

Background Document on Oversight Bodies for Regulatory Reform

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INTRODUCTION

1. The aim of this paper is to describe and analyse the characteristics and good practices of oversight bodies in charge of regulatory reform. The 2005 *OECD Guiding Principles for Regulatory Quality and Performance* pleads for a whole-of-government approach for regulatory policy. This requires coordination of different institutions involved at different levels of government and the commitment to assign adequate resources to them.
2. Simplifying, the responsibilities to be carried out by institutions at the Executive involved in the regulatory processes can be classified in: tasks related (i) to regulating and drafting of rules, (ii) to ensuring compliance and enforcement of rules, and (iii) to providing technical support and overseeing the regulatory process from the design of policies to the enforcement of regulation.
3. This document focuses on the third task. Oversight bodies have been key actors in the process of regulatory reform, working as '*engines of reform*', maintaining a whole-of-government approach, coordinating inside the administration. The main role of oversight bodies is to ensure regulatory quality. This is done through supervision, control and coordination of the regulatory programme and system. Regulators are forced to demonstrate and justify the relevance of their regulatory actions (newly proposed and existing), using accountability and assessment mechanisms. Oversight bodies advocate and promote reform, and encourage regulatory 'champions', also non governmental institutions, to support improvements in the regulatory system. In a challenging and reforming environment, institutions need capacity building and competent human resources; oversight bodies offer technical advice and support throughout government.
4. Appropriate institutional arrangements have been recognised as essential components of a comprehensive strategy for regulatory reform. In some cases the set up of institutions to carry out this task has not been fully accomplished, due to a lack of strategic perspective, not enough resources and an unclear distribution of responsibilities and tasks. Most OECD countries however have integrated oversight bodies dealing with regulatory issues into the administration.
5. This paper is divided in two sections. The first part is a description of the roles of oversight bodies. The second section defines the most relevant characteristics of these institutions. A number of OECD examples will provide a better picture of the different institutional arrangements chosen by OECD countries.

KEY FEATURES OF AN OVERSIGHT BODY FOR REGULATORY REFORM

1. ROLES OF OVERSIGHT BODIES

6. Effective and credible mechanisms inside the government for managing regulation are indispensable for reform (OECD, 2002). OECD evidence shows that a well-organised and monitored process, driven by “engines of reform” with clear accountability for results, is important for the success of the regulatory quality policy. While in 1996 only 14 OECD countries had set up a dedicated body (or bodies) responsible for promoting the regulatory policy and monitoring and reporting on regulatory reform and regulatory quality in the national administration from a whole of government perspective, 23 countries had one in 2005 (Jacobzone *et al*, 2007). These institutions have brought important improvements for the regulatory systems and the reform processes.

Main functions of an oversight body

7. In OECD countries, there is a **wide range of institutional bodies** that function successfully. The most remarkable aspect of the use of oversight bodies is their variety in roles and structures: “most are located within administrations, although advisory commissions, regulatory reform committees of Cabinet, parliamentary committees and intergovernmental committees are also relatively widespread” (OECD, 2002). According to OECD reviews on regulatory policies in country members, oversight bodies can play several roles:

Coordination and supervision

8. A key role of oversight bodies is to **coordinate and supervise the regulatory system**, making sure that regulation meets quality standards, complies with a whole-of-government strategy and policy tools are properly used, for instance Regulatory Impact Analysis (RIA). In that sense, channels of communication between regulators and these bodies must be properly put in place. Furthermore, the level of government from which the body coordinates is important, as well as the tools under use (see Box 1).

