

Issues Paper on Regulation

1, Facts

In an era of globalization, in which barriers to movement of goods, services and people are falling, citizens expect their governments to ensure their safety and welfare. Businesses expect public authorities to ensure a level playing field and boost competitiveness. Regulation - “the diverse set of instruments by which governments set requirements on enterprises and citizens” (1) - is key to meeting these challenges. Regulations “include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers” (2). It serves many purposes — to protect health by ensuring food safety, to protect the environment by setting air and water quality standards, to set rules for companies competing in the marketplace to create a level playing field. Regulation is a necessary and accepted aspect of modern society. We regulate at all levels — at local, national and international level.

In a large number of countries, public trust has been in decline for the past several years. One of the causes of this phenomenon lies in governments’ ineffective and inefficient use of regulations. One of the examples of this was the Lehman Brothers fiasco in 2008, in which government regulations, such as regulations against fraud, were not sufficiently enforced prior to the meltdown. Poorly conceived and ill-considered regulation can prove to be excessive and go beyond what is strictly necessary. Some regulation can be overly prescriptive, unjustifiably expensive or counterproductive. Layers of overlapping regulation can develop over time, affecting businesses, the voluntary sector, public authorities and the general public. Regulation can also become quickly outdated. Rapid technological developments, open and expanding global markets and ever-increasing access to information mean that regulation has to be kept under constant review and adapted to keep pace with the fast moving world. (3)

In contrast to regulation, deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance. It consists of setting fewer and simpler restrictions and burdens on business (by eliminating, reducing or simplifying those no longer needed and not pro-competitive), to encourage the efficient operation of markets and a raised level of competitiveness and productivity. (4)

2, Issues derived from Facts

Achieving regulatory quality in today's world is increasingly challenging. The recent global financial crisis has showed that governments used regulations often inefficiently and inequately while deregulation in the financial sector may have contributed to the crisis. In addition, far-reaching deregulation in some countries in sectors like transport and electricity supply has shown that the desired benefits for citizens have not materialized.

The main issue therefore is to how prevent poorly conceived, ill-considered, overly prescriptive, unjustifiably expensive or counterproductive regulation. Layers of overlapping regulation can develop over time, affecting businesses, the voluntary sector, public authorities and the general public. In addition, regulation can also become quickly outdated.

In contrast, good regulation should be a product of good policy advice and good decision-making. The modern regulatory challenge is to develop a regulatory system which can effectively deal with the increasing demand for regulation, inherent bias to regulate, and complex nature of regulatory interventions. This requires that the right incentives, principles, procedures, and institutions of government are in place and working effectively to ensure that regulation is necessary, cost effective, and in the best interest of society. (5)

According to the OECD, good regulation should: (i) serve clearly identified policy goals, and be effective in achieving those goals; (ii) have a sound legal and empirical basis; (iii) produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels. (6)

Through RIA - Regulatory Impact Analysis (or Assessment), governments consider any potential positive/negative effect of a regulation in preparation (and whether it is likely to achieve the desired objectives), before approving it.

3, Responses to regulatory challenges in selected countries/regions

OECD

In 2005 the OECD has formulated seven Guiding principles for regulatory Quality and performance (7):

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation
2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment
3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
4. Review and strengthen where necessary the scope effectiveness and enforcement of competition policy

5. Design economic regulations in a ll sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests

6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness

7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support them.

European Union

The European Union has, over the years, developed a sophisticated body of legislation which continues to deliver economic development, environmental protection and improvement of social standards, notably through the completion of the internal market. As progress towards these objectives is being achieved, it has also become clear that the way in which we regulate has considerable impact on whether we meet these objectives efficiently.

In the context of the renewed Lisbon Strategy, refocused on growth and jobs, the Commission has launched a comprehensive strategy on better regulation to ensure that the regulatory framework in the EU contributes to achieving growth and jobs, while continuing to take into account the social and environmental objectives and the benefits for citizens and national administrations. The EU's Better Regulation policy aims at simplifying and improving existing regulation, to better design new regulation and to reinforce the respect and the effectiveness of the rules, all this in line with the EU proportionality principle.

