

OECD REVIEWS OF REGULATORY REFORM

**BACKGROUND DOCUMENT ON
REGULATORY REFORM IN OECD COUNTRIES**



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Introduction¹

The objective of this paper is to provide an overview of the initial developments of regulatory reform in OECD countries and to identify key elements for implementation. In a first section, the context of reform and the move to regulatory quality will be discussed. Using examples from OECD countries, major industrialised economies and transition and emergent economies, the second section of the paper covers the first steps to implement regulatory reform. The third section will concentrate on key elements for implementation, such as capacity-building, communication and consultation, as well as constituency development.

In a globalised environment, characterised by rapid change in economic, social and technological conditions as well as internationalised competition, the role of regulations is crucial. Regulations can become an obstacle when they create unnecessary barriers to trade, duplicate responsibilities for government authorities and citizens, or protect vested interests from competition. Thus, a growing number of countries – OECD and non-OECD – have embarked on ambitious programmes to reduce the costs of poorly designed regulation and improve their quality.

Regulatory reform is not primarily a technical problem of getting regulations right. The regulatory management system – including the processes and institutions, through which regulations are developed, enforced and adjudicated – should support governance objectives in an efficient, transparent and accountable manner. OECD Regulatory Governance Principles advise to: deregulate where markets work better than governments; regulate well, where markets cannot work without governments; establish systems to ensure laws are coherent and well managed; and ensure regulations are made in ways to ensure democratic principles.

Introducing reform has not been an easy task, but delay in reforms heightens the cost of change in many cases. The difficulties and complexities of the reform can also be greater than expected, underlining many questions about the risks and costs of further reform, as well as continued opposition from vested interests. Yet today much has been learned about reform and how to do it, and it is clear that the risks and difficulties of not reforming are often greater.

The promotion of economic and social well-being of the people is a central task of democratic governments. In order to achieve this goal, a wide variety of public policies exists: policies aimed at macroeconomic stability, increased employment, improved education and training, equality of opportunity, promotion of innovation and entrepreneurship, and high standards of environmental quality, health and safety. Regulation provides a predictable, legal framework within which businesses and citizens can act, plan and invest. Economic, social and administrative regulations (see Box 1) have been long used by governments to align better public and private interests in markets.

1. For further information, please contact Delia Rodrigo, Regulatory Policy Division, Public Governance and Territorial Development Directorate Tel: +33 1 45 24 16 53 or e-mail: delia.rodrigo@oecd.org

Box 1. What is regulation?

In OECD work, regulation refers to the diverse set of instruments by which governments set requirements on businesses and citizens. Regulations fall into three categories:

- Economic regulations intervene directly in market decisions such as pricing, competition, market entry or exit.
- Social regulations protect public interests such as health, safety, the environment, and social cohesion.
- Administrative regulations are paperwork and administrative formalities through which governments collect information and intervene in individual economic decisions.

Source: OECD (1997a), *OECD Report on Regulatory Reform*, Paris.

1. From deregulation to regulatory reform

1.1. Context of reform

In the last few decades, different stages have characterised the development of regulatory reform. The role of the State in relation to the economy and society is in transition. Even if the 20th century saw a rapid growth in the role and presence of the State, efforts started some decades ago to “roll back the frontiers of the State” in order to free up market economies and to redefine the relationship of the State to the economy and citizens. The reduction of direct State intervention in the economy, *i.e.* through privatisation of State ownership of enterprises, the reduction of price controls and licenses, etc., implied a change in the mode of intervention. In terms of regulatory policy, this has given rise to the concept of the “regulatory state”: a State still strategically responsible for the economy and society, but with a more arms’ length relationship to citizens and the economy.² The public sector is still a major issue, since it constitutes a very large part of the economy of all OECD countries³ and of most developing countries.

The first efforts of “deregulation” were driven by economic downturn and were based on the view that regulation was impeding the economy by strangling innovation and entrepreneurialism. But these early attempts to reduce regulatory inflation were only partially successful. Deregulation gave way in the 1980s and 1990s to regulatory and management reform and, more recently, to the development of a comprehensive regulatory policy agenda.

In response to technological innovations, consumer demand for better services, the evolution from manufacturing towards service economies, and interdependencies in regional and global markets, governments have faced a transition to market-led growth to maintain economic performance. These shifts have necessitated supply-side reforms that stimulate competition and reduce regulatory inefficiency. Thus, regulatory reform has become increasingly central to economic policy agendas.

2. The “regulatory State” has a more specific meaning in the context of the State-owned enterprises: separating the State’s rule-making, enforcement and ownership functions.
3. The public spending to GDP ratio in the OECD area stood at slightly over 40% in 2002. OECD (2003).

1.2. *A move towards regulatory quality for better public service delivery*

Progress has been made in developing a stronger conceptual framework for regulatory quality. At the beginning, initial conceptions of regulatory reform as a process of simply eliminating some rules and revising others evolved toward an understanding of the procedural, institutional, and finally the profound cultural transformations that were required in many areas, within both public and private sectors. This revealed a difficult, complex and multi-faceted reform agenda, a task that most reformers did not have the influence or the tools to carry out, and that sometimes was ill-suited to the political cycle.

Confronted by internal and external pressures, governments had no choice but to press on. New environments with low-quality regulatory systems increasingly penalised citizens. Regulatory failures eroded trust in government. The increasing internationalisation of the world's economy underlined these trends. Traditional economic management tools based on monetary and fiscal policies seemed not to work well anymore, and regulatory reform offered new hope to economic policy officials faced with high unemployment, low productivity, and new demands to be internationally "competitive".

Regulatory reform was also part of a more profound economic and social transformation. As countries faced, and still face, the urgent and difficult task of moving forward with the transition of market-led growth to maintain economic performance in response to technological innovations, changes in consumer demand, and interdependencies in regional and global markets, supply-side reforms to stimulate competition and reduce regulatory inefficiencies have become central to effective economic policy.

Thus, the reform agenda began to broaden to include the adoption of a range of explicit overarching policies, disciplines and tools, tending to be more permanent than episodic in nature. At the broadest level, this shift has meant providing explicit policy support for the regulatory reform agenda, by adopting a reform policy at the "whole of government" level, often with timelines, targets and evaluation mechanisms.

Regulatory policy is today a key part of a much broader framework on governance, the goals of which are transparency, legitimacy, accountability, trust in government, efficiency and policy coherence. To achieve these goals, the link between regulatory policy and the promotion of regulatory quality with other horizontal policies, such as competition policy and market openness, is fundamental (see Box 2).

Box 2. Regulatory quality: a mutually supportive agenda

The OECD work on regulatory reform, compiled in more than twenty country reviews and different thematic studies, has underlined that different policies and perspectives on regulatory quality are mutually supportive and should be viewed from a "whole-of-government" approach:

- From the high level economic perspective, product market regulatory reforms are an important component of structural policies that support sustained economic growth;
- There is a close and positive relationship between the objective of promoting competition policy principles, and that of promoting high quality regulation and regulatory reform. Competition policies are stronger and more coherent, and regulatory policies are strengthened in a key part of their agenda – promoting competition and market openness – where they have supported each other to promote reform.
- Effective regulatory policy and market openness also support each other. Foreign as well as domestic businesses are encouraged by an effective regulatory environment. It is, for a large part, a shared agenda.
- The application of competition principles strengthens market openness. Good practices, such as strong competition oversight and enforcement mechanisms, support international trade and investment.

Source: OECD (2004), *Taking Stock of Regulatory Reform: A Multidisciplinary Synthesis*, Paris.

Regulatory quality is essential for a better approach of service delivery. Countries differ in their starting point for regulatory reform in this area, depending on their institutional and cultural constraints, and their public policy goals, not least the extent to which they may consider certain sectors to fulfil public service functions. What is clear, however, is the challenge to inject competition to public services, in order to gain productivity and efficiency. Different ways to open up public services to competition are possible⁴ and a strong regulatory quality framework can contribute to make a better use of it. Better service provision – predictable, accessible – will have a direct effect on public service ethics, reducing demand for bribery.

2. Regulatory reform in the 1990s and 2000s

2.1. *The rationale of regulatory reform*

Regulatory quality refers to a regulatory framework in which regulations and regulatory regimes are efficient in terms of cost, effective in terms of having a clear regulatory and policy purpose, transparent and accountable. Regulatory policy is broadly defined as an explicit, dynamic, continuous and consistent “whole-of-government” policy to pursue regulatory quality. An effective regulatory policy that helps to improve the framework for investment is made up of three components that are mutually reinforcing: policies, institutions and tools.

Box 3. The OECD approach to regulatory quality: policies, institutions and tools

The OECD experience on regulatory quality confirms that an effective regulatory framework needs to be made up of three pillars which are mutually reinforcing: regulatory policies, regulatory institutions and regulatory tools.