Box 1. Co-ordination and supervision

In **Korea** a Regulatory Reform Committee (RRC) has been set up by law with a “general mandate to develop and co-ordinate regulatory policy and to review and approve regulations.” Its main functions are to give some strategic perspective in the regulatory reforms, to undertake research, to monitor improvement efforts of each agency and to make sure there is coherence between their actions. The RRC is composed of 25 members, 18 of whom are from the private sector and 7 are government officials from various departments. The RRC is jointly chaired by the Prime Minister and one member from the private sector appointed by the President. It is one of the cases where more power has been given to this kind of institution, multiplying the ‘engine of reform’ effect. The secretariat function supporting the RRC is undertaken by the Regulatory Reform Office which is located in the Prime Minister’s Office. This unit includes around 40 civil servants and 3 professional experts, under the direction of the Deputy Minister for Regulatory Reform.

In the **Netherlands** extensive inter-ministerial coordination and supervision has been put in place. A Regulatory Committee coordinates fairly independent Ministries. As for supervision of policy makers and regulators, a programme to audit law-making processes has been established. Independent audit units review every two years the performance of ministries and their staff involved in the legislative process, delivering recommendations to the responsible Minister.

In **Denmark** there was a significant change in the regulatory philosophy before the end of the 1990s, moving from “deregulation” to the search of “regulatory quality”. A Regulation Committee was established to oversee and manage the overall legislative programme and to make sure the impacts of regulation were properly assessed. It is another example of inter-ministerial coordination since the Prime Minister’s Office and the Ministries of Finance, Justice, Economic Affairs and Trade and Industry are deeply involved.

In **Mexico**, a great part of the economic activity is performed by micro and small enterprises. The COFEMER (Federal Regulatory Improvement Commission) launched an specific Rapid Business Start-up System (SARE) co-ordinating all levels of government to try to bring more flexibility in the start-up of companies, complying with all due requirements in a shorter period of time. This case provides a good example of coordination at different levels of government.

The challenge function

9. The **challenge function** empowers the oversight institution with the competence of questioning regulation and its reforms by assessing quality of regulatory policy proposals through RIA. The oversight bodies exercises a gatekeeper function. This means that the rule maker, an institution different from the oversight body, is responsible of preparing the RIA accompanying a proposed piece of regulation. When both elements are delivered to the oversight body, it may exert its capacity of veto and return the piece of proposed regulation which does not fulfil the requirements of quality. In order to well accomplish the challenge function, the oversight body requires an important amount of authority. This feature has not reached all institutions and it is still pending in many OECD countries.

Box 2. The challenge function

In **Denmark**, the Regulation Committee has insisted on the necessity of developing ways of assessing regulatory impacts. RIA is performed in a number of areas (financial, administrative, business, environmental and EU impacts) under the Committee’s advice when laws have a substantial economic impact. Then, the Ministry of Finance gives guidance through benefit and cost-effectiveness analysis.

In the **United Kingdom** there have been recent changes in the regulatory reform framework. Since 2007, the Better Regulation Executive (BRE) is part of the Department for Business, Enterprise and Regulatory Reform (BERR) and leads the regulatory reform agenda across government. Within its overall responsibility for this agenda, the BRE works with government departments and regulators to scrutinise new policy proposals, to achieve effective new regulations and to make it easier to change or remove regulation, where beneficial, among other tasks. The impact of any new regulation is assessed through the use of Impact Assessments (IAs).

Since 2006, the **Australian** government decided that the Office of Best Practice Regulation (OBPR) will play a central role in delivering the Government’s best practice regulation requirements by providing a ‘one stop shop’ to assist departments and agencies. One of the main tasks of the OBPR is to examine Regulation Impact Statements (RIS) and advise whether they meet the Government’s requirements and provide an adequate level of analysis, including cost-benefit and risk analysis of appropriate quality.

10. This function would be better performed if there were improvements in **efficient accountability and assessment** of results of regulation. There have been great advances in this area with the introduction of regulatory tools such as RIA, but still much more attention must be placed in measuring the quality of regulations.

