

Regulatory Governance: The New Frontier

Governance in regulatory oversight

Social impacts of regulations

**Regulators and the regulatees: being
friendly without being cozy?**

**Open government towards user
centered regulation**

Governance in regulatory oversight

Delivering results and implementing reforms require significant government capacity. The implementation of regulatory reform is critically dependent on the existence of appropriate government commitment and institutions. These institutions need to be transparent and accountable, with mandates and sufficient power to ensure that reform translates into action on the ground. They will need to ensure that regulation is part of the policy environment, not simply the tail end of the process. To meet policy objectives, regulation needs to be integrated into the policy cycle, so it can deliver those objectives.

Significant institutional change has recently occurred in a number of countries. In particular, an important element of the debate involves setting up independent advocacy bodies to ensure that reforms are broad based and supported by citizens and businesses. The scope for reviewing regulations is also significant, and must be balanced with political discretion that may apply at various levels in different countries.

- What political actions can governments take to create a credible and sustainable commitment to regulatory reform in the long term, ensuring stability beyond a given political cycle? What are the critical political challenges to improve and strengthen institutional design?
- Is it possible to enshrine regulatory quality oversight within existing national institutional frameworks? What are the main lessons from implementation?
- What is the scope for independent and autonomous bodies to be in charge of regulatory quality oversight?
- If robust regulatory governance is to reinforce the integrity of regulators and regulatory enforcement, what role and mandate should regulators be given to act as an early warning system to identify emerging issues or crises in the future?

Chair: **Mr. George Redling**, Former Assistant Secretary, Treasury Board of Canada

Speakers:

- » **Ms. Catherine Atkins**, Manager, Treasury, New Zealand
- » **Dr. Johannes Ludewig**, Chair, National Regulatory Control Council (Nationaler Normenkontrollrat), Germany
- » **Mr. Stig Von Bahr**, Chairman, Regelrådet, Swedish Better Regulation Council, Sweden
- » **Mr. Stephane Jacobzone**, Senior Economist, Public Governance and Territorial Development, OECD

Session B1. Regulatory Oversight

Key points

- Independent assessment of regulatory quality is seen as critical to ensure appropriate independent scrutiny of regulations, and has been adopted in a number of Northern European Countries: demand for evidence-based analysis that is credible to the government and to the community.
- Transparency, fair assessment, easily applicable methodology, clear procedures, public communication with government, and possibly with Parliament are essential to ensure credibility and accountability.
- Officials in charge of regulatory oversight need to be careful to be visible and relevant at the highest political level, yet should not overshadow regulators, with a low profile in terms of public communication and maintaining good horizontal relations. They also need to build trustful cooperation with regulators and ministries through partnerships and dialogue.
- Aside from independence, appropriate staffing, adequate and transparent legal framework, long term and clear mandate are essential elements.
- Independent regulatory oversight is not static. It may have to start with a “lighter touch”, and some more narrow scope of review, and may expand over time, with some deeper assessment and a broader understanding of impact.
- Countries learn from comparative experience but need to root these elements in their institutional framework in a way that reflects local conditions: foreign experiences are catalyst for change, but change needs to be rooted in national settings.
- Regulatory Quality Oversight will not substitute for political choices, but helps to make decisions clearer and makes the costs and trade-offs of policy decisions explicit.
- Regulatory Quality oversight needs to provide leadership: being in the center of government, or close to a center of power, e.g. related to budgets or Ministry of Finance can help, staffing and statutes of members for independent committees is also critical.

Quotes (adapted)

“It takes time to change attitudes: regulators are slow turners”.

Implications for the Principles:

The governance aspect of regulatory oversight is an essential element. While different institutional settings exist, this critical element will have to be more explicitly reflected in the principles than has been the case until now. Political commitment at a high level is also essential, as well as the quality of coordination and trust built with regulators.



THE TREASURY
Kaitohutohu Kaupapa Rawa

REGULATORY POLICY AT THE CROSSROADS

Designing a New Zealand Productivity Commission

Catherine Atkins

New Zealand Treasury

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Designing a New Zealand Productivity Commission

- What the Commission will do
- Why the Government thinks it is needed
- Critical design features

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Role of the Commission

To provide advice to the Government on improving productivity to support the overall well being of New Zealanders

© The Treasury

Role of the Commission

- Inquire into productivity related matters in both the private and public sectors
- Undertake reviews of regulatory regimes and agencies
- Undertake regulatory impact analysis of specific regulatory proposals

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So why is the Government doing this?

- Size and distance continues to create challenges for NZ
- Demand for innovative new ideas – challenging the status quo
- Demand for evidence-based analysis that is credible to the government and the community

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Could we import the Australian Productivity Commission model?

