BETTER POLICIES FOR BETTER LIVES

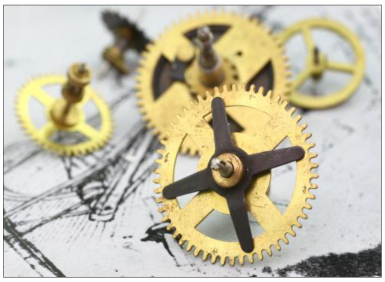
THE GOVERNANCE OF REGULATORS

OECD Best Practice Principles on Regulatory Policy

"Regulators, under unprecedented pressure, face a range of demands, often contradictory in nature:

- be less intrusive – but be more effective;
- be kinder and gentler – but don't let the bastards get away with anything;
- focus your efforts – but be consistent;
- process things quicker – and be more careful next time;
- deal with important issues – but do not stray outside your statutory authority;
- be more responsive to the regulated community – but do not get captured by industry".

Malcolm K. Sparrow (2000), *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance,* Brookings Press, p. 17.



Regulators are responsible for the delivery of social, environmental and economic outcomes through the delivery of regulatory regimes and implementation of regulations. And yet regulatory agencies are under increasingly complex situations and environments.

The OECD Best Practice Principles for **the *Governance of Regulators*** frames the governance arrangements of regulators in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence, as described in the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance*.

This set of principles details the key considerations for establishing and operating regulatory agencies. It also provides more detailed issues that should be reflected upon to apply the principles to different cultural and political contexts.

This OECD publication has an informal status of guidance approved by the Regulatory Policy Committee and the OECD Network of Economic Regulators. It can be used by member and non-member countries to guide their reforms and as a set of criteria for evaluation of regulatory agencies.

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OECD Best Practice Principles for the Governance of Regulators

1. Role clarity

For a regulator to understand and fulfil its role effectively it is essential that its objectives and functions are clearly specified in the establishing legislation. The regulator should not be assigned objectives that are conflicting or should be provided with management and resolution mechanisms in case of conflicts. The legislation should also provide for clear and appropriate regulatory powers in order to achieve the objectives and regulators should be explicitly empowered to co-operate and co-ordinate with other relevant bodies in a transparent manner.

2. Preventing undue influence and maintaining trust

Independence from the government and from the industry that is regulated can improve the regulatory outcomes by allowing the regulator to make decisions that are fair and impartial. It is important that regulatory decisions and functions are conducted with upmost integrity to ensure that there is confidence in the regulatory regime. This is even more important for ensuring rule of law, encouraging investment and having an enabling environment for inclusive growth built on trust. This requires a proactive approach to regulating that is accessible by regulated entities and yet within the national strategic priorities.

3. Decision making and governing body structure for independent regulators

Regulators require governance arrangements that ensure their effective functioning preserve its regulatory integrity and deliver the regulatory objectives of its mandate. The governing body structure of the regulator (e.g. a single head or a board of directors) should be determined by the nature of the regulated activities and their motivation. The membership of the governing body should also protect from potential conflicts of interest or influence from the political process and should be ultimately for the public interest.

4. Accountability and transparency

Businesses and citizens expect the delivery of regulatory outcomes from government and regulatory agencies and the proper use of public authority and resources to achieve them. Regulators are generally accountable to three groups of stakeholders: *i)* ministers and the legislature; *ii)* regulated entities; *iii)* the public. The expectations for the regulator should be published and regulators should regularly report on the fulfilment of their objectives, including through meaningful performance indicators.

5. Engagement

Good regulators have established mechanisms for engagement with stakeholders as part of achieving their objectives. The knowledge of regulated sectors , businesses and citizens affected by regulatory schemes assists to regulate effectively. Regulators should also regularly and purposefully engage with regulated entities and other stakeholders to enhance public and stakeholder confidence in the regulator and to improve regulatory outcomes.

6. Funding

The amount and source of funding for a regulator will determine its organisation and operations. It should not influence the regulatory decisions and the regulator should be enabled to be impartial and efficient to achieve its objectives. Funding levels should be adequate and funding processes should be transparent, efficient and simple.

7. Performance evaluation

It is important that regulators are aware of the impacts of their regulatory actions and decisions. This helps drive improvements and enhance systems and processes internally. It also demonstrates the effectiveness of the regulator to those it is accountable toward and helps to build confidence in the regulatory system. The regulatory decisions, actions and interventions of the regulator should be evaluated through performance indicators. This creates awareness and understanding of the impact of the regulator's own actions and helps to communicate and demonstrate to stakeholders the added value of the regulator.

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