Advocacy

11. **Advocacy** means to take especial consideration in maintaining the right direction on the long term strategy. Oversight bodies can be very useful in the promotion of regulatory reform and quality. Institutions driving reform, not necessarily part of government, can better bring innovation to the system when appropriate mechanisms to interact with other stakeholders are well in place. In addition, the right incentives should be promoted to encourage these reform ‘champions’.

12. Effective communication is essential for this function. Besides, overlapping and duplication of functions can be avoided through flow of information inside and outside government. Oversight bodies can help to raise public awareness of reform outcomes and benefits.

Advice and support

13. Provide **advice** and **support** helps to create and maintain a cultural change in regulators. This generally under-prioritised task could be achieved through the provision of extensive guidelines, continuous training and specific expertise, even with external support if necessary.

Box 3. Advocacy and support to regulators

In the **United Kingdom**, the Better Regulation Commission played until 2008 a continuous advocacy role of reform throughout the regulatory institutions. A Risk and Regulation Advisory Council (RRAC) has been established to oversee the better regulation agenda to a new level by focusing upstream at where policy-making engages with risk. The RRAC will advise the Prime Minister and the Secretary of State for Business, Enterprise and Regulatory Reform. The approach is to work with the decision-makers on a special choice of topics in the form of experiential learning, moving away from the former model of published reports and recommendations. Each topic would have a Risk and Regulation Forum convened as an action learning set of all those principally involved in the design of the regulatory policy – Ministers, senior officials and external stakeholders – facilitated by experienced coaches.

In **Japan**, the Council of the Promotion of Regulatory Reform (CPRR) produced its first report in 2007, which provides the plan for regulatory reform over the next three years. This Council is the most important driver of regulatory reform in Japan. Created in 2001 on a three year mandate, the Council consists of 15 private sector experts, organised into 13 Working Groups. Once a year, the Council – supported by a 30 persons staff recruited from the private sector and the ministries – produces a Report with analysis and recommendations for the Prime Minister’s annually revised Three-Year Plan for Promoting Regulatory Reform. Members of the Council can negotiate directly with the responsible ministries about regulatory reforms.

2. ATTRIBUTES OF OVERSIGHT BODIES FOR REGULATORY QUALITY

Common characteristics of oversight bodies

14. After describing the functions of oversight bodies for regulatory quality, this section enumerates the main common features that contribute to regulatory quality: (i) capacity of institutional co-ordination ensured at the centre of government, (ii) independency and sufficient authority, (iii) a high level political support, (iv) a whole-of-government approach, (v) a multidisciplinary vision of regulation, and (vi) the integration of its work into a broad concept of reform.

15. From an administrative perspective, most countries believe that **strong oversight bodies at the centre of government are essential to progress** (OECD, 2002). In many OECD countries, oversight bodies have been placed at the centre of government, sometimes at the same level of ministries and other regulators supervised, next to the Prime Minister/ President Office or directly linked to a budgetary agency. Special gains have been registered in countries with a strong presidential system, where the institutional structure provides more power to a centred oversight body. Korea, United States and Mexico are conspicuous cases of improvement in their regulatory systems propelled by central bodies clearly supported by presidential offices.

16. A central supervising and coordinating body can help avoiding negative effects derived from a “bottom-up” organised administrative system, in which the regulators are asked to supervise themselves, which might bring possibilities of misleading behaviour.

Box 4. Oversight bodies at the centre of government

In **Mexico**, the COFEMER, under the Ministry of Economy and supported by the *Federal Regulatory Improvement Council*, plays the role of an oversight body ensuring regulatory quality, working as “an engine of reform in the Executive branch”, bringing expertise, training, guidance, improving transparency, increasing quality in regulation and making sure regulators undertake RIA. All Ministries and federal agencies responsible for regulation must report Biennial Programmes, analysing the potential impact of future regulation. COFEMER revises and assess all drafted regulation, and even though it does not have complete veto over them, it can ask regulators to change these drafts. Everything is made public through its web-site. Political commitment has been essential, enhanced by the support from businesses and encouraged by an improvement in transparency of the mechanisms of decision making and regulatory policy design.