- Seen as catalyst for change – raise awareness
- Brings together broad community wide perspectives
- Issues discussed at arms length from Government
- Very 'open' policy development process – significant public input

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Critical design features



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Independence

- Independent Crown Entity – same level of independence as competition regulator
- Security of tenure of Commissioners
- Highly credible Commissioners

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Transparency

- Public inquiries
- Expected to consult widely in carrying out inquiries and reviews
- The terms of reference of reviews must be published
- Draft reports will be released for consultation
- Final reports and recommendations must be tabled in Parliament

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Relevance

- *To Government* – Government decides inquiry topics
- *To Future Governments* – mandate broad enough for it to consider future governments' agendas. Appointments critical.
- *To Community* - it needs to take in a wide range of views and perspectives of the community and consult widely

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Capability

- Build internal, specialised capabilities in economic analysis
- Credible Commissioners

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Conclusion

- An experiment informed by overseas experience
- Provide policy leadership, be a catalyst for change
- Challenge the Government and officials to do better

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Regulatory Policy at the Crossroads Towards a New Policy Agenda

Session B1: Governance in Regulatory Oversight

Dr. Johannes Ludewig

**Chairman of the Nationalen Normenkontrollrat (NKR) in Germany,
Member of the HLG**

Paris, 28th October 2010

Political actions to create a sustainable commitment to regulatory reform (1)

1. Political commitment

- **German Coalition Treaty** (2005, 2009)
Commitment to reduce administrative burdens and to establish the Normenkontrollrat (NKR)

- **Government programme** on the reduction of bureaucracy and better legislation
 - Reduction of the stock of administrative burdens (Reduction target of 25% by 2011)
 - Assessing administrative burdens in all new regulations (ex-ante procedure)

**Bound to the
respective
legislative
period**

Political actions to create a sustainable commitment to regulatory reform (2)



2. Institutional framing

(Act on the Establishment of the NKR)

- The NKR is a permanent and independent body
- The mandat of its members (5 years) is not linked to the legislative period (4 years)

3. Procedural integration in the law-making process

(Joint Rules of Procedure)

- Every impact assessment has to include a calculation of administrative costs
- Every proposal has to be reviewed by the NKR

Ensuring
continuity

Enshrining regulatory quality oversight within existing national institutional framework



1. The review process has to be institutionalised

- By law and binding rules of procedure
- Guidelines on applicable methodology
- Training of civil servants in the ministries

2. The independent body has to be an integral part of the institutional framework

- NKR takes part in the inter-ministerial coordination process like a federal ministry
- Formal opinion of NKR is attached to the cabinet draft and is passed to the Bundestag and the Bundesrat (parliamentary chambers)

- Constitutional meeting on 19 September 2006
- 8 Members (appointed by President Koehler)
- Statutory Mandate¹⁾:
 - „The NKR has the task of supporting the Federal Government in reducing the costs of bureaucracy caused by legislation through the application, monitoring and further development of a standardised measurement of the costs of bureaucracy on the Basis of a Standard Cost Model.“
- 1544 draft proposals have been assessed so far by the NKR (ex-ante procedure)
- NKR is supporting the Government by reducing the existing administrative costs of 25 % until 2011
- Advise on request of the Government (e.g. ELENA-electronical salary and income certificate)

¹⁾ Sec 1 para 2 of the Act on the Establishment of the NKR

The main lessons from implementation

- 1. Governmental commitment on a high level**
 - Federal Chancellor and Ministers have to commit to the importance to strengthen regulatory quality
- 2. Easily applicable methodology**
 - E.g. Standard Cost Model
- 3. Clear procedure, no exceptions**
 - Permanent and consistent calculation of administrative costs in all new proposals
- 4. Trustful cooperation**
 - Cooperation of the ministries with the NKR at an early stage
 - Suggestions of the NKR are largely incorporated by the ministries before the final NKR-opinion is adopted

Conclusion



1. **NKR is by now a well established advisory and assessment board**
 2. **NKR plays a double role: supervisor and consultant**
 3. **NKR managed to allay governments and parliaments fear that the NKR would engage in a political manner**
 4. **The gaining confidence in the NKR has led to the extension of its mandate (e.g. compliance costs)**
-

How can Better Regulation and lower costs to businesses be achieved?

... by establishing an independent body (watchdog) to review all new and amended regulations affecting the regulatory burden borne by businesses.



Important elements to an independent watchdog

- ☑ Independence in relation to the regulators
- ☑ Own and adequate budget
- ☑ Comprehensive and transparent legal framework
- ☑ Longterm and clear mandate



Regelrådet meets all four elements.

