impacts of regulations on citizens and businesses in order to create a better regulatory environment. Compliance costs measured in monetary terms should thus be only one - albeit important - element of a whole-of-government regulatory policy. Non-financial costs to stakeholders, such as those connected with enforcement and inspections or irritation and associated benefits, should be given a significant amount of attention as well.

The term “compliance costs” refers to the costs to businesses resulting from complying with government regulation and includes both administrative costs and substantive costs, such as the costs of new machinery or training. The Standard Cost Model provides a widespread, well-developed methodology for the measurement of administrative costs. This session therefore focuses on the measurement of substantive compliance costs. What is considered part of compliance cost differs across countries and the development of common definitions might be part of follow-up work (see Appendix D).

Differences exist in methodologies of measurement as well as in the process itself, depending mainly on the purpose of the exercise. While usually only direct costs are quantified, foreseeable indirect costs should also be stated quantitatively, or if not possible, qualitatively, especially for the purpose of the impact assessment. Whether to include the “business-as-usual” (BAU) costs is another important question: It may be a challenge to distinguish these costs, thus making it difficult to exclude BAUs. Consultations with stakeholders are indispensable in this aspect. Switzerland also does not include an assessment of the opportunity costs of abstaining from an activity.

From the procedural point of view, it is not possible to conduct a full baseline measurement of compliance costs, as it was sometimes the case with administrative costs in a few countries. Sound methodology should be prepared upfront and adjusted continuously as various questions and issues emerge. Particular departments/ministries are responsible for measuring costs in their area of competence, while strong co-ordination from the centre of the whole programme is necessary. Active involvement of stakeholders is crucial. Several countries employ advisory bodies consisting of independent stakeholders to increase the quality control of the measurement. Strong political support to promote take up by the ministries/agencies involved is very important for the success of the exercise.

Session 2b - Measuring compliance costs – Integrating practical methodologies in impact assessments

The second part of Session 2 aimed to identify good practices in implementing methodologies for measuring compliance costs, as well as challenges of implementing and ways to overcome them. Presenters from both Germany and the Netherlands explained how compliance costs measurements are integrated into impact assessments for new regulations, as well as being used for creating a baseline of the costs of existing regulations.

One of the key issues raised in the presentations and the subsequent discussion was how measurement of compliance costs can be integrated into impact assessment, while ensuring that it is comprehensive and also comprehensible. The standard cost model (SCM) was identified as an example of a straightforward practice that may be able to be adapted.

The session also stressed the importance of the institutional setting and political will for measuring compliance costs. Embedding the measurement and use of compliance costs in a legitimate, transparent and credible system is important for the success of this decision-making tool.

Participants suggested that the OECD Secretariat should develop, in consultation with member countries, standard definitions for key concepts and terms, establish basic principles for how to calculate compliance costs, and support the development of an internationally recognised methodology. This could be done for example through case studies of how compliance costs are currently measured and integrated into regulatory impact assessments. It was also suggested that the OECD could facilitate a workshop as a kick-off meeting for further work in this area.

Session 3 - Maximising benefits of regulations

The purpose of this session was to identify strategies to maximise benefits of regulatory interventions, to discuss challenges in assessing impacts and benefits and ways to overcome them. The representative of Canada presented how Canada measures benefits for the flow of new regulations ex-ante as part of cost-benefit analysis. The representative of Australia discussed an economy-wide framework for assessing the impacts of regulatory change at an aggregate level on national and regional output, and the time scales over which those impacts could accrue. The discussant drew on experience in Germany to raise the concern that there is some inherent scepticism about the capacity of benefits measurement to persuade policy makers of the merits of alternative policy approaches.

Three key lessons resulted from this session. The first is that quantifying and monetizing the benefits of different policy or regulatory approaches contributes to a robust evidence basis for decision-making. It will not replace policy making through a process by which officials' advice prescribes to governments whether an action should or should not be taken. Instead, well-founded analysis can assist policy-makers in their decision-making processes. When economic efficiency is not the only public policy objective, the measurement of benefits also provides useful information to decision makers and citizens by highlighting who would "win" if an alternative were implemented, and by how much. As such it is an important tool in shaping and supporting policy making, and communicating the outcomes of government interventions to the public in a transparent manner. Delegates' concerns regarding the difficulty of quantifying benefits, the technicality of the documents, and numbers based on projections in this area, however, should be taken into account and addressed in system design, including guidance and training.

Second, it is not enough to simply compare sectoral costs with benefits when designing policies. Indeed, it is necessary to also consider potential economy-wide and distributional effects. With regard to distributional effects, it was suggested that when disadvantaged members of society are adversely affected, i. e. if they experience the costs when the better off enjoy the benefits, policy makers should be made aware of it and of possible options to address this.

The third lesson is that not all countries have institutionalized benefit measurement practices to the same degree. There is still a lack of understanding of what benefit measurement is and is not, and some misconceptions around the use of the net benefits indicator. Clearly, further guidance and training could provide helpful, particularly with respect to the methodologies to quantify benefits, interpretation of results and distributional analysis.

Session 4: Controlling regulatory expenditures – from measurement to impact

In the context of the challenges of the fiscal crisis, countries are considering identifying and reducing regulatory costs to stimulate innovation and to attract investment. Ideally, this cut in regulatory costs should not compromise other economic, social and environmental outcomes. This session aimed to identify strategies for reducing regulatory expenditures to stimulate growth and maximise welfare outcomes.

