# **Final Plenary Session**

# Regulation: the Challenge to Govern Better

Learning from Failures to Prepare for the Future

### Regulation: the challenge to govern better, Learning from failures to prepare for the future

The roundtable will offer an opportunity to discuss strategies ahead and the role of the OECD in furthering quality regulation in the medium term, integrating regulatory management and regulatory governance perspectives. It will benefit from all the breakout sessions as well as the general vision outlined in the first plenary session. While the tools policies and institutions of regulatory management are still fundamental to regulatory quality initiatives in government, the field of regulatory policy is dynamic, and a management focus may not be sufficient to address the underlying governance challenges. Integrating regulatory governance follows from the simple recognition that optimal social outcomes depend on the collaborative actions of private institutions, as well as government agencies, both within governments, across levels of government and across countries.

In this debate, the OECD has a role to play to help strengthen the strategic foresight capacity of national governments and help to prepare for the next stage. As a result, the discussion will address the renewal of the OECD 1995 and 2005 principles, to take account of the new economic and social context, post crisis. This emphasis on governance will also have to be complemented by an emphasis on communications and strategies to reach out to a wider public, to build confidence and mobilise support.

- What are the key political challenges to integrate regulatory management and regulatory governance? What are the implications for sectoral policy making and for regulatory policy as a whole?
- How can governments co-operate on the regulatory policy agenda, both across jurisdictions and across levels of government within countries?
- How can the OECD assist efforts to foster the regulatory policy agenda from a global perspective? What should be the thrust and focus of future OECD principles?
- How can a focus on regulatory governance achieve policy coherence and help governments better address the challenges of green growth, innovation and global threats? What are the implications in terms of institutional design and co-ordination?
- What efforts should government undertake to strengthen communications and consensus to mobilise businesses and citizens around the regulatory policy agenda?

Chair: Mr. Rolf Alter, Director, Public Governance and Territorial Development. OECD

Speakers:

- » Mr. Gary Banks, Chairman, Productivity Commission, Australia
- » Mr. Luigi Carbone, Deputy General-Secretary of the Presidency of the Council of Ministers, Executive Chair of the Better Regulation Unit, and Counsellor of State, Italy
- » Mr. Luiz Alberto dos Santos, Deputy Minister for Analysis and Follow-Up of Governmental Policies, Presidency of Republic -Civil House, Brazil
- » Dr. Marianne Klingbeil, Director for Better Regulation; Acting Chair of the Impact Assessment Board, Secretariat-General of the European Commission
- » Mr. Jeroen Nijland, Director, Regulatory Reform Group, Ministry of Finance/Economic Affairs, Netherlands; Chair, OECD Regulatory Policy Committee

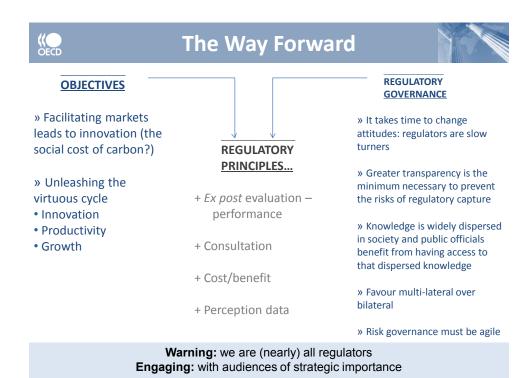


#### **The Way Forward**

Regulatory Policy at the Crossroads Towards a New Policy Agenda

#### **Rolf Alter**

Director
Directorate for Public
Governance and Territoria
Development



#### Regulatory Policy at the Crossroads

#### Some remarks to the OECD's final plenary<sup>1</sup>

#### **Gary Banks**

#### **Chairman, Productivity Commission**

#### **Australia**

This concluding session of what has already been a valuable conference is directed at learning from the past experiences of different countries, to provide a better 'road map' for the future.

So what might be learnt from Australia's experiences? Are we in the 'front runner' category identified by the OECD in its background paper? I think we were indeed a front runner in the latter 1980s and 90s. We then began to slip behind some other OECD countries, like the Netherlands and the UK, before putting in another burst more recently. But I don't believe that we can say that we are yet near the finishing line!

Perhaps the most important thing that Australians have learnt over the years (though with periodic memory lapses) is that poor regulation is costly. It is costly not only in an *economic* sense, but also *socially* and, ultimately *politically*.