The Mandate

- ☑ Does the Mandate cover only business aspects or also for example environmental and social aspects?

Regelrådet's mandate covers only business aspects.

- ☑ Advisory or veto?

Regelrådet's Opinions are advisory in relation to the regulator.

Results

- ✔ Regelrådet has issued 328 Opinions during its first 1 ½ years.
- ✔ Regelrådet has recommended the proposal and found the Impact Assessment acceptable in approximately half of its Opinions.

Regelrådet has noted an increased interest by Swedish regulators in Better Regulation and in improved Impact Assessments. There are also indications of improvements in these fields, but it takes time to change attitudes...



...and the Regulator is a slow turner!

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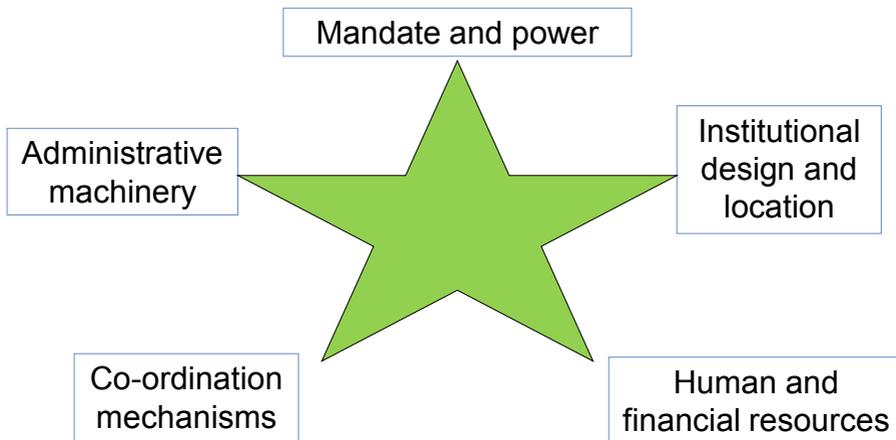
STRENGTHENING THE INSTITUTIONAL SETTING FOR REGULATORY REFORM

Stephane Jacobzone
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Governing Regulatory Oversight

- An explicit focus on key institutional design issues:
 - units, agencies, committees, advocacy bodies
 - Within the executive or at arms' length from government
 - With or without a Secretariat
- Four key functions:
 - Co-ordination (most widespread)
 - Challenge function (fairly common, but to which extent?)
 - Training and advice (less)
 - Advocacy (but also other institutions)
- Recent empirical study with C. Cordova-Novion. Building also on previous OECD work on regulators (2005).

Key elements of institutional design



Assessing institutional performance

- Policy coherence & co-ordination
- Stability
- Adaptability and responsiveness
- Implementation strategies
- Forging a political constituency

Lessons from implementation

- ✓ Similarities and differences
 - *Tradition and constitutional aspects*
 - *Controlling the ‘regulators of regulators’*
- ✓ Networks versus centralisation
- ✓ Addressing trade-offs
 - *‘Low hanging fruits’ Vs ‘big prizes’*
 - *Ensuring stability while seizing opportunities*
- ✓ Balancing the need for evidence base and political relevance

Scope for autonomous bodies

- ✓ Significant trend: Germany, Sweden, UK, Netherlands
- ✓ To which extent regulatory quality oversight can really be decentralised?
 - Technical expertise versus formal assessment*
- ✓ Political discretion versus rule-based systems
- ✓ Role in terms of advocacy and reaching out to a wider public

Addressing broader challenges

- ✓ Moving into compliance: compliance costs
- ✓ Broader perspective on regulators: integrity, conflict of interest, enforcement
- ✓ Links with *ex post* review mechanisms
- ✓ Role in terms of advocacy and reaching out to a wider public
- ✓ Establish capacity for strategic foresight

CONCLUSION

- Institutional creativity across the globe
- Beyond political cycles
- Links with trust in government, accountability and transparency

... Report will soon be out (as soon as the conference is over).

Social impacts of regulations

The assessment of economic impacts often entails detailed analysis of economic costs and related administrative and compliance costs for businesses. The general principles of cost benefit analysis rely on distributional approaches that consider the overall implications of a regulation. The distribution of the impacts is important, as some groups in society may be disproportionately affected by certain regulations. An equitable approach to better regulation-making must therefore address these distributional implications. This will help governments build trust with citizens, and strengthen legitimacy for regulatory policy, while increasing transparency and facilitating compliance. This could also strengthen the constituency for reform among minority populations, as well as throughout civil society, fostering better governance.

Such distributional analysis presents significant methodological and conceptual challenges. Often