- **Regulatory policies.** They may be broadly defined as an explicit, dynamic, continuous and consistent “whole-of-government” policy to pursue high quality regulation. It is an integral part of the process that links a policy goal, a policy action and regulation to support the policy action. Regulatory policy refers to the way policy makers draft, update, apply and enforce regulations and foster public understanding of these processes. Political leadership at the highest level is the key to success of regulatory policies, overcoming opposition and fostering transparency to make clear government’s objectives.
- **Regulatory institutions.** A set of institutions to ensure regulations, well placed in the country’s legal and institutional architecture, are key for success. The OECD experience shows that, at least, the following institutions are necessary:
 - **Central oversight body.** Co-ordination on regulatory policy issues within the government is essential and some form of central mechanism is better suited to accomplish this goal. This ensures a “whole-of-government” approach, providing technical support for those applying regulatory tools and acting as an advocate of quality regulation and good regulatory governance.

4 The introduction of competition principles for public sector delivery can follow different approaches. Competition can be introduced whilst retaining direct State control. Under this approach, the service continues to be provided directly by consumers by the State. Competition is introduced by splitting the roles of purchaser (the State) and the provider. For example, the government calls for tenders from private providers. User charges can be introduced to contain demand. Or the State can withdraw entirely from the direct and sole provision of services to the consumer, in which case either consumers directly or intermediaries such as health insurers, but not the State, may influence service delivery. The ex-State provider may be commercialised, in other words, the provision of the service is separated from other State activities through separate accounting, and the State charges for it. Consumers may then choose between it and private providers.

- **Independent regulators.** They are an essential part of a country's regulatory structure. Broadly speaking, their role tends to be concerned with enforcing rules and dispensing penalties for non-compliance, or authorising the issue of licences and permits. They contribute to improving regulatory quality, transparency, stability and expertise, shielding market interventions from interference from captured politicians and bureaucrats.
- **Regulatory tools.** Six main types of regulatory tools are available to facilitate regulatory reform and to improve regulatory quality:
 - **Administrative simplification.** It refers to simplify and reduce government formalities and paperwork.
 - **Regulatory Impact Analysis (RIA).** A tool to ensure the most efficient and effective regulatory options are chosen.
 - **Transparency and communication.** Those subject to regulation must be aware of the regulation and understand what is required of them.
 - **Alternatives to regulation.** Governments are exploring the use of alternatives to direct regulation to achieve goals, for example, consider non-regulatory options or market-based approaches.
 - **Compliance and enforcement.** They are essential if the regulation is to achieve its objectives. There is little use having a regulation with a low compliance rate.
 - **Tools to support administrative justice and accountability.** Regulators themselves must be accountable. To achieve this, those subject to regulations should have access to clear, open and effective appeals procedures.

Regulation has been a tool of government for improving the quality of economic performance and government effectiveness. Regulatory quality is essential in providing a framework that encourages investment flows and a clear environment based in the rule of law, transparency and accountability. Regulatory quality contributes to good governance in the public sector, which is increasingly recognised in assessments of a country's competitiveness and attractiveness for investment.

In this period of transition, regulatory inflation continues to affect OECD countries, a challenge for most governments. As citizens seek better services and higher standards of social and environmental welfare, regulation arises from the consolidation of market economies and the move away from direct intervention by the State. Regulatory policy can make a broad contribution to public policy goals and the policy-making process.

2.2. *The OECD experience*

The OECD experience provides a rich picture of progress made in the regulatory quality agenda over the last twenty years. Even if institutional, cultural, legal and economic contexts differ, playing a determinant role in the way governments have approached regulatory reform over time, OECD countries have experienced similar problems with the use of regulation.

The OECD Recommendations on Improving the Quality of Government Regulation,⁵ adopted in March 1995, were the first-ever international statement of regulatory principles common to member countries. In 1997, building on this text and broadening to embrace market openness, competition policy and micro-economic principles in a multidisciplinary framework, the OECD produced a set of Principles

5. OECD (1995).

on Regulatory Reform⁶, which have been often been the basis for the design of national policies. But as countries have made progress, their goals have been set higher, and their working methods have been adjusted to changes in the policy environment. Based on lessons learned from this body of reviews and taking account of developments in specific sectors, such as network utilities, as well as in competition policy, policies for market openness, and policies and tools for regulatory quality, the OECD has produced the Guiding Principles for Regulatory Quality and Performance⁷, adopted by the OECD Council in April 2005.

The following section covers the first steps taken by several different OECD members, to show how countries, even from a low institutional capacity, were able to initiate reform. These examples also demonstrate that reform is a continual, on-going process based on learning from experience. These examples concentrate on the early years of reform, they do not necessarily include information on current programmes.

Major industrialised economies

In major industrialised economies, massive growth in the scope and scale of regulatory interventions through most of the 20th century was followed by shifts in the economic environment that revealed clearly the previously hidden costs of out-dated, low quality and constantly expanding regulatory structures. These factors included the 1970s oil shocks, currency volatility and declining tariffs, as well as awareness of the complexity of environmental degradation. While the problems caused by poor quality regulation were increasingly apparent, reform was consistently being delayed or blocked.

The sequence of reform was uneven at the beginning. Sometimes results failed to match expectations and politicians, and civil servants were disillusioned. What seemed easy in the 1980s was slowly revealed as a difficult, complex and multi-faceted reform agenda. Initial conceptions of regulatory reform as a process of simply eliminating some rules and revising others evolved toward an understanding of the procedural, institutional, and the profound cultural transformations that were required in many areas, with both public and private sectors on board. There is no attempt to bring the information on countries up to the present; this would lengthen the paper and divert the focus away from the first phases of reform. These examples show that many of the successful programmes today have their origins in measures taken ten or thirty years ago.

Canada

Political and economic context

Canada's economy was one of the OECD's strongest in the late 1990s, even if sluggish performance in terms of output, reduced productivity growth, high rates of inflation and budget deficits endured since the 1970s. The government introduced a series of measures to set the economy back on track, such as structural reforms (tax, labour market and sectoral reforms), free trade agreements with the US and Mexico and measures to tackle the fiscal deficit.

Regulatory reform was seen as a key element that could contribute to the turnaround. Debate began in the late 1970s as part of the response to the problems of the economy. Regulatory shortcomings were identified as underlying factors in the economy's poor performance, structural rigidities, and high social welfare costs. The number of federal regulations had risen by almost 350% between 1955 and 1975. A number of sectors, such as telecommunications, airlines, rail, trucking, financial services and energy, underwent significant deregulation.

6. OECD (1997).

7. OECD (2005).

Box 4. Sequencing reform - first steps in Canada

Canada was among the first OECD countries to adopt a comprehensive regulatory reform programme. It has continued its policy efforts for over thirty years, progressively broadening and deepening its policy approaches, adopting new tools and refining them. It was one of the first countries to move from the initial focus on deregulation toward regulatory reform, then regulatory management approaches, and it is now prominent in developing the regulatory governance agenda.

Some of the earliest reform initiatives date back to 1950, with the introduction of the *Regulations Act*, which required that every regulation be published in the Canada Gazette and subsequently tabled in Parliament. The *Statutory Instruments Act* (1971) was largely a continuation of the 1950 Act, with the added requirement of legal review of all proposed regulations by the Clerk of the Privy Council in consultation with the Deputy Minister of Justice and the referral of all regulations to parliamentary committee for review after they have been made (now the Standing Joint Committee on Scrutiny of Regulations).

The next significant reform was the 1977 order by the Treasury Board Secretariat that regulatory agencies should undertake periodic evaluation of regulatory programmes. This was supplemented, in 1978, by a requirement that "Socio-Economic Impact Analysis" should be applied to major new regulations in the areas of "health, safety and fairness". In 1978, at the highest political level, the Government of Canada made a formal reference to the Economic Council of Canada to undertake a series of specialised studies on the processes of regulation and its effects on the economy. The Council spent three years on this reference, issuing influential reports calling for procedural and substantive changes and delivering its final recommendations in 1981.

The 1986 Regulatory Reform Strategy was one of the first comprehensive, principles-based regulatory policies ever developed in the OECD. Further reforms followed to ensure that regulations did improve in quality and promoted policy objectives. The process of refining regulatory policies and tools has continued ever since. The Deputy Ministers' Challenge Team on Law Making and Governance was set up in 1996 to promote effective regulatory management. High-performance regulatory tools are now in place.

Source: OECD (2002a), *Government Capacity to Assure High Quality Regulation in Canada*, Background Report, Paris.

France

Political and economic context

France has undergone some fundamental changes over the past few years, introducing important reforms, ranging from decentralisation and administrative simplification, to the liberalisation of network industries and internal changes to the management of public expenditures, among others. There has been a growing internal consensus over the need to review the role of the State and reform the governance and regulatory framework.