The economic costs are not confined to the administrative and compliance burdens related to 'red tape', though these can indeed be burdensome. (My organisation estimated that removing the unnecessary cost burdens associated with regulation would raise Australia's GDP by nearly 1  $\frac{1}{2}$  per cent.) Even larger costs arise from the misallocation of effort, investment and production that poor regulations can induce, and from reduced incentives for people to be innovative and industrious.

Evidence of what it means to liberate an economy from these regulatory distortions can be found in the productivity surge experienced by Australia in the 1990s, following extensive structural reforms from the early 1980s. This saw the incomes of Australian households rise on average some \$7 000 above what they would otherwise have been by the end of the decade. Australia's per capita income ranking globally rose from 18<sup>th</sup> to 8<sup>th</sup>. The greater flexibility, adaptability and dynamism of Australia's economy has also held it in good stead since the Global Financial Crisis.

347

<sup>1.</sup> Regulatory Policy at the Crossroads: Towards a New Policy Agenda, OECD Conference Centre, Paris, 29 October 2010

If Australia has indeed positioned itself as a 'front runner' on regulation, this can be attributed above all to the systematic efforts we have made to understand the costs of poor regulation and to communicate that to the community as well as to policymakers. A better public understanding of the costs of the status quo is likely to be a precondition for durable reform in other countries too.

A second important thing we have learned is that poor regulatory outcomes should not be regarded as aberrations. On the contrary, poor regulation is better thought of as the natural order of things, being much easier to achieve than good regulation. It requires less effort and generally faces less political resistance, especially where certain groups can benefit from it in opaque ways at the cost of the wider community. Regulatory action, even when ill-conceived, is often rewarded with public acclaim, as tangible evidence that government is 'doing something'. These uneven political pressures have often manifested themselves in a 'regulate first, ask questions later' approach - the antithesis of good regulatory process.

Once bad regulation has come into being, however, it can be very difficult to remove or reform. (One experienced Australian politician has asserted that it is 'five times harder' to remove poor regulation than to introduce it!) So actions to discipline the flow of new regulation, as well as tackling problem areas within the existing stock, are clearly desirable. That is why countries need a distinct 'regulatory policy': a policy about *making* policy through regulation. Without conscious, systematic efforts, poor regulation - and poor policies - are inevitable.

Australia's experience confirms, however, that there are no simple prescriptions for achieving 'regulatory nirvana'. Good regulation can only be secured through systems within government that actually foster it - systems that make it harder to regulate poorly than to regulate well. Ultimately what is needed is *cultural* change. The culture within a government influences decisions at both the political and bureaucratic levels, about whether, what and how to regulate, as well as how to administer regulation in place: in short, it exerts influence throughout the whole regulatory cycle. While cultures are not immutable, they are not easily changed and do so only slowly.

As the OECD has highlighted, improved regulatory governance - institutions, processes and leadership - is crucial to better regulatory outcomes.

Australia has been active in this space over recent years, and some of our innovations may have wider relevance, including for an OECD 'road map'. It would be nice to be able to report that all our changes have been successful and sustained. The truth is that while we have certainly had successes, we have also had changes of questionable value and some that have not helped the cause of good regulation. That said, there is now a heightened sense in Australia of the importance of good regulation and a more active debate about how we can do better.

Looking back over the past couple of decades, Australia's greatest successes, in my opinion, have been in reforming existing policies, rather than in preventing poor policies and costly new regulation being introduced. In other words, we have done better in reforming the *stock* than disciplining the *flow*.

Australia has benefitted over the years from having independent institutions and other review processes to identify and make the case for reform. Selling the need for reform to the community, and testing public support for specific changes, has been central to the major structural reform successes of the past. These have taken the form of detailed reviews of key areas of policy or regulation (like the regulatory frameworks for financial markets, public utilities, etc) as well as broader 'search and destroy' missions to address problems across the regulatory landscape (like the Regulation Taskforce that I headed in 2006 and the Legislative Review Program conducted under National Competition Policy from 1995-2005).

A clear lesson from Australia's record of successes and failures in regulatory reform is the crucial importance of consultation. If anything other than 'quantification' deserved its own mantra among regulatory reformers, it would have to be 'consult, consult, consult'. It is essential at all phases of the regulatory cycle: at the beginning, when a 'problem' arises; in the middle, when options are being considered; and, just as importantly, at the end, to rid the devil from the detail. Beyond that, it is also needed to check that regulation is not having unintended effects (which are less likely the more effective the consultation process).

