

Meeting of the Council at Ministerial Level, 5-6 October 2021**RECOMMENDATION OF THE COUNCIL FOR AGILE REGULATORY
GOVERNANCE TO HARNESS INNOVATION****(Adopted by the Council at Ministerial level on 6 October 2021)****JT03482396**

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council on Improving the Quality of Government Regulation [[OECD/LEGAL/0278](#)], the Recommendation of the Council on Regulatory Policy and Governance [[OECD/LEGAL/0390](#)], the Recommendation of the Council on Digital Government Strategies [[OECD/LEGAL/0406](#)], the Recommendation of the Council on Open Government [[OECD/LEGAL/0438](#)], the Recommendation of the Council on Artificial Intelligence [[OECD/LEGAL/0449](#)], the OECD Declaration on Public Sector Innovation [[OECD/LEGAL/0450](#)], and the Recommendation of the Council on Responsible Innovation in Neurotechnology [[OECD/LEGAL/0457](#)];

RECOGNISING that, while not an end in itself, innovation can drive more inclusive and sustainable growth, promote well-being, help address social and global challenges including climate change and other environmental emergencies, and foster resilience;

CONSIDERING that realising the full potential of innovation in high-uncertainty contexts, enhancing its benefits for societies while addressing its risks, including the occurrence of low-probability events that entail high impacts, requires a shift in regulatory policy and governance towards more agile and forward-looking approaches;

ACKNOWLEDGING the crucial role of innovation in overcoming global challenges such as the Covid-19 crisis and that, while the ravages of the pandemic will abate with time, the influence of emerging technologies on societies will only grow in the years to come;

ACKNOWLEDGING that innovation ecosystems and related value chains tend to cut across national and jurisdictional boundaries and thus require concerted governance approaches;

RECOGNISING the important contribution of new ventures and innovative entrepreneurs to innovation and the need to ensure a regulatory environment that minimises barriers for their establishment and access to markets and resources;

RECOGNISING that holistic, open, inclusive, adaptive, and better-co-ordinated governance models enhance systemic resilience by enabling the development of agile, adaptive regulation that upholds fundamental rights, democratic values, and the rule of law;

RECOGNISING that strengthening regulatory policy and governance to ensure that innovation is sustainable and human-centred is crucial and that addressing current challenges warrants adapting the design and application of existing regulatory management tools to ensure their continued relevance;

RECOGNISING that, while innovation-related challenges will often require more flexible and adaptive regulatory frameworks, increased flexibility may lead to more discretion in decision-making and case-by-case trade-offs for which creating societal buy-in by demonstrating that the selected approaches are evidence-based, fit for the future and trustworthy, including through broad-based and continuous public stakeholder engagement and close monitoring of outcomes, will be crucial;

RECOGNISING that capacity and skills are key enabling factors for agile and innovation-friendly regulatory policy;

RECOGNISING that developing appropriate institutional arrangements, culture, and working methods is a pre-condition for regulatory policy and governance to help steer innovation on a desirable trajectory;

HAVING REGARD to the Practical Guidance on Agile Regulatory Governance to Harness Innovation (hereafter the “Practical Guidance”) [C/MIN(2021)23/ADD1], developed by the Regulatory Policy Committee to support Members and non-Members having adhered to this Recommendation (hereafter the “Adherents”) in the implementation of this Recommendation and that may be modified as appropriate by the Regulatory Policy Committee;

On the proposal of the Regulatory Policy Committee:

I. AGREES that, for the purposes of the present Recommendation, the following definitions are used:

- **‘Regulation’** refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation includes all laws, formal and informal orders, subordinate rules, administrative formalities, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory power.
- **‘Regulatory management tools’** refers to the different tools available to implement regulatory policy and foster regulatory quality including, in particular, regulatory impact assessment, stakeholder engagement, and ex post evaluation.
- **‘Regulatory policy’** refers to the set of principles, rules, procedures, and institutions introduced by government for the express purpose of developing, administering, and reviewing regulation.

II. RECOMMENDS that Adherents **adjust regulatory management tools to ensure regulations are fit for the future** by:

1. Developing more adaptive, iterative, and flexible regulatory assessment cycles, while capitalising on technological solutions to improve the quality of evidence.
2. Putting in place mechanisms for public and stakeholder engagement in the regulatory process, including citizens and innovative small and medium-sized enterprises (SMEs) as well as start-ups, from an early stage and throughout the policy cycle to enhance transparency, build trust, and capitalise on various sources of expertise.
3. Considering the international innovation ecosystem to draw on the most relevant evidence and regulatory approaches.

III. RECOMMENDS that Adherents **lay institutional foundations to enable co-operation and joined-up approaches within and across jurisdictions** by:

1. Strengthening co-operation across policy-making departments and regulatory agencies as well as between national and sub-national levels of government.
2. Stepping up bilateral, regional, and multilateral regulatory co-operation to address the transboundary policy implications of innovation.

IV. RECOMMENDS that Adherents **develop governance frameworks to enable the development of agile and future-proof regulation** by:

1. Developing or adapting governance frameworks and regulatory approaches so that they are forward-looking by developing institutional capacity and assigning clear mandates accordingly, conducting systematic and co-ordinated horizon scanning and scenario analysis, anticipating and monitoring the regulatory implications of high-impact innovations, and fostering continuous learning and adaptation.
2. Developing more outcome-focused regulatory approaches to enable innovation to thrive by harnessing the opportunities offered by digital technologies and big data.

3. Harnessing, under the condition that corresponding outcomes can be appropriately monitored, the opportunities provided by non-legally binding approaches either as an alternative or as a complement to other regulatory instruments.
4. Enabling greater experimentation, testing, and trialling to stimulate innovation under regulatory supervision.

V. RECOMMENDS that Adherents **adapt regulatory enforcement strategies and activities to promote compliance, help innovators navigate the regulatory environment, and uphold public protection, including across jurisdictions** by:

1. Adopting data-driven responsive approaches to identify, assess, and manage risks, and revising existing risk governance frameworks as appropriate.
2. Integrating enforcement-related considerations in legislative proposals and related assessments as appropriate.
3. Fostering co-operation among authorities leading investigations and enforcement of regulations related to innovation, both domestically and, where practical and feasible, across jurisdictions.

VI. INVITES the Secretary-General to disseminate this Recommendation.

VII. INVITES Adherents to disseminate this Recommendation at all levels of government.

VIII. INVITES non-Adherents to take due account of and adhere to this Recommendation.

IX. INSTRUCTS the Regulatory Policy Committee, in consultation with other relevant committees, to:

- a) serve as a forum for exchanging information on policies and experience with respect to the implementation of this Recommendation, fostering dialogue with and among stakeholders, and improving the evidence base on agile regulatory governance to harness innovation;
- b) review and update the Practical Guidance over time to ensure it remains relevant;
- c) develop further guidance and evaluation frameworks to support the implementation of this Recommendation; and
- d) review the implementation, dissemination, and continued relevance of this Recommendation and report thereon to the Council no later than five years following its adoption and at least every ten years thereafter.