In the 1970s, the French institutional system was modernised, as far as transparency and relations between constituents and the civil service concern. Because the institutional strength of the regulatory system, changes have been gradual, altering the traditional framework of republican institutions step by step. Unlike other countries, France has not known any major crisis in serious economic difficulties which would have led to the regulatory system completely reformed. The French economy has recently enjoyed a period of relative success, following slow growth and a recession in the early 1990s. This was supported by important structural, regulatory and institutional reforms.

Box 5. Sequencing reform - first steps in France

The French governance and regulatory framework has deep historical roots. Although some of the premises of the modern State of law were first put in place under the *Ancien Régime*, a large part of the highly centralised legal and administrative system dates from the Napoleonic era. The role of the State was also strengthened at certain periods in France's history, as was the case during the 1930s and the period immediately after the Second World War when the State acquired greater power through nationalisations and the indicative planning process.

The "State does everything" approach, that characterised the attitude following the reforms of 1945-1949, is gradually being replaced by a more moderate vision with a Republic undergoing a decentralisation process, a desire to be more transparent to citizens and an extensive use of communication technologies to improve the quality of regulations. This has been accompanied by a liberalisation of the market, including more and more protected networks in certain sectors, fitting into a European context. Although there has not been an overall policy for regulatory reform, strategic reforms have been implemented gradually.

A first wave of reforms in the 1970s included the desire to improve relations between constituents and public services. This resulted in the creation of the post of Ombudsman in 1973; the enactment of the laws of 1978 and 1979 on access to administrative documents and the purpose of administrative and the adoption of the regime of silence-is-consent for construction permits in 1977. The second wave of reforms during the 1980s and 1990s was marked by the administrative simplification implemented from 1983 onwards and extended from 1996 onwards. This aimed at reducing *ex post* the impact of regulations by reducing the number of forms and simplifying declarations.

On a wider scale, an overall economic liberalisation movement took place during the 1980s, as part of the European economic integration. The end of price controls in 1986 and the opening up of financial markets contributed to the liberalisation of economic life. These reforms also included an extensive privatisation programme, carried out by successive governments.

The privatisation trend preceded the modernisation of the State and the reform of the whole regulatory policy. In 1989, the government launched a programme on the regeneration of public service, covering the following objectives: the increase of responsibilities by expanding management autonomy; reforming working relations; evaluating public policies; improving the reception and service for users. Since then, the 1994 Picq report highlighted the need for an overall effort to reform the State. This helped to move forward and introduce different reforms in improving the quality of regulations, financial management and managing human resources.

Source: OECD (2004c), *Regulatory Reform in France – Charting a Clearer Way Forward*, Paris.

Italy

Political and economic context

The continue growth of state intervention in the economy since the 1950s, combined with a legalistic and over-legislated approach to public policy, was one of the most relevant features of the administrative and legal environment in Italy in the 1990s. External and internal forces contributed to transform regulatory practices. The roots of change lay in the fiscal and economic problems of the early 1990s, and the massive anti-corruption movement that transformed the Italian post-war political scene. A huge public debt, economic stagnation, budget imbalances, the need to harmonise EU practices, etc. contributed to introduce changes to the regulatory system,

Lagging behind some other OECD countries at that time, successive Italian governments introduced a far-reaching approach that included competition principles, transparency, simplification, accountability for results, and client-oriented policies through the set up of a national regulatory apparatus that included new policies, procedures, skills and institutions. By the mid-1990s, reform focused on unwinding extensive state intervention into economic decisions. The goal became economic stimulation through liberalisation and opening markets. The privatisation process accelerated and became one of the largest in the OECD area.

Box 6. Sequencing reform - first steps in Italy

The emergence of a genuine regulatory quality programme in Italy took considerable time. In 1978, the Minister of Public Administration launched a major review of the quality of public administration, including the regulatory management system. Based on his report, a second commission recommended the assessment of “administrative impacts of laws”, based on the German Blue Checklist, and the establishment of a central unit to monitor it. In 1986, the President of the Chamber of Deputies issued a circular containing rules and recommendations about language, structure, quotation, modification, and repealing. A 1988 law created basic institutions to improve regulatory management, such as the Department of Legal and Legislative Affairs under the Prime Minister’s Office and the de-legislation mechanism.

In the early 1990s, the most important reform of the Italian state since 1860 was launched, including a major review of the constitutional framework through numerous initiatives, policies and programmes, supported by six successive governments. Five major governmental policies stand out concerning the reform of the state’s intervention in the economy, including privatisation, establishing new regulatory regimes and institutions, and simplifying law on a broad scale; the management and control of the public budget and civil service; the simplification of the public administration, procedures and controls; the ‘reorganisation’ and management of the legal and regulatory system, and the balance between the centre and sub-national governments.

In 1990, an administrative procedure law (Law 241/90) was issued, being the main vehicle for regulatory simplification. The focus was on improving the structure of each procedure by reducing steps in the procedures and mechanisms that reduced the administration’s capacity to delay and forbid action. The law complemented simplification with crucial provisions on the rights of citizens and accountability mechanisms. In 1993 a second law (Law 537/93) reformed institutions to simplify procedures, concentrating efforts on reducing duplication of functions among ministries and governmental bodies.

In 1997, under the “Bassanini laws” the government launched a new phase of regulatory reform, creating a process of continuing improvement and the rebuilding of institutions. The reforms had two goals: to re-balance the powers between the centre and the sub-national governments, and to re-launch the administrative simplification policy based on a permanent approach and a more aggressive reorganisation of regulatory reform. This led to introduce more effective regulatory tools, such as consultation mechanisms and RIA.

Source: OECD (2001a), *Regulatory Reform in Italy*, Paris.

Japan

Political and economic context

Regulatory reform in Japan has been a central element in the promotion of deregulation as key to economic recovery in 1994 and the broad structural reform programme underway since 1996. The goals were to complete the move from a model of state-led growth – in which interventionist styles of regulation were used for decades to manage high economic growth, carry out deep structural reform, and promote producer interests – to a model of market-led growth characterised by a more efficient and flexible economy in which the role of the government is diminished.

From the early 1960s until the early 1990s, Japan experienced the highest growth rates of GDP and exports in the G7, accompanied by very low levels of inflation and unemployment and large external surpluses. In the late 1970s, however, structural problems emerged, as external conditions changed and the state-led model of economic development became ill suited to the demand of global markets. The economy began to feel the increasing burden of a highly regulated, high cost and inefficient non-traded good sector making up a substantial portion of the economy. The recent periods of stagnation of the Japanese economy have been mainly a product of structural rigidities resulting from an increasingly outmoded regulatory and institutional framework. The challenge is to deepen and speed up the regulatory transition underway, while managing its effects on economic and social life so as to sustain and expand political capacities for reform.

Box 7. Sequencing reforms - first steps in Japan

Since the early 1980s, regulatory reform has been prominent on Japan's political agenda, becoming a symbol of a broader economic and social transformation. Substantive deregulation programmes began in 1981, directed by the Provisional Commission for Administrative Reform, which recommended a full-fledged programme of deregulation, and specifically targeted licensing and approval requirements for businesses. The new thinking about the diminished role for regulation was reflected in the "Guideline for the Promotion of Deregulation", which was adopted by the Cabinet in 1988.

A Deregulation Action Plan (DAP) was in place from 1995 to 1997, under the supervision of a high-level Administrative Reform Committee. It included over 2 800 actions during its three-year life. Since December 1996, regulatory reform has been a central element in the broad economic structural reform programme. The goals of regulatory reform include to move a deeply entrenched system, in which regulation has been used for decades as an instrument to manage high economic growth, toward a more competitive and flexible economy in which the role of the state is diminished, personal choice and initiative is increased, structural reform is driven by market pressures, consumer interests take higher priority, and Japan's markets are more open to international competition. The Administrative Reform Programme was a far-reaching complement of the Programme for the Promotion of Deregulation.

Japanese approaches to regulatory reform became progressively structured and formalised as reformers grappled with the difficulties of changing a system that gives bureaucrats substantial control over the scope and pace of reforms. The "Three-Year Programme for the Promotion of Deregulation", adopted in 1998 for three years, and revised in 1999, expanded the range of areas under review. Through the Basic Law on the Administrative Reform of the Central Government, Japan completed in 2001 a reorganisation of the structure of the government administration that is billed as the most fundamental in the post-1945 period.

Source: OECD (1999c), *Regulatory Reform in Japan*, Paris.