In **Korea** the Regulatory Reform Committee, established directly under the authority of the President in 1997, has worked easily as a ‘motor of reform’. The firm commitment of the President has overcome general domestic opposition to reform.

In the **United Kingdom** the Better Regulation Executive (BRE), within the Department for Business Enterprise & Regulatory Reform, has overall responsibility for the Government’s commitments to regulate only when necessary, to set exacting targets for reducing the cost of administering regulations and to rationalise the inspection and enforcement arrangements for both business and the public sector.

17. Other countries, smaller and consensus-based, have chosen a different strategy: the set up of more decentralised mechanisms. However, “a rejection of a central regulatory oversight body does not imply the absence of co-ordination on regulatory policy issues” (OECD, 2002), but it is a result of the relatively decentralised model of government administration.

Box 5. Oversight bodies in decentralised systems

Denmark, like other small countries, is relatively more informal, consensual, and decentralised in its policy structures. Strong policy coordination through Ministerial Committees has connected a relatively weak central government with the rest of the framework. The Regulation Committee was intended to coordinate ministerial institutions and ensure that they accurately identify policy problems, assess impacts and consider alternatives to “command and control” regulation.

In **Norway** and **Switzerland**, there is no central unit responsible for managing and co-ordinating regulation and its reform. The Economic Policy Directorate of the Swiss State Secretariat for Economic Affairs is mainly in charge of promoting regulatory quality, Regulatory Impact Analysis (RIA) and the analysis of the economic impact of legislation in co-ordination with the sections on Regulatory Analysis, and of Growth and Competition Policy. In the Norwegian case, the regulatory policies and supervision tasks are fragmented across ministries. The four most important institutions are: the Ministry of Finance, responsible for supervising all regulations which may affect the budget, or produce substantial changes within the central government organisation, or have significant socio-economic consequences; the Ministry of

Justice, responsible for ensuring the technical and legal quality of primary legislation; the Government Committee for Modernisation and Simplification which is co-ordinating and supervising projects under the Modernising the Public Sector programme, including initiatives to simplify regulations and reduce administrative burdens on businesses; and the Office of the Auditor General which evaluates the fulfilment of policy objectives and with orientation in the regulatory reform agenda. No institutions are in charge of the challenge function to incentive and supervise the use of RIA.

18. Mixed institutional arrangements for oversight bodies are possible, combining the different responsibilities of supervising, advising, challenging and co-ordinating thus creating a network of bodies operating at different levels of government. When responsibilities are spread over different institutions, coordination mechanisms are especially needed. The institutional framework of Canada tries to strengthen the oversight activities by creating a complex but well structured framework (see Box 6).

Box 6. Canada's regulatory institutional framework

Canada has some of the responsibilities which could be centered in an oversight body spread through a number of long-established bodies with horizontal responsibilities for aspects of regulatory governance.

The Regulatory Affairs Sector, transferred in July 2006 from Privy Council Office, supports the Treasury Board Committee in its role as the "Queen's privy council for Canada" by providing advice to the Governor General and by providing management and oversight of the government's regulatory function. In addition, it provides policy leadership on the federal regulatory policy, a.k.a. the Cabinet Directive on Streamlining Regulation (CDSR).

The Sector is engaged in two key functions: (1) support of government priorities through continuous improvement of the policy; and (2) advise Treasury Board Ministers on Governor in Council (GIC) submissions.

The Sector delivers on its mandate by undertaking policy research and analysis, and developing policy and associated frameworks; providing reliable and timely advice to departments on regulatory policy interpretation and application; reviewing regulatory and non-regulatory submissions to the GIC (except for appointments) and, among other things, ensuring submissions adhere to the CDSR; ensuring that relevant information is provided for decision-making of the GIC; contributing to learning programs that strengthen all of government regulatory capacity, particularly their understanding of regulatory policy requirements; and brokering the resolution of issues through interdepartmental co-ordination and horizontal policy management.