Consultation, when done well, allows government to learn a great deal about problems and solutions and to test its ideas - and to do so without being unduly influenced by particular sectional perspectives. Consultation needs to be wide in its coverage of 'stakeholders' and as transparent as possible.

(As an aside, consultation needs to be distinguished from 'negotiation'. Realpolitik necessitates a degree of political negotiation to get policies enacted and implemented. But if policy proposals have not been well-informed by effective consultation and research in the first place, negotiation has no anchor and is liable to produce undesirable policy outcomes.)

Australia's own record on consultation has been mixed. But the evidence is clear that where it has not been conducted properly, policy proposals have generally not turned out well. There is now a 'whole-of-government' requirement for government agencies to engage in consultation for any new regulatory proposals in accordance with a number of established principles (drawn in part from the UK). It is not clear yet how consistently or well these are being applied.

These form part of broader requirements for regulation impact statements for 'significant' regulatory proposals, which had their genesis in the 1980s. For many years, lip service was paid to those requirements, until they were tightened and sanctions were introduced for failure to comply. The fact that we sometimes now hear complaints from regulatory agencies and policy departments about the 'red tape' *they* face in developing regulatory proposals, suggests that we may have made some progress!

Mechanisms to *entrench* good process are the Holy Grail of regulatory policy. They require both incentives and disciplines. However, political leadership is the key. Without strong support at the top, exceptions soon become the rule. And without the right signals from the top, cultural change can never be achieved at the bottom. But is this asking too much of our political leaders, especially in this era of a 24 hour electronic media cycle that demands daily 'announceables'?

I don't think so. And this brings me to the final lesson from the Australian experience. As a former Australian political leader has expressed it, good process is ultimately good politics. Without it, governments can certainly act more quickly and 'decisively', but poor outcomes will often result, and they will ultimately take their toll. Ironically, the media plays a key role at both ends of the story. Media clamour often forces governments to make hasty regulatory interventions; but, when things go wrong, it is the media that again leads the charge in bringing political leaders to account. (We have seen this play out in Australia very recently.)

This highlights the political, as well as policy importance, of establishing processes, procedures and initiatives, that (to quote an earlier speaker) "create space and time to get the right answers": arrangements that permit governments, in other words, to ask questions *first*, regulate later.

In terms of a 'road map', this suggests that we may need to devote attention not just to what needs to be done, but how to ensure that it is. What are the incentive structures and institutions that surround regulation making in each country? Are they working? What constitutes 'best practice? (Is there a need for more independent 'gate-keeping'? More resourcing? More sanctions? Stronger political oversight?) This is a direction for further work that is likely to have a promising destination, and one which the OECD is very well placed to advance.

### Final Plenary Session: Luigi Carbone, Deputy Secretary-General of the Presidency of the Council f Ministers, Executive Chair of the Better Regulation Unit, and Counsellor of State, Italy

#### 5 ideas:

- *Involve politics*. Address politicians who look after citizens, not just the technocrats who concentrate on the *tool*.
- Fewer rules. Apart from the number of laws, concentrate on reducing prescriptions. Reconsider the way you want to reduce them (Empty the handbag).
- Reorient tools toward people. Where are the hidden "chests we can open", just by removing the regulatory lock? Considering the standard cost model and burdens, why are don't we consider the ones most irritating, with the greatest psychological costs to business? Consider the human factor with regard to burdens. Consultation is fine, but watch out how you consult. What about consulting those who can't be consulted, can't be heard...such as children? Old people? Take in the entire picture, beyond consultation because those who are consulted are well organised and focused on their interests, and their interests are not the whole reality.
- Maintenance/implementation of reform. The ex post phase is the most crucial phase of a reform, and we in the OECD have concentrated more on the establishment phase.
- Managing the multilateral dimension. The public good is no longer one but several, and at several different levels. We cannot ignore complexity; we must simplify, but we must know how much and to what point we must simplify.