The Netherlands

Political and economic context

Regulatory reform in the Netherlands has been part of the modernisation of the European welfare state and its integration into the development of the European single market. During much of the post-war period, the Dutch corporatist model, in which state sovereignty over public policy was shared with organised business and labour, was praised for its capacity for flexible adjustment, social stability, and pragmatic solutions, based on social consensus, to changing external conditions. The regulatory system often reflected producer interests in protected markets, but was also said to protect consumers and mediate concerns about social equity.

Yet flexibility degraded over time and, as rigidities accumulated and the external environment deteriorated, the welfare state ran into trouble. Low labour force participation and unsustainable welfare policies led to a severe crisis in the early 1980s, forcing to re-examine the post-war economic policies. Policy reforms were further supported by the increased integration of the Dutch economy into Europe through the Single Market in the 1990s.

Box 8. Sequencing reform - first steps in the Netherlands

Initiatives to improve the quality of national regulation have been underway in the Netherlands for twenty years. Regulatory reform, which began in the late 1980s and has accelerated in the past ten years, is the most recent element in the reshaping of the Dutch model.

In 1984, the report presented by the Commission on Deregulation of Governmental Institutions (Commissie Geelhoed) concluded that characteristics of the Dutch institutional system structure bore major responsibility for an excessively complex, heavy, and far reaching legislative structure. It found that when the Cabinet and individual Ministers made commitments during budget talks and other parliamentary discussions about the content of future regulation, they did not consider the practicality, coherence, and legal feasibility of those commitments. It also found that extensive processes of inter-ministerial co-ordination and parliamentary scrutiny often greatly increased the detail and complexity of legislation.

The report was one of many sources questioning the regulatory effects of the Dutch administrative and legal system. Since the 1980s extensive reforms in social, labour and competition policies reduced to some extent the participation of organised market interests in policy-making and implementation, improved transparency and accountability in the administrative system, and transferred more economic decision to the market. In the 1990s, Dutch governments sought a “*new balance between protection and dynamism*” based on competition policy, regulatory reform, and market openness. The regulatory reform programme started in 1994 aimed at strengthening competition and regulatory policy through three strategies: adoption of a competition law; increased exposure of the public sector to market forces; and a multi-faceted programme on the “*Functioning of Markets, Deregulation and Legislative Quality*” (MDW). MDW programme has been the main vehicle for improving regulatory quality, and as such is the centrepiece of Dutch regulatory reform policy.

Source: OECD (1999b), *Regulatory Reform in the Netherlands*, Paris.

United Kingdom

Political and economic context

Regulatory reform in the UK, a process that started in 1979, was initially aimed at helping to improve the supply-side of the UK economy. Although standards of living continued to rise during the 1960s and 1970s, the UK’s economic performance slipped relative to that of OECD countries. Attempts to accelerate economic growth foundered on balance of payments difficulties and a lack of competitiveness.

Macroeconomic discipline was tightened from 1976 onwards and a new macroeconomic policy was introduced in the early 1980s. Its centrepieces were stringent control of the money supply to combat inflation and fiscal policy that emphasised tax reform and public expenditure control, to reduce public sector borrowing and re-invigorate the private sector. However, it was not until the introduction of the macroeconomic framework in 1997, with central bank independence, inflation-targeting and firm fiscal rules, that the stability of recent years was achieved.

Box 9. Sequencing reform - first steps in the United Kingdom

With more than twenty years of experience and efforts behind it, the United Kingdom is one of the most experienced OECD countries in regulatory reform. Privatisation and at a later stage economic policies to stimulate competition have provided major impetus for deregulation and reform of the regulatory system, and placed regulatory reform among government's top priorities.

An extensive programme of privatisation, economic deregulation and targeted re-regulation, together with a broad-based programme to reduce regulatory costs, were prominent strategies in the effort to reduce state intervention in the economy in the early 1980s. Government economic strategies intended to reinvigorate the private sector through a combination of a more stable macroeconomic environment and enhanced competition. Deregulation and re-regulation implied the set up of new regulatory bodies and regimes. The privatisation of some network industries and services was not an easy task; the introduction of competition in these sectors faced diverse challenges, *i.e.* the weight that should be attached to competing objectives in privatisation programmes and consequential institutional issues.

A constant up-grading of instruments has occurred simultaneously with the establishment of an array of regulatory policies, institutions, and tools many of them innovative and unprecedented. This has formed a set of broadly efficient, transparent and accountable regulatory systems of high quality. Successive UK governments have developed and refined regulatory policies and principles to guide the preparation of new regulations. The White Paper "Modernising Government", published in 1999, established broad government priorities for reform, and marked a new drive to remove unnecessary regulation. The White Paper also required departments to implement Regulatory Impact Analysis (RIA) for policies, which impose new regulatory burdens.

Institutionally the Regulatory Impact Unit in the Cabinet Office (scrutiny and advice), the Better Regulation Task Force (advocacy) and the Panel for Regulatory Accountability (accountability and awareness at the political centre of government) provide a strong driving force from the centre for regulatory quality and reform. Regulatory tools have been also introduced and refined, to support the efforts for a systemic regulatory quality.

Source: OECD (2002c), *Government Capacity to Assure High Quality Regulation in the United Kingdom*, Background Report, Paris.

2.2.2. Transition and emergent economies

OECD transition and emergent economies have also acknowledged the importance to introduce regulatory principles into their public policies. Taking as starting points different political and economic contexts, some of these OECD countries have made spectacular improvements in their regulatory frameworks in relatively short periods of time, often starting from a very low level of institutional capacity and against administrative culture rooted in "command-and-control" practices.

Czech Republic

Political and economic context

After a complete shift from a planned socialist economy to an open-market democracy, the Czech state is now an increasingly capable regulator and overseer of competitive markets. Regulatory reform entailed dismantling centralised institutions and constructing new regulatory regimes appropriate to a democratic society, including instruments, policies and institutions that could work together to promote co-operation, power-sharing and decentralization. This legal and regulatory transformation was supported by fast-track harmonization with EU legislation.

The 1997 currency crisis and popular backlash against abuses during the rapid privatisation processes exposed weaknesses and gaps in the regulatory framework. In the first half of the 1990s, economic reforms leaped ahead of institution-building. The Czech transition illustrates the need to complement deregulation and market liberalisation with well-designed and market-oriented re-regulation and capacity-building. This dual approach is necessary to protect market competition in the interests of consumers and to safeguard other public policy interests.

Box 10. Sequencing reform - first steps in the Czech Republic

The Czech Republic's transition to a market democracy that began in 1989 required fundamental changes to the role and culture of the public sector and the horizontal and vertical organisation of the state. The legal system was reconstituted so that it is based on a new framework for a democratic rule of law. Reform of the state encountered great difficulties, including the 1993 break-up of the Czech and Slovak Federal Republic into two countries and the 1997 currency crisis, but substantial steps were taken.

Political awareness of the need for an effective public administration and a robust and modern regulatory framework to support democratic and market institutions came only after the transition period. This imposed a heavy price on the process, as mistrust and scepticism of Czech citizens toward the state increased as a response of delayed policy corrections to mistakes in market liberalisation.

Transformation of the legal system due to the transition process and EU accession process resulted in the adoption of huge swathes of laws. From January 1990 to 2001, 1 150 new acts and amendments of acts, 14 constitutional amendments, 8 400 government resolutions and various measures by central state administration were adopted. Some of the new laws, while improving the ones existed before, were piecemeal and had few substantive quality standards.

Since 1997, after difficult negotiations with Parliament, the government launched a series of reforms to improve the institutional basis of the new market economy. These reforms improved the institutional capacity for quality regulation through the creation and strengthening of bodies such as the Czech Statistical Office, the Commission for Securities, the Office for Industrial Ownership, and the Czech Telecommunication Office. Transparency and the fight against corruption and administrative abuse were reinforced with the establishment of an independent Ombudsman. Reforms also included the revision in 1998 of the Legislative Rules and a commitment to adopt government-wide regulatory quality principles.

Source: OECD (2001b), *Regulatory Reform in the Czech Republic*, Paris.

Hungary

Political and economic context

Hungary has gone through a historic transition of sustained reforms over several years. In less than ten years, the country largely completed an historic transition concerning social, political and economic aspects of life. The speed of reforms has hardly declined since 1989 and even accelerated after 1995 due to efforts to close the gaps in policies and capacities before accession to the European Union.

Since 1989, successive governments eliminated numerous laws and other regulations that undergirded the centrally planned economy. Each year the Parliament passed more than a hundred laws, the government adopted twice as many decrees, and the ministries promulgated many hundreds of orders. The regulations and institutions needed for the smooth operation of markets were established and secured, with government procurement laws and property rights, bankruptcy, and business start-up rules. Today, Hungary has a practically new legal system.