The sector is also developing a third function, the Centre of Regulatory Expertise (CORE), which will assist departments in building their internal capacity to comply with the Directive, particularly in the areas of cost-benefit analysis, risk assessment and performance measurement and evaluation. The CORE will assist departments through its team of internal experts and by cost-sharing the services of external experts/consultants in cases where CORE experts are not available and departments do not have sufficient funds to fund external experts.

19. Regulatory reform has been proved more effective in cases where it is considered as a **whole-of-government process**. Key institutions should be integrated into a comprehensive strategy, strengthening co-ordination mechanisms among regulators and ministries. Having bodies supported by relevant reform-oriented groups as Ministries of Finance, Competition and Trade authorities could help to diversify risks and to extend their capacity for reform.

Box 7. A whole of government perspective

In the **Netherlands** ministries have a significant responsibility for regulatory policy reform. Nevertheless, a series of oversight bodies were established: a Ministerial Committee chaired by the Prime Minister revises and coordinates the regulatory reform, and the Ministries of Justice and Economic Affairs have defined implementation responsibilities and give advice together with the Ministry of Environment supporting the environmental impact of regulation analysis. Besides, an independent Civil Service Commission gives a broader view and capacity to provide a whole-of-

government perspective in the direction of the reform programme.

In **Japan** regulatory reform has been placed in a prominent position in the political priorities. Most of the government agencies and committees charged with the promotion of regulatory quality are located in or associated to the Cabinet Office. Placed within the Cabinet Office, a Minister of State for Regulatory Reform is responsible for supervising ministries' and agencies' implementation of the Three Year Plans for Regulatory Reform. The Minister for Regulatory Reform is supported by staff of the Office for the Promotion of Regulatory Reform, which also acts as the Secretariat for the Council for the Promotion of Regulatory Reform. The Headquarters for the Promotion of Regulatory Reform composed of cabinet ministers was established in May 2004. The establishment of this ministerial committee has marked a further strengthening of the horizontal drive and co-ordination of regulatory reform in Japan. Main members of the CPRR will be able to attend the Headquarters' meetings in order to keep close co-ordination between both organisations. The Headquarters will be supported by the Office of the Promotion of Regulatory Reform in the Cabinet Office.

20. The independence of oversight bodies is needed to ensure that their work imposes changes to the system, so benefits of regulatory reform are reaped. Independency could be better guaranteed if the bodies are staffed with experienced experts and professionals from different fields of expertise including legal, economic and social backgrounds. Oversight bodies should have information and capacity for independent judgement, and constantly look for exchange of experiences with other institutions and countries. Strong political commitment is necessary to fulfil their tasks (see Box 8).

Box 8. Levels of authority held by oversight bodies

One of the pioneer bodies responsible for assessing regulatory quality was established in the **United States**, the *Office of Information and Regulatory Affairs (OIRA)* under the *Office of Management and Budget (OMB)*. This institution has a limited period of time of 90 days to perform cost-benefit analysis to regulations, formal regulatory review (policy and analytical oversight) by executive order of most federal regulations at proposed and final stages, and it has to report to Congress for its activities.

The **Czech Republic** has a *Legislative Council* of the Government, which is the main institution in charge of overseeing the quality of legislation, although it has only an advisory power. Furthermore, the government may decide not to consult the Council, but in principle, this happens only on urgent legislation.

The General Legislative Policy Division of the Ministry of Justice of the **Netherlands** has the capacity of advising the Cabinet Office. In many cases the Cabinet has returned bills to Ministries in order to improve their regulatory quality.

Every department in the **United Kingdom** has to account for their regulatory performance to the Panel for Regulatory Accountability (PRA), institution chaired by the Prime Minister. This panel has the responsibility of assuring a sound level of quality by avoiding new administrative burdens. In order to achieve this mission all regulatory proposals likely to impose a major new burden on business require clearance from the PRA.

