

## Chapter 1

# Regulatory policy 2.0

**Global crises and complex policy problems are forcing governments to consider how to regulate better, both for now and for the future.**

While regulating in “normal times” is already difficult, global crises such as the COVID-19 pandemic have placed an even bigger priority on improving regulatory policy. Coupled with complex policy problems – such as climate change, inequality, or ageing populations – and headwinds of hyper partisanship, distrust in public institutions, and the pace of technological change, it is clear that new approaches are needed to how laws and rules are made and reviewed.

A “regulatory policy 2.0” agenda offers a chance to adapt, amend and create a more agile framework for making and delivering better regulation, e.g.:

- ▶ Review the existing framework for “better regulation” developed over the last 30 years to discover what still works and what could be updated.
- ▶ Identify gaps in this framework, tools that are under-developed (risk-based regulation), insufficiently implemented (regulatory reviews), or applied with unsatisfactory results (RIA).
- ▶ Update our usual approaches to regulatory policy making, including leveraging technology and taking into account behavioural barriers and biases.

### **An intergovernmental alliance to promote agile regulatory approaches for innovation**

In response to the regulatory challenges raised by innovation, Canada, Denmark, Italy, Japan, Singapore, the United Arab Emirates and the United Kingdom created the “Agile Nations” in December 2020. This intergovernmental alliance aims at fostering co-operation across borders towards more agile, flexible and resilient governance and regulatory practices to unlock the potential of innovation.

### **Technological change is a major driver of this agenda, forcing governments to move past the traditional “regulate and forget” mindset and develop “adapt and learn” approaches.**

The pace, scope and complexity of the changes caused by innovation are raising new governance and regulatory challenges for governments. The COVID-19 crisis has magnified these challenges. The social and economic disruption further highlights the importance of more agile and co-ordinated regulatory approaches.

Governments need to undertake substantial reforms in order to allow more dynamic, flexible and technology-neutral approaches to laws and regulations and their enforcement. As highlighted in the OECD Recommendation of the Council for Agile Regulatory Governance to Harness Innovation, this involves several complementary approaches

such as more flexible and adaptive *ex ante* and *ex post* assessments, strengthened co-ordination (including across borders) and the use of more agile regulatory approaches (e.g. outcome-based regulation, regulatory sandboxes).

**Better regulatory design and delivery can help improve the agility, quality and coherence of rule-making.**

Traditional regulatory management tools – such as regulatory impact assessment (RIA), stakeholder engagement and *ex post* evaluation – need to be adapted to help governments navigate the challenges and opportunities of the future. This includes better use of regulatory governance in achieving strategic goals, such as the Sustainable Development Goals. More recent tools, such as international regulatory co-operation, must be used to improve the effectiveness of regulatory frameworks – especially with digitalisation ignoring boundaries while drastically increasing the intensity of cross-border flows and transactions.

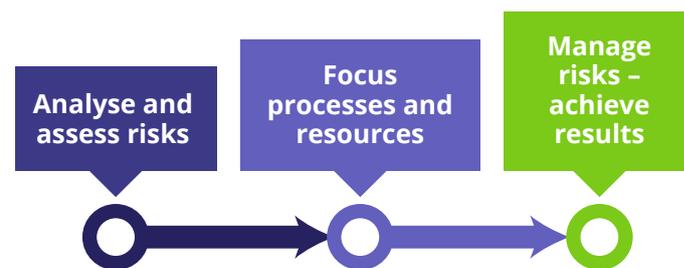
The delivery stage of regulation is critical in this context, particularly through smarter enforcement and inspections focused on improving outcomes rather than increasing sanctions. As highlighted by the COVID-19 pandemic, governments need to develop and implement risk-based, professional and flexible regulatory delivery across regulatory spheres and sectors, harnessing in particular the opportunities provided by digital technologies and improved availability and use of data.

## Outcomes-focused vs. process-focused regulation

**Process-focused:** disconnect between rules and processes, and the goals they are supposed to achieve.



**Outcomes-focused:** processes are driven by the risks to be prevented, the goals to be achieved.



**A focus on more robust regulatory governance can help improve co-ordination and foster new ways of thinking, which can promote system-wide change and improve trust in government.**

Governments need to (re-)build trust, including in regulation and regulatory services. Better communication strategies, shifting from public consultations to stakeholder engagement and demonstrating good governance of regulatory institutions are essential.

Regulatory oversight bodies (ROBs) are likely to become more important in the future, as they serve an important role in ensuring better regulation. This includes actively co-ordinating regulatory reforms, acting as advocates of better regulation, serving as gatekeepers overseeing regulatory quality, offering a helping hand in implementing tools such as RIA, and finding new ways of achieving regulatory goals such as international regulatory co-operation.

A change in thinking is also needed – we must remember that government is created and run by humans, who experience the same behavioural biases and barriers as individuals in society. This affects how regulatory decisions are made. Developing behaviourally-informed solutions to regulatory governance issues is a promising new area for helping governments make policies that are more effective.