Box 11. Sequencing reform - first steps in Hungary

Hungary's approach to regulatory reform has been particularly concerned with the pragmatic re-orientation of the state's role in relation to the market and citizens. In 1968, Hungary introduced the New Economic Mechanism to increase enterprise autonomy and the role of markets in economic decisions. Economic structural reform, begun in the 1970s, was completed in the 1990s. From 1989, these reforms were complemented by a major effort to modernize public administration, including the regulatory framework. Hungary's reforms have been sustained over several years, even as governments changed among political parties.

Two extensive reviews of the regulatory system (1989-91 and 1995-98) eliminated thousands of unneeded regulations. In the mid-1990s, on the basis of quality criteria inspired by OECD recommendations, the Hungarian government adopted policies to improve the process by which it developed new laws and regulations. Hungary has recognized that a sustainable regulatory management system is a strong institutional basis for more rapid economic and social convergence with other European countries.

In 1992 the Bankruptcy Law was restructured, led to the closure of many non-profitable companies and an increasing shift over the decade to more efficient production methods. Privatisation under the Privatisation Act accelerated after 1995 macro-economic stabilisation package. Avoiding "big bang" approaches, the privatisation process was based on negotiated transactions, management buyouts, auctioning, and fixed term concessions. Further liberalization of state infrastructure occurred through Built-Operate-Transfer contracts in transport and energy production, among other sectors. Deregulation reduced the intervention of the government in huge areas of the economy. This was done through strengthening competition policy under the aegis of a strong and independent authority.

Source: OECD (2000a), *Regulatory Reform in Hungary*, Paris

Ireland

Political and economic context

Over the last twenty years, Ireland has witnessed outstanding economic performance and the transformation of its economic, social and cultural environment. Closely linked to this have been significant improvements to the Irish regulatory environment and framework. Accountability and transparency have been strongly enhanced, not only through traditional participatory and consensus-building mechanisms characterized by the social partnership approach, but also through new mechanisms such as enforcement and compliance. New market-oriented institutions have been set up or strengthened, including sectoral regulators and a competition authority.

Regulatory reform gathered speed over the 1990s, in the framework of a remarkable economic performance (average annual growth of 8.3% in 1997-1999) and large and sustained foreign investment flows. Regulatory reform was seen as a support to manage the consequences of fast growth and to build new capacities to sustain it into the future. For example, regulatory reform is a way to open up important infrastructure and policy bottlenecks to further growth and to attain efficiency improvements that can help manage inflationary pressures.

Box 12. Sequencing reform - first steps in Ireland

The Irish government has used regulatory reform to establish a more competitive and flexible economy that can innovate, adapt and prosper. The challenge has been to move from growth based on using more resources to growth based on using resources better, that is, on productivity improvements. This shift in sources of growth requires a more nimble and dynamic economy rooted in a modern regulatory environment that is consistent with market forces, rewards productivity and innovation, and responds to consumer needs in changing market opportunities, domestic and international.

The first attempt to reform the public service followed the publication of the *Report of the Public Services Organisation Review Group 1966-1969*, commonly referred to as the *Devlin Report*. This report presented a series of recommendations to permit the administration to cope with new demands generated by the creation of a European welfare state providing more services to a wider array of citizens. It concentrated on key functional elements, the most important of which was the separation of policy making from implementation and service delivery functions.

In 1985, the government launched a second reform programme through publication of a White Paper: *Serving the Country Better*. That reform aimed to introduce new public management concepts and policy tools. It advocated great decentralisation, improved budgetary management and greater mobility across departments of top level administrators. While the programme permitted the introduction of some important changes, by the time of the economic crisis of 1987, the political level and highest level of the administration had withdrawn their support, and basic structural changes were not implemented.

The main vehicle for improvements was the launching in 1994 of the *Strategic Management Initiative (SMI)*. This has been the first successful reform of the Irish Public Service since the foundation of the independent state. One of the reasons for success is that it has had strong support, not only from senior civil servants, but also from three successive governments. Its main objectives were to reform the institutions at national and local level to provide services, accountability, transparency and freedom of information. The SMI has been also a vehicle to promote quality across all government activities, including laws and regulations. For this task, each department was asked to undertake on a regular basis a systematic review of all its operations and ask whether each policy was necessary or whether it could be best achieved by alternative means.

Source: OECD (2001c), *Regulatory Reform in Ireland*, Paris.

Korea

Political and economic context

At the end of 1997, Korea suffered one of the worst economic crises ever experienced by an OECD country. Stabilisation of the crisis and recreation of the foundations for sustainable growth was accomplished through an ambitious programme of regulatory, financial, and structural reforms. These reforms boosted the confidence of investors, both domestic and foreign. Recovery in investor confidence, in turn, played a key role in a strong economy recovery in 1999 and 2000.

On taking office in 1998, the Korean government identified regulatory reform as an essential policy response to the economic crisis that had hit the country the previous year. The role of the state in the economy and in society moved from the interventionist model of economic development followed since the 1950s to an open and market-oriented model, with strong incentives for competition. Regulatory reform was integrated into the policy reforms needed to lay the foundation on which to build sustainable long-term growth. Such change involved a dramatic cultural shift, with government, business and consumers given new roles and responsibilities.

Box 13. Sequencing reform - first steps in Korea

From the 1960s, the Korean government was deeply involved in the country's economic development through intervention in industrial, labour, and credit markets. Moving aggressively in the 1960s to a policy of export-led growth, the government tried to support development by directing scarce capital to what it believed were the highest productivity uses, by protecting infant industries from foreign competition and by encouraging co-operation between firms to improve productivity capacities.

This model was progressively abandoned since the 1980s. Accompanying a succession of privatisation programmes, regulatory reform was primarily aimed at reducing the role of the state in the economy. Due to demands for reduced bureaucracy and regulatory intervention, regulatory reform has been an official government policy for more than 20 years. All political parties have supported the principle of reform, as have the bulk of the business sector and the general public.

The government of President Kim Young-Sam (1993-1998) engineered a major shift toward a more active and wide-ranging approach to regulatory reform. This period saw the establishment of important reform bodies and several pieces of key legislation. The major reform bodies created were the Presidential Commission on Administrative Reform, the Economic Deregulation Committee and the Industrial Deregulation Committee. Much of the current programme of reforms builds upon foundations laid during this period.

Source: OECD (2000b), *Regulatory Reform in Korea*, Paris.

Mexico

Political and economic context

Regulatory reform has been a central element of Mexico's strategy as it moves towards a strong and open market. Mexico's structural reforms required dismantling an overregulated and protected domestic economy, in which industries and services were almost closed to foreign and national competition. Most of the achievements of the country's regulatory programme have occurred in the midst of a political transition. Regulatory reform was introduced over a relatively short period of time and in spite of difficult circumstances, such as economic constraints resulting from the 1994-95 financial crisis.

Box 14. Sequencing reform - first steps in Mexico

The process of economic structural change that begun in 1983 was built on two pillars. First, public finances were put on a sound footing to strengthen the government's ability to influence macroeconomic variables. To achieve this goal, the government's size and its role in the economy were redefined. Secondly, the government expanded the space for market-driven decisions in order to promote a more efficient economy.

Privatisation and free trade served as the framework and starting point for regulatory reform in Mexico. A huge privatisation process transferred commercial activities from the public to the private sector and the free trade programme increased competition. The embracing of market policies called for a new regulatory framework that would clearly define the rules of the game and give certainty to investors. These policies were supported by two other strategies: the emergence of a structured competition policy and the modernisation of the public administration.

In 1989 an explicit national policy on regulatory reform had been put in place and expanded in scope and ambition. An important element of this strategy was the creation of an economic deregulation unit in the Ministry of Trade and Industry, which concentrated at the beginning on deregulating or re-regulating specific economic sectors to facilitate the flow of goods, services and capital stimulated by the trade liberalisation measures. It also worked with other ministries to establish new regulatory frameworks for privatised infrastructure sectors.

By the early 1990s, the economic deregulation programme had broadened to include an effort to review obsolete and inadequate regulations and build the necessary microeconomic conditions to increase efficiency and lower costs in all markets. These reforms were driven by the advancing pace of structural reforms induced by external competition and investment attraction. The reforms aimed at providing legal certainty and eliminating contradictions, thus reducing transition costs and facilitating decision-making.

Source: OECD (1999d), *Regulatory Reform in Mexico*, Paris.

In the 1980s, a collapse in oil prices and default on a massive external debt, followed by five years of economic stagnation, triggered a major shift in the economic model. Mexico was one of the first Latin American countries to adopt market-based principles as a cornerstone of economic development. More than two decades ago, the Mexican economy was heavily regulated and protected. Industries and services in many areas were shielded from foreign and national competition. Export played a limited role as most industries concentrated on internal markets.