21. Oversight bodies with a **permanent mandate** are more numerous among OECD countries and indicate a greater commitment with reforms in the long term. A permanent mandate contributes to maintain more independence, since limited mandates could make them more vulnerable to political cycles. In order to avoid capture, stakeholders can take part in the design and support of oversight bodies, but the public interest must prevail.

Box 9. Mandate period and independency of oversight bodies

In **Mexico**, COFEMER was established in 2000 by the Federal Law on Administrative Procedures, functioning with technical and operating autonomy and an indefinite period of mandate.

In the **United States**, the Office of Information and Regulatory Affairs (OIRA) is a federal office that Congress established in the 1980 Paperwork Reduction Act. It is part of the Office of Management and Budget, which is an agency within the Executive Office of the President. In addition to reviewing collections of information under the Paperwork Reduction Act, OIRA reviews draft regulations under Executive Order 12866 and develops and oversees the implementation of government-wide policies in the areas of information technology, information policy, privacy, and statistical policy. OIRA also oversees agency implementation of the Information Quality Law, including the peer review practices of agencies.

22. **A broad concept of reform is advisable**, as well as a strategic perspective of the regulatory policies and their reforms. Without this, oversight bodies may act on a case-by-case basis, facing problems of coherence, consistency, and short-reaching policies. It is therefore advisable to establish a strategy to build up constituency for their work, integrating different voices of the political, economic and social landscape.

Box 10. Oversight bodies' wide view

In **Canada**, the *Cabinet Directive on Streamlining Regulation* came into effect on April 1, 2007. The Directive replaces the Government of Canada Regulatory Policy from 1999, and introduces several key improvements, including a more comprehensive management approach with specific requirements for the development, implementation, evaluation and review of regulations. This new approach supports the Government's commitment to protect and advance the public interest in health, safety and security, the quality of the environment, and the social and economic well-being of Canadians through a more effective, efficient and accountable regulatory system. The Directive is the product of over two years of collaboration between federal regulatory departments and agencies as well as thorough consultation with a wide cross-section of stakeholders including environmental and consumer groups, industry and small business, and provinces and territories.

In the **Netherlands**, the Prime Minister developed economic and legal standard principles which must be applied by all Ministries and institutions involved in drafting regulation: clear definition of policies, sufficient justification of regulation, clarity in drafting, efficiency in terms of cost-effectiveness, sound measurement of impacts and enforceability of regulation.

23. OECD experience shows that the institutional design of oversight bodies should reflect the legal, economic, social and cultural characteristics of each country, taking into account how the regulation affects the system. There is no unique model and structure of institutions dealing with regulatory quality, but lessons learnt from other cases can contribute to success.

CONCLUSIONS

24. Oversight bodies for regulatory quality are an essential regulatory institution. Their mission is to supervise, co-ordinate, challenge and advice institutions involved in the regulatory process while promoting reform, regulatory quality and its benefits. These institutions should have the capacity to independently coordinate, maintain a whole-of-government approach, a multidisciplinary perspective, a broad concept of reform, and holding sufficient authority.

25. The path to building a well functioning oversight body is not a single straight line, and each system has to adapt to its needs and challenges. The first step to build an institution of this kind is to assess the regulatory system, its advantages and its challenges, draw clear objectives and define clear deadlines to

move forward. Oversight bodies should have an incremental approach in accepting tasks, and should be constantly developing human resources capacities and skills. The internal organisation could be structured in working groups for each area of work, some of them of permanent nature, however ensuring enough flexibility to form *ad hoc* groups could respond to changing environments. In order to inform this process, a research unit might be created, evaluating and supporting the oversight body and other institutions involved in the regulatory system. “Regulatory quality is not merely an issue of maintaining levels of performance, but of achieving continuous improvement over time” (OECD, 2002).

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