# Luis Alberto dos Santos, Deputy Minister for Analysis and Follow-up of Government Policies, Presidency of Republic - Civil House, Brazil

The key political challenges to regulatory management and governance in Brazil: the need of political leadership, clear legal mandates, shared goals (in terms of economic and social development) and a shared vision of the role of the state and how to deal with stateowned enterprises in a competitive environment. The implications for sectoral policy making: there is a need for more transparency, openness and technical legitimacy. Also required is a greater capacity to negotiate and involve stakeholders. How can governments co-operate on the regulatory policy agenda? Observe your neighbours, share and receive input, but consider their local context: cultural, political, social, economic, historical, institutional and environmental. No one size fits all. Institutional learning must be reciprocal, and respectful. As to how OECD can foster the regulatory policy agenda. capacity building must be included more and more in the OECD agenda; openness, technical competence and political sensibility must guide the OECD activity. The 2005 OECD Principles must be reinforced but also periodically reviewed to introduce new trends such as ex post impact assessment. New regulatory frameworks must reduce burden on economic activities and infrastructure investment, but the Precautionary Principle cannot be left behind. The main challenge for developing countries such as Brazil in fostering sustainable growth is solve that dilemma - the equilibrium between short- and long-term interests, conciliating the need for green growth and the Precautionary Principle in terms of environmental protection.

# Final Plenary Session, Dr Marianne Klingbeil, Director for Better Regulation; Acting Chair of the Impact Assessment Board, Secretariat-General of the European Commission

We have a very well functioning impact assessment system in the European Commission, recognised by our stakeholders, and by the European Court of Auditors. Thanks to this system we can better prepare proposals that deliver policy objectives, and at the same time avoid unintended consequences.

In practice, many of these new proposals to be adopted by the Commission are revisions of the existing policies. While we are doing very thorough evaluations of any expenditure programmes, and nearly all legislative acts require close monitoring of how well they are implemented, we have realised that this is not enough - and that there are gaps to be bridged.

We need to look at how different elements of policy work together. Do they really go in the same direction? Or perhaps there are some overlaps and contradictions that result in bringing the implementation costs up or delaying the benefits? Do we have many infringement cases or strong signals from stakeholders that something is going wrong?

What do we do in practice to fix these problems?

To start with, we will launch pilot new-style evaluations in four policy areas: transport, environment, social policy and employment and industrial policy. Then, we will make sure that at the end of the day no new major initiative is planned until the results of the existing instruments have been evaluated. Finally, we will make sure the results are fed into the impact assessments.

What we have learned from our successful programme for the administrative burden reduction, and significant simplification effort, will naturally be very useful in that process.

In parallel, in 2011 we will rethink the way we communicate with our stakeholders. They provide us with valuable inputs to the policy making and we need to make sure that the process through which they can contribute is as easy for them as possible. And - needless to say, - we need to make sure that we reach all those who should be consulted.

We also realise that we tend to focus on costs - forgetting about benefits. We have good expertise in valuating EU action even in some difficult policy areas, such as environment or social and employment policy, but we need to invest in it even more.

Finally, and perhaps most importantly, the quality of the EU legislation and policies depends also on the European Parliament, Council and the Member States. The Commission can make - and already has made - a great difference, but clearly there is a limit how much we achieve acting alone.

# Final Plenary Session: Jeroen Nijland, Director, Regulatory Reform Group, Ministry of Finance/Economic Affairs, Netherlands; Chair, OECD Regulatory Policy Committee

#### **Key Points**

- It's clear from listening to the questions, the panellists and the sessions that the challenges are about completing the cycle, in which consultation and ex post evaluation are the weakest parts; about institutions and the relationships among them in governance that crosses the border internationally; and about the importance of demonstrating benefits. Because of fiscal constraints, there will be an upward pressure to regulation. Countering that takes strong institutions, capacity and resources. We must demonstrate the benefits of this work, not just of regulation.
- We need to "walk where we talk" when we revise the Principles. I hope we have the courage to be self-critical, a little more explicit about what we didn't achieve. If we advocate Consultation, let's open the discussion beyond this community - with businesses, trade unions, consumers, interest groups. We say keep a close eye on impacts in practice. Regulation should be user-centred, easy to understand, easy to comply with. We should apply those principles to our work.
- Words I often heard during the Conference: ex post review, accountability, transparency, user-centred approach, behaviourism, human rules, human benefits, social media. The common denominator with these words is that we are making a plea to let the outside world in. Apparently we feel it is time for a reality check on the intellectual concepts we use, the theoretical or maybe even idealistic assumptions underlying our work. It's a reality check not of colleagues who have to work with our instruments and tools but of citizens, businesses and politicians not to replace what's in place but to complement it.
- In the upcoming months we have to try to create a dynamic picture, because the historic contexts of our countries differ, as do their current positions and cultures there's no one-size-fits-all. The new Principles should be more than a static overview of an ideal situation, more than a horizon. It should also capture transition: how to move from A to B and further, on our way to the horizon.

# Regulatory Policy at the Crossroads: Towards a New Policy Agenda

**AGENDA** 

	Thursday 28 October 2010		
8:00	Registration and welcome coffee		
9:15-11:00	Plenary Session Regulatory Policy, Better Rules for a New Game		
	The first plenary session aims at presenting a dynamic discussion of the challenges involved in setting Better Rules in the aftermath of the crisis, and how regulatory policy can move towards a new policy agenda.		
	This session will be moderated by <b>Mr. Gary Banks</b> , Chairman, Productivity Commission, Australia		
	High-level Roundtable		
	» Mr. Angel Gurría, Secretary-General, OECD		
	» Mr. Vincent Van Quickenborne, Minister of Economy and Reform, Belgium		
	» Mr. Kenneth Bengtsson, Chairman of the Confederation of Swedish Enterprise		
	» Dr. Marianne Klingbeil, Director for Better Regulation; Acting Chair of the Impact Assessment Board, Secretariat-General of the European Commission		
	» Dr. Gunter Thielen, Chairman of the Board, Bertelsmann Stiftung		
	» Mr. Adam Jasser, Undersecretary of State, Secretary of the Economic Council, Prime Minister's plenipotentiary for the Reduction of Bureaucracy, Poland		
11:00-11:30	Coffee break		
11:30-13:00	Plenary Session Regulatory Policy, Guiding the Road to Recovery and Growth		
	This session will set out the strategic results from the OECD synthesis report and open a first general discussion, opening the debate on the challenges highlighted by the report.		
	Chair » <b>Mr. Rolf Alter</b> , Director, Public Governance and Territorial Development, OECD		
	Introduction » <b>Ms. Caroline Varley</b> , Project Manager, Public Governance and Territorial Development, OECD		
	<ul> <li>Panelists</li> <li>Mr. Martin Tlapa, Deputy Minister, Ministry of Industry and Trade, Czech Republic</li> <li>Ms. Viola Groebner, Director, Industry Policy and Economic Reforms, Directorate General Enterprise and Industry, European Commission</li> <li>Mr. Michael Fitzpatrick, Associate Administrator, Office of Information and Regulatory Affairs, United States</li> <li>Mr. Tadahiro Asami, Secretary General, Business and Industry Advisory Committee (BIAC)</li> </ul>		
13:00-14:30	Lunch		

14:30-16:00	Regulatory Management Achievements and Emerging Challenges			
Breakout sessions	Session A1  Ex post evaluation: closing the policy cycle	Session A2 Building a competitive and business-friendly environment	Session A3 Better regulation for green growth	Session A4 Simplification strategies through e-government
16:00-16:30	Coffee break			
16:30-18:00	Regulatory Governance The New Frontier			
Breakout sessions	Session B1 Governance in regulatory oversight	Session B2 Social impacts of regulations	Session B3 Regulators and the regulatees: being friendly without being cozy?	Session B4 Open government towards user- centered regulation
18:00	Cocktail			
13:00 - 18:00	Session P			

	Friday 29 October 2010		
9:00-10:30	Towards Policy Coherence for Sustainability		
Breakout sessions	Session C1 Session C2 Session C3 International regulatory Mapping sustainability in co-operation policy making regulatory policy making		
10:30-11:00	Coffee break		
	Final Plenary Session Regulation: the Challenge to Govern Better Learning from Failures to Prepare for the Future		
11:00-13:00	The roundtable will offer an opportunity to discuss strategies ahead and the role of the OECD in furthering quality regulation in the medium term, integrating regulatory management with regulatory governance to form a new framework for regulatory policy.		

Expanding the frontier of regulatory policy and practice

13:00 - 18:00



# Participants List- International Conference « Regulatory Policy at the Crossroads: Towards a New Policy Agenda »

28/10/2010 - 29/10/2010

All Sessions

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