Turkey

Political and economic context

Turkey has seen the need for a comprehensive regulatory reform agenda in response to both domestic and international factors. Turkey's accelerated drive towards European Union membership and successive economic crises has brought an unprecedented sense of urgency to Turkish regulatory process. Very successive economic crisis, culminating in the 2001 devaluation of the lira, lead major international organisations to call for a range of reforms to Turkish regulatory governances. Very substantial economic reforms were launched in particular in 2000 and in the first part of 2001.

The economic crisis of the past years exposed critical weaknesses in Turkey's current regulatory management system. The need for urgent implementation of comprehensive reforms were confronted with regulatory institutions and practices that in many cases were outdated, incoherent, ineffectively managed, and partially undermined by a very low trust in government, wide-spread non-compliance and in some cases corruption. The implementation and enforcement capacities of the public sector were lagging behind policy decisions.

Box 15. Sequencing reform - first steps in Turkey

The Turkish government began to address the regulatory shortcomings since 2000. Regulatory reform has increasingly been seen as an essential element in the range of policy responses needed to restore economic stability and growth. Moreover, Turkey gave increased priority to reforming the government and the public administration.

Turkey's *National Programme for the Adoption of the Acquis* was adopted by the Council of Ministers in 2001. The Programme set priorities and commitments to aligning Turkey's regulatory structure to the EU *acquis* and practices of EU Member States. Among the initiatives included in the Programme were the following: the draft law on public procurement; the set up of an independent legal or administrative body to consider complaints and settle disputes in public procurement; the commitment to set up a range of supervisory or independent authorities and boards; etc.

Linked to international commitments, the government approved in 2001 a comprehensive economic transition programme called *Strengthening the Turkish Economy*, which included a section on "Enhancing Transparency of the State and Strengthening of Public Finance" to improve public sector capacities. Constitutional amendments were implemented at the end of 2001, addressing liberal rights issues, and relations between citizens and the State, bringing the Turkish constitution in line with EU accession criteria.

The speed of reform in Turkey has been confronted with different challenges, e.g. the particular fragmentation of sporadic regulatory reforms and the lack of confidence and trust in institutions. An important element to highlight, however, is the complicated task to complete the transition from a static, state-led and rule-bound economy to an innovative and entrepreneurial economy, driven by the market economy and civil society. Regulatory governance takes place in the context of a highly centralised state structure and political culture. The benefits and advantages of market mechanisms are not yet fully appreciated by a large part of public sector officials.

Source: OECD (2002e), *Regulatory Reform in Turkey*, Paris.

3. Key elements for reform

3.1. Capacity building

One of the main challenges that face regulatory governance is to build capacities for sustaining reform, as well as for improving regulatory quality and performance. Capacity-building includes not only the way in which reforms are sequenced over time, but also how well-functioning institutions are maintained (*e.g.* the degree of independence and identification of good practices) and how to balance regulation against competition. This is extremely relevant for the design of a reform programme, in order to avoid regulatory or market failures.

A wide range of elements are part of capacity building. The OECD experience, based on assessments on how far OECD countries have evolved in their capacities for promoting regulatory quality, has shown that a strong conceptual framework is essential to succeed. The approach has to link three different pillars: regulatory policies, regulatory institutions and regulatory tools. This section covers some elements that need to be taken into account while building capacities for regulatory quality.

Box 16. Japan and Mexico: progress in implementing regulatory reform

Japan and Mexico were two of the first countries to be reviewed by the OECD in 1999. In 2004 they underwent a monitoring process aimed at assessing the progress made in implementing regulatory reform.

In Japan, there was a need to strengthen the shift from a model of state-led growth to a model of market-led growth characterized by a more efficient and flexible economy. This called for further efforts to improve regulatory tools and institutions, to reassess existing regulations in the light of current economic and social developments, and to assess the impact of new regulations when they are drafted. The government has concentrated on a more pragmatic and incremental approach toward implementation. Strong political leadership at the highest level has been an important factor. Created in 2001 on a three-year mandate, the Council for Regulatory Reform has been driving regulatory reform in the country. The council consists of 15 private-sector experts, supported by a staff of about 30 recruited from the private sector and ministries. It produces an annual report, leading to recommendations for the Prime Minister's Three-Year Plan for Promoting Regulatory Reform, which is updated yearly. Placed within the Cabinet, a Minister of State for Regulatory Reform is responsible for supervising implementation of the Three Year Plans by ministries and agencies.

In Mexico, regulatory reform was part of the structural reforms that required the dismantled an overregulated and protected domestic economy, where industries and services were almost closed to foreign and national competition. Regulatory policy was also part of a market opening strategy, promoting free trade and attracting investment in the country. The Mexican government was able to introduce a broad regulatory programme in a relatively short period of time in spite of difficult circumstances. The elements that contributed to supporting reform were political willingness and commitment to regulatory policy at the highest political level. Thus, Mexico introduced legal, institutional and policy changes to its regulatory programme in 2000. The reforms to the Federal Administrative Procedure Law institutionalised a wide-ranging regulatory programme: the Federal Regulatory Improvement Commission (COFEMER) was created as a technically and administratively independent body of the Ministry of Economy, to co-ordinate and to supervise the Regulatory Improvement Programme of the government. COFEMER is responsible for administrative simplification, the analytical review of all draft regulations and their regulatory impact assessments, the proposal to update and reform existing laws and regulations and the support of regulatory programmes at sub-national levels of government.

Source: OECD (2004b), *Japan – Progress in Implementing Regulatory Reform*, Paris; OECD (2004d), *Mexico – Progress in Implementing Regulatory Reform*, Paris.

Regulatory institutions

Institutions take forward the regulatory policy agenda. They include not only regulatory management and oversight bodies within Cabinets and executive government, within administrations and Parliaments, but also independent regulators and other key contributors to regulatory quality, such as specialist law drafting offices or even Parliaments.

Institutions should be “effective and credible mechanisms inside the government for managing and co-ordinating regulation and its reform”.⁸ To accomplish this goal, specific responsibilities and powers should be allocated to agencies at the centre of government to monitor, oversee and promote progress across the whole of the public administration, because this is where the expertise lies and policies are formulated.

Co-operative and confrontational relationships between regulatory institutions need to be carefully balanced. Ministerial independence might be challenged by a higher degree of central control over issues of legal quality, budget impacts and public service staffing policies. Experience in OECD countries shows that reforms to improve the quality of the regulation cannot be entirely left to regulators, but they will also fail if they are too centralised. Regulators must take primary responsibility under a system of incentives overseen by regulatory management and reform bodies.

Central oversight body

Best practice amongst OECD countries suggests that a central oversight body is probably essential to the success of the reform program. In many cases these bodies are located in the Prime Minister’s Department or President’s office. In other, often smaller, countries a more decentralised approach has been adopted. But in either case there needs to be co-ordination on regulatory policy issues within government (see Box 17).

Box 17. Regulatory oversight bodies: the OECD experience

The strongest central units to promote and oversee regulatory quality are in three countries with presidential systems: **Korea, Mexico** and the **United States**. All of them have established powerful bodies independent from the regulating bodies, with a variety of legal, procedural, and managerial authorities (Korea and Mexico have created high-level commissions, the United States has built regulatory quality management into its central management and budgeting institutions). Presidential systems have the capacity for cross-cutting, top-down policy reforms, and have a tradition of institutional structures to carry out presidential policies.

In countries with relatively weak centre of government co-ordination and management functions, this trend is less apparent. However, increasing attention has been paid to co-ordination between agencies with responsibilities for particular aspects of the regulatory reform programme. In the **Netherlands**, the Ministries of Justice, Environment and Economic Affairs now co-operates in providing “helpdesk” service that is at the heart of attempts to improve RIA standards across the administration. Many countries, including **Germany, Japan** and **Portugal** have also created independent high-level commissions to assist in determining the shape of regulatory reform policy.

Source: OECD (2000c), *Regulatory Policies in OECD Countries*, Paris.

8. OECD (1997).

Adequately resourced (in terms of funding and trained staff) central oversight or co-ordination bodies can play a number of key roles in the reform process, including:

- Ensuring a ‘whole of government’ approach is taken to reform;
- Acting as an advocate of quality regulation and good regulatory governance; and
- Providing technical support to those applying regulatory tools.

The role of government ministries and their support is also crucial, but coordination is difficult to achieve when ministries are in separate ‘stove pipes’, that is, horizontal links between them are not strong. Regulatory reform cuts across all ministries which formulate and implement government policy. Central oversight or co-ordination bodies may help overcome this problem, to some extent, and encourage increased dialogue and interaction between the different ministries. But ultimately the ministries themselves must commit to regulatory reform and ensuring regulatory quality.

In addition, advisory councils – including representation from business and consumer interests – can help maintain momentum, provide advice and make information more widely available. They can provide the opportunity for members of the public to participate directly in the reform process and thereby create a sense of ownership in the process and constituency for further progress. They can also play an important role in communicating the benefits of reform to the community, a role that is strengthened when they are considered independent from government.

Independent regulators

Independent regulators are also part of a country’s regulatory structure. They include economic regulators for network industries, or regulators set up to support civil liberties and foster administrative transparency. Independent regulators have become more significant over the last decade.⁹ They contribute to improving regulatory quality, transparency, stability and expertise. When such regulators are responsible for making rules or interpreting them, they should operate under the same disciplines as other rule-makers, notably as regards RIA.

Box 18. Independent regulators

In most OECD countries, economic structural reforms, promoted in part by international commitments, have prompted the establishment of independent regulatory agencies and the redesign of existing regulators. These institutions are intended to provide neutral regulatory oversight in liberalized or privatized sectors, and prudential oversight of competitive markets. The design and management of such regulatory agencies constitute an important component of regulatory management. Key issues in this respect include considerations on how to establish institutions that are:

- Competent, accountable and independent;
- At arms length from short-term political interference;
- Capable of resisting capture by interest groups, but still
- Responsive to general political priorities; and
- Have decision-making procedures that take into account the particularities of the area being regulated, while at the same time maintaining transparency and accessibility for all stakeholders.

Source: OECD (2004e), *OECD Reviews of Regulatory Reform – Germany. Consolidating Economic and Social Renewal*, Paris.

9. For a recent discussion on the set up of independent regulators see OECD (2005), *Designing Independent and Accountable Authorities for High Quality Regulation*, Working Party on Regulatory Management and Reform, OECD, Paris, also available at: www.oecd.org/dataoecd/15/28/35028836.pdf

Strong and effective institutions require expert staff and resources to provide all core functions. Expertise and experience need to be developed and maintained over time so that officials responsible for policy development and institutional design are more aware of and better able to identify what is necessary for high quality regulation that provides a better framework for investment. Synergies among regulatory institutions are crucial for policy coherence and effective coordination.

Building quality control and legal conformity

In the past 20 years, the regulatory reform agenda has undergone changes. At first, it was thought that governments just needed to get out of the way and let private enterprise take the lead. A period of deregulation followed. However, sometimes markets failed and this showed that markets require a solid foundation of good law to support their operation. Underlying laws are needed to define private property and provide for legal redress.

The first response to the new role of the regulatory State was to develop criteria to improve the quality of individual laws and regulations on a case by case basis. Behind this lies the recognition – based on years of experience with regulatory reform – that the success of economic and social regulations fundamentally depends on governments’ capacities to produce, co-ordinate, implement, and review regulations. Now, the concept of regulatory management is giving way to that of regulatory governance, reflecting the dynamic and pro-active role of government in providing quality regulation. Markets and democracy go hand in hand. And there must be a sound underpinning of law for markets and democracy to work. The legal framework is needed to underpin the transition from state-led to market-led growth. Good governance, backed up by supportive civic institutions, boosts the performance of markets.

Regulatory Impact Analysis (RIA)

RIA is perhaps the most important single tool (but all the tools are complementary and supporting). It aims to ensure that the most efficient and effective regulatory option is chosen by establishing a systematic and consistent framework for assessing the potential impacts of government action. RIA is about providing the information necessary to make better regulatory decisions. It aims to make transparent the costs and benefits of different regulatory and non-regulatory options that may be suggested by ministries. In this way, the trade-offs between different policy options are more apparent to policy makers. RIA is not, however, a substitute for political accountability, it is intended to complement good decision making by those empowered to make decisions and implement regulations.

There is no single model for a good RIA program. When designing a RIA program it is necessary to take into account institutional, social, cultural and legal contexts in the relevant country. An OECD study identified a number of good practices in Member countries which maximise the benefits to be gained from implementing a RIA program (see Annex 1).

In some countries there has been resistance to the concept of RIA because it may challenge traditional policy making processes. The focus on making trade-offs transparent, quantifying the both the costs and benefits of regulation and requiring regulation to have a clearly specified objective, can be challenging for some policy makers and regulators.

In countries where the concept of RIA is new, it may be prudent to introduce RIA elements over time as support for it grows and expertise in its use develops. Initially, for example, there could be a general requirement to identify those affected by a regulation prior to its introduction. This could develop over time to require more quantitative estimates of costs and benefits to be prepared. Consultation requirements could become more inclusive overtime. This approach of introducing elements of a full RIA program over time have been used successfully in a number of countries to facilitate the acceptance of RIA in the policy making process (see Box 19).

Box 19. Introducing RIA over time

In **Greece** the requirement to produce a budgetary impact statement is an important precedent for establishing full regulatory impact analysis. The Greek constitution requires that all legislative proposals, including amendments, must be accompanied by a budgetary impact assessment. This assessment reviews the future impact on the budget of the legislative proposal. Without a budgetary impact statement, Parliament cannot discuss or vote on a proposed bill.

Another approach to introducing RIA requirement is to target regulatory proposals which are likely to have a significant impact on the economy or the public. In **Korea**, the RIA system requires a rough estimate of costs for all regulations but a full RIA must be conducted for 'significant' regulations. These are defined as those which have a monetary impact over a certain amount, impact on more than 1 million people, impose a clear restriction on market competition or represent a clear departure from international standards.

In **Mexico**, the government has adopted a 'partially targeted' approach, where RIA is applied to all new laws and regulations but three possible levels of analytical rigour can be applied depending upon the importance of the regulation.

Sources: OECD (2000b), *Regulatory Reform in Korea*, Paris; OECD (2001d) *Regulatory Reform in Greece*, Paris; OECD (2004d) *Mexico - Progress in Implementing Regulatory Reform*, Paris.

Administrative Procedure Acts

The Administrative Procedure Act (APA) is a basic tool for controlling excessive administrative discretion. The adoption or amendment of administrative procedure laws should try to improve the orderliness of administrative decision-making, to define the rights of citizens more clearly, and to detail standard procedures for making, implementing, enforcing and revising regulation. Adopting these practices in legislative form effectively transforms them into rights that the public can assert. By strengthening citizens' rights and controlling arbitrary regulatory actions, these acts are fundamentally changing the relationships between the public administration and the citizen. The importance of these kinds of reforms for improving certainty and reducing regulatory risk in the market, while enhancing democratic accountability, can hardly be over-estimated.

APAs can have a wide scope. The following elements indicate the more or less frequently included matters, organised under headings broadly related to the regulatory "lifecycle":

- **Making regulation:** Consultation requirements at different stages of regulatory development, preparation of regulatory impact analysis; consideration of alternative instruments; publication requirements; dates of entry into effect; duration (including automatic "sunsetting") and disallowance.
- **Implementation and enforcement:** Availability of regulations; rules on incorporated material; general rules on extent and exercise of administrative discretions, including publication of objective criteria for judging applications, time-limits for decision-making, publication requirements for administrative decisions, requirements to give reasons for rejecting applications.
- **Revision and amendment:** Application of general procedural rules to amendments of existing regulation, rules on updating of incorporated material.
- **Appeals and due process.** Hearing procedures in relation to disciplinary actions for violation of the rights of regulated entities or for appealing rules and administrative actions such as enforcement and sanctions.

Few APAs cover the entire range of matters enumerated above. The content of administrative procedure laws therefore can vary quite widely between countries, with individual laws often reflecting the specific regulatory and administrative issues that have given rise to the legislation in the particular country (see Box 20).

Box 20. Administrative Procedure Acts: a clear legal instrument

In **Italy**, **Mexico** and **Spain**, the silence-is-consent or tacit authorisation rule switches the burden of action entirely: if administrators fail to act within time limits, the citizen is automatically granted approval.

Japan used its 1994 administrative procedure law to attack the problem of administrative guidance by forbidding the use of coercive guidance and establishing transparency standards for voluntary guidance.

In the **United States**, the cornerstone of the regulatory system is the 1946 Administrative Procedure Act, which established a legal right for citizens to participate in rule-making activities of the government on the principle of open access to all.

Mexico's reforms to its Federal Law of Administrative Procedures in 2000 established a broad framework of principles for regulatory quality and measures to enhance administrative transparency and consistency. These include rights of public access to information possessed by regulators, a clearer administrative appeal mechanism, and time limits for authorities to respond to a public request for information or authorisations and minimum criteria to be followed by public officials during an inspection.

In **Hungary**, the 1987 Act on Legislation established the limits to legislative action, defined the different types of regulatory instruments, regulated the process of preparing them, distributed the responsibilities of the different bodies involved in the process, and set out other important aspects such as the use of public consultation. The Act was heavily revised in 1999 and 2000 to improve these administrative controls, with an emphasis on legal harmonisation with the European Union.

A series of amendments to the 1958 Administrative Procedure Law were adopted in **Spain** to increase accountability and transparency across the public administration, that is, to move away from the authoritarian traditions of the Franco regime to new relations between the government and citizens. The powers of the Spanish central government organisation were redefined to separate the political from the administrative levels throughout the administration.

Korea has adopted in recent years several significant pieces of legislation providing controls on administrative discretion. The Administrative Procedure Act of 1996, which took effect in January 1998, sets out general requirements for making and implementing regulation; it also establishes the Administrative Appeals Commission to hear a wide range of administrative disputes and limits the use of informal "administrative guidance". The Administrative Disclosure Act seeks to make transparent the reasons underlying administrative decision-making in a range of areas. The Basic Act on Administrative Regulations, as the primary legislative driver of regulatory reform, includes additional procedural requirements for law-making (including Regulatory Impact Assessment and consultation) and emphasises transparency. Resistance to this legislation within the administration was strong. The Administrative Procedures Act was passed only after a decades-long battle against major opposition from the bureaucracy, which worried about the limits on administrative discretion implied by greater transparency and stricter procedures.

Technical capacities and skills

Human resources able to conduct regulatory reform are an essential element of capacity building. Many regulators do not have the capacity to conduct Regulatory Impact Analysis, for example, either because they lack of skills or lack of resources. Even if regulatory bodies have the capacity to do so, required analytical methods can be too complex and costly to be practical. The lack of skills reflects the fundamental disregard for the need for large scale, sustained and detailed training to be provided by co-ordinating bodies.

A fundamental role of oversight bodies is to increase regulatory capacities throughout the administration, as a means of ensuring systematically that higher quality is generated. Key tasks in support of this role include the publication and dissemination of extensive written guidance and the conduct of training in regulatory quality issues. This role is the one with the greatest long-term impact in implementing regulatory policy, since it is based on the need to achieve cultural change among regulators

3.2. Communication and consultation

Communication and consultation are two basic elements of regulatory transparency. Transparency's importance to the regulatory policy agenda springs from the fact that it can address many of the causes of regulatory failures, such as regulatory capture and bias toward concentrated benefits, inadequate information in the public sector, rigidity, market uncertainty and inability to understand policy risk, and lack of accountability. Transparency of the regulatory policy itself, as well as its institutions, tools and process is equally important for its success. Transparency encourages the development of better policy options, and helps reduce the incidence and impact of arbitrary decisions in regulatory implementation. Transparency is also rightfully considered to be the sharpest sword in the fight against corruption.

Open dialogue, communication and consultation involving all major stakeholders on the benefits and costs of reform will improve the understanding of impacts, increase regulatory transparency and reduce transition costs. It will also improve the legitimacy and credibility of government actions.

3.2.1. Communication strategies

Access to regulatory information is a precondition for a well-functioning market. Investors base business decisions on the formal and informal regulatory framework as well as the predictability of regulatory changes. Also, lack of clear knowledge of the existing framework can foster non-compliance by businesses and create possibilities for unethical behaviour. Improving the clarity of legal and regulatory frameworks and the effectiveness of communication and access arrangements is fundamental to make substantial progress in the regulatory reform agenda.

Different transparency tools and mechanisms, including new information and communication technologies (ICT) are now available for governments and regulators. ICT can be used to share information, improve effective access to consultation opportunities, reduce transaction costs and open access to government markets. The potential use of ICT-based approaches in areas such as public consultation, electronic data filing, one-stop shops and government procurement is still to be fully exploited.

3.2.2. *Consultation mechanisms*

The use of public consultation has different implications for the improvement of the regulatory framework. First, consultation is increasingly being used to collect empirical information for analytical purposes, especially as a precondition for the move toward more analytically based models of decision-making processes (*e.g.*, the use of impact assessments to evaluate the impact of regulations). Thus, consultation is a cost-effective source of data, as well as a source of information on issues such as the acceptability of different policies, which can be essential in determining practicability and designing compliance and enforcement strategies.

Second, consultation mechanisms are also being increasingly characterised by greater openness and accessibility, particularly for smaller, less organised interests. This reflects a move away from corporatist modes of governance toward more pluralistic approaches. The use of information technology innovations has had a substantial benefit in increasing the effective availability of opportunities for consultation. The provision of draft legislation, discussion papers or other material via the Internet or the ability to submit comments electronically is the proof of the new use of IT mechanisms for effective consultation.

3.3. *Constituency development*

The sustainability and coherence of reform depends on its acceptance by citizens. Concrete and credible steps are needed to demonstrate to citizens that important public interests such as safety and equity will be safeguarded within dynamic and global markets. These steps can engender public confidence that, in turn, reduces political constraints and the risks of excessive regulation, and speeds up, deepens, and sustains market reforms. Lack of trust is a major cause of over-regulation. When effective, efficient government action improves trust in markets and states, it contributes to the performance of both.

Political demand for regulatory reform is also relevant. Adoption of the policy at high political levels lends authority to the institutions of reform and ensures that the government incentives to strive to achieve the policy's objectives.

Changing the administrative culture

One of the most difficult challenges to implement regulatory reform is to change the country's administrative culture. This is needed for several reasons. First, legal conformity is not sufficient to issue regulations. As regulatory management and reform has been implemented, it is clearer that there is a need to include economic criteria when designing regulations. But this raises a different set of questions which many public servants are not trained to handle. Second, policy-makers should ask whether regulation is necessary, but this is different when the enactment of a regulation is politically expedient. Last but not least, there is a tendency of government officials to think they know best and mistrust the market.

4. **Conclusions**

Regulatory reform should be an identifiable policy integrated within the broader governance agenda, making a contribution to the continuous structural adjustment of economies and societies. In many countries, administrations have not yet fully integrated the need for regulatory reform, and remain too inward-looking. The starting point to introduce changes is not easy to identify, as countries differ in their institutional and cultural constraints, in their public policy goals and in the extent to which they may consider certain economic sectors to fulfil public service functions.

Key challenges include not only promoting an understanding of the economic importance of regulation, but also integrating a comprehensive approach that maximise the efficiency and effectiveness of regulation. The introduction of specific strategies that can contribute to move forward may help to define the agenda for regulatory reform (see Box 21).

Box 21. Forward looking strategies

Some forward-looking strategies that governments could introduce to start with regulatory reform are:

- *Action plans*, to indicate policy objectives that include regulatory goals;
- *Annual reports*, to highlight outcomes and results of regulatory policy objectives;
- *Priority-setting*, to identify priorities for integrating elements of regulatory reform and allocating resources;
- *Self-assessments*, to revise regulatory needs and policy recommendations; etc.

ANNEX 1. GETTING MAXIMUM BENEFIT FROM RIA: GOOD PRACTICES

The following key elements are based on good practices identified in OECD countries:

1. *Maximize political commitment to RIA.* The most effective programmes are those that require RIA as a condition for the consideration of new regulations and laws.
2. *Allocate responsibilities for RIA program elements carefully.* Responsibilities for RIA programme elements, such as objectives, legal analyses, justification and effects, should be allocated carefully, sharing them between ministries and a central quality control unit.
3. *Train the regulators.* Regulators must have the skills to conduct high-quality RIA. They should clearly understand the methodological and data collection processes and the role RIA plays in assuring regulatory quality.
4. *Use a consistent but flexible analytical method.* Determining which method to apply is a central element of RIA design and performance. Several RIA methods are commonly used in OECD countries. These include: benefit/cost analysis, cost effectiveness or cost/output analysis, fiscal or budget analysis, socio-economic impact analysis, consequence analysis, compliance cost analysis and business impact tests.
5. *Develop and implement data collection strategies.* The usefulness of a RIA depends on the quality of the data used to evaluate the impact of a proposed or existing regulation.
6. *Target RIA efforts.* Policy-makers should target RIA towards proposals that are expected to have the largest impact on society, and ensure that all such proposals are subject to RIA scrutiny.
7. *Integrate RIA with the policy-making process, beginning as early as possible.* RIA is a challenging process that needs to be built up over time. It has to be integrated into the policy-making process if the disciplines it brings are to become a routine part of policy development.
8. *Communicate the results.* The assumptions and data used in RIA can be improved if they are tested through public disclosure and consultation.
9. *Involve the public extensively.* The public, and especially those affected by regulations, can often provide much of the data that are needed to complete the RIA. Consultation can furnish important information on the feasibility of proposals, on the range of alternatives considered, and on the degree to which affected parties are likely to accept the proposed regulation.
10. *Apply RIA to existing as well as new regulation.* RIA is equally useful in reviewing existing regulation as it is in assessing proposed new regulatory measures

Source: OECD (1997), *Regulatory Impact Analysis. Best Practice in OECD Countries*, Paris.

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