Strategies to control regulatory expenditures include working with business to identify and amend irritant regulations and setting targets to reduce costs imposed on business and citizens. For example, Canada recently announced a "One-for-One" Rule to control administrative burden on business. This will require regulators to remove at least one regulation each time they create a new one that imposes administrative burden on business. In addition, when a new or amended regulation increases administrative burden on business, regulators will be required to offset—from their existing regulations—an equal amount of administrative burden costs on business. In the United Kingdom, among other initiatives, the "One-in, One-out (OIOO) Rule" for the flow of regulation has been in place since 2010. It stipulates that for every new regulation imposing a direct net cost (IN), the equivalent value needs to be removed to compensate (OUT). First experiences seem to be positive in terms of a stabilisation of regulatory costs.

Participants identified challenges in reducing regulatory costs. These include the pressure from media and the general public to introduce regulation to address a problem, as well as the fact that politicians want to live up to the promises made during election and other campaigns, often involving new regulations. The necessity of having ambitious targets for reducing costs, even if these are not reached, to counterbalance this pressure was highlighted. Other participants argued that targets can be easily “gamed”. It was suggested to direct the reduction of compliance costs to regulations with high economic and social impacts. In order to assess the amount of the impacts, a consistent measurement of compliance costs in ex-ante-procedures when drafting regulations was recommended, as is established practice in various Member States.

Some key success factors for a strategy to reduce compliance costs were identified:

- the need to address both the stock and the flow of regulation;
- the need for transparency in strategies for reducing costs and measurement methods to assess the nature and impacts of change;
- the necessity of strong political support, including buy-in from stakeholders, executive bodies and parliament — success and impact need to be demonstrated and communicated;
- the necessity for a credible and legitimate system — institutional champions can help promote cultural change;
- the need to move beyond political statements — roles and functions need to be allocated clearly and permanently to achieve sustainable success.

Policy Findings – “Not just a measurement issue”- Methodological and Institutional features for a successful compliance cost system.

Participants discussed practical and effective strategies for ensuring an actual reduction in regulatory expenditures that can stimulate growth and maximise welfare outcomes. Through breakout sessions, participants developed the following concrete policy findings for designing strategies which were later discussed in the final plenary session.

The design of efficient and effective regulation is integral to a “growth strategy.” It is a necessary condition to ensure opportunities for enterprise, enable more productive use of resources, facilitate new markets and services for consumers and support improvements to productivity.

An ex ante assessment of the compliance costs (sometimes referred to as policy costs) and benefits of regulatory proposals should be developed to evaluate the possible impacts of regulatory change, to improve the design of regulation, and to assist decision makers in the selection of optimal policy responses.

- a) The assessment of the compliance costs of regulation should be comprehensive and relevant. It should take into account administrative, financial and capital costs, as well as foreseeable indirect costs, including the opportunity costs of delays to approval processes. An assessment of compliance costs should also include private costs, including costs borne by citizens and businesses and also costs to the public sector in accordance with principle 4 of the *Recommendation of the Council on Regulatory Policy and Governance*.
- b) The calculation of costs should have regard to the period when the costs are likely to be incurred and whether the costs are transitional or on-going. An appropriate discount rate should be applied to take into account the time value of money and assist in comparing costs and benefits that accrue over different time periods.

- c) An integrated assessment of costs and benefits is necessary to evaluate the relative merits of alternative regulatory and non-regulatory approaches in achieving policy goals. The presentation of this information should be in a form that enables decision makers to evaluate tradeoffs.
- d) Flexibility in the choice of an analytical method should align with the significance of the policy issues. Different methods have their role and can include compliance-cost assessments, cost-effectiveness analysis, cost-benefit analysis, multivariate analysis and economy-wide analysis. Analytical methods should weigh all significant positive and negative effects, and include qualitative and quantitative analyses, as appropriate.
- e) Mandatory guidelines for the analysis of costs and benefits are necessary to maximise consistency and support decision makers in their use of the information. The use of standard calculation tools, such as the “standard cost model” can help improve the quality of information and promote its use in practice. (An examination of other tools, such as the Australian Business Cost Calculator, may be useful, though this particular tool is limited to a calculation of the direct costs to business.) If international guidelines were to be developed, they should be kept simple and concise, so that OECD countries can use and adapt them according to their national requirements.
- f) Improvements to social welfare may not be captured in an assessment that favours measures which will generate GDP growth. Methodological approaches are required that can help analysts overcome the “attribution problem” that is the challenges from linking and assessing the benefits expected from regulatory interventions, particularly in respect to non market value, or otherwise “intangible” assets. Nonetheless, decisions require information and analysts should attempt to make informed estimations with a transparent description of the underlying assumptions.
- g) The following components are required for every analysis:
- The necessity to understand what is required to be achieved through regulation;
 - What is the current state of the world?
 - What consequences are expected to result from regulations? What will change for citizens, how many of them and in which ways will they be affected?
 - The consequences should, where possible, be estimated in quantitative and monetary terms and all assumptions should be made transparent.
- h) Post implementation reviews should be planned, to evaluate the actual outcomes against the anticipated outcomes.

- i) Clarity and objectivity are necessary for a cost assessment or cost benefit methodology to assess regulatory proposals. It needs to be supported by institutional arrangements that are embedded in a legitimate and credible system of oversight that ensure transparency and can challenge the methodology and assumptions of the analysis. To be successful, this requires to be championed and have political support within government, and more widely through supporting the Cabinet, parliament and other roles interested in promoting accountability (e.g. Supreme Audit Authority).
- j) It is necessary to have the right institutions to ensure that impact assessments are undertaken that demonstrate the outcomes of regulatory changes, either through the achievement of targets or other goals.
- k) A common methodology is required to promote a dialogue among decision makers and analysts. The standard for this evaluation methodology should be pragmatic and proportionate to the significance of the regulatory proposals.
- l) A step beyond policy statements and the establishment of formal roles for the agencies and actors responsible for complying with and implementing the institutional set up are required. External accountability sources should be incorporated and used to provide oversight and support the challenge role.