The better regulation strategy of the EU is based on three key action lines:

- Promoting the design and application of better regulation tools at the EU level, notably simplification, reduction of administrative burdens and impact assessment.
- Working more closely with Member States to ensure that better regulation principles are applied consistently throughout the EU by all regulators.
- Reinforcing the constructive dialogue between stakeholders and all regulators at the EU and national levels. (8)

Brazil

In 2007, the Brazilian Government set up the Programme for the Strengthening of the Institutional Capacity for Regulatory Management (PRO-REG). This Programme has the purpose of contributing to the improvement of the regulatory system and co-ordination among the institutions that participate in the regulatory process. The Programme aims at introducing new mechanisms for accountability, participation and monitoring from civil society and at strengthening the quality of market regulation. Its objectives are:

- To strengthen the regulatory system to facilitate the full exercise of functions by all actors
- To strengthen the capacities to formulate and analyse public policies in regulated sectors
- To improve co-ordination and strategic views between sectoral policies and the regulatory process

- To strengthen autonomy, transparency and performance of regulatory agencies
- To develop and to improve mechanisms for social accountability and transparency during the regulatory process. (9)

Canada

The Government of Canada is committed to creating a performance-based regulatory system that will protect and advance the public interest in the areas of health, safety and security, the quality of the environment, and the social and economic well-being of Canadians.

The objectives of a performance-based regulatory system are:

- Protection of Canadians and their environment.
- Regulation of the economy in the most efficient, timely and cost-effective manner.
- Clear service standards that hold the Government to account for performance.
- Monitoring and reporting on performance to provide pressure for continuing improvement.
- Ongoing assessment of and adjustment to regulatory approaches to allow for greater cooperation between regulators and orders of government. (10)

Japan

For the Financial Services Agency of Japan, "Better Regulation" refers to improving the quality of financial regulation in order to bring about a Better Regulatory environment. It aims to do so by concentrating on four major pillars:

First Pillar: Optimal combination of rules-based and principles-based supervisory approaches

Second Pillar: Timely recognition of priority issues and effective response

Third Pillar: Encouraging voluntary efforts by financial institutions and placing greater emphasis on providing incentives

Fourth pillar: Improving the transparency and predictability of regulatory actions (11)

United Kingdom

In the UK the Better Regulation Commission, a non-departmental public body of the British government, advises the Government on action to reduce unnecessary regulatory and administrative burdens, and ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted. The framework for action in the UK now includes principles, regulatory impact assessments, simplification plans, and post-implementation reviews. (12)

5, A Few Questions

1. What are the main challenges to achieving regulatory quality in today's conjuncture (the fiscal crisis being just one among many complex policy areas)?

2. How far are measures being seriously instituted to ensure respect of the key principles for good regulation of clear policy purpose, cost effectiveness, transparency, predictability, accountability, regular review etc?
3. In addressing this whole issue, how successful have governments been in establishing the concept of a regulatory policy as a 'whole-of-government policy' respected by all?
4. To what extent has there been progress in building a coherent institutional framework to support such a policy, and overcome the disparate, ill coordinated systems, which had progressively emerged in the past according to need?
5. How effective are the decision processes both at national and international levels for meeting new emerging needs? Are the right policy instruments for a given problem selected, and how soon in the decision process? To what extent is regulatory impact analysis (RIA) systematically used at least for major policy choices? What are the key obstacles in ensuring compatibility with international regulation and emerging global priorities, and how best to address them?
6. Where are the main failures in terms of regulatory management and oversight systems such as periodic information, consultation techniques, achieving compliance, evaluation etc?

6, References

- (1) The OECD report on regulatory reform, Volume 1
- (2) Ibid
- (3) Better Regulation – simply explained. European Communities, 2006
- (4) UN Public Administration Glossary:
<http://www.unpan.org/DPADM/ProductsServices/Glossary/tabid/1395/language/en-US/Default.aspx>
- (5) Steven Bailey and Graham Boxall (Ministry of Commerce, New Zealand), APEC Initiatives on Good Regulatory Practice
http://www.med.govt.nz/templates/Page_15218.aspx
- (6) OECD Guiding Principles for Regulatory Quality and Performance, OECD 2005
- (7) Ibid
- (8) http://ec.europa.eu/governance/better_regulation/index_en.htm
- (9) OECD Report on "Government Capacity to Assure High Quality Regulation in Brazil":
<http://www.oecd.org/dataoecd/48/2/40668590.pdf>
- (10) <http://www.tbs-sct.gc.ca/ri-qr/index-eng.asp>
- (11) <http://www.fsa.go.jp/en/policy/iqfrs/index.html>
- (12) http://en.wikipedia.org/wiki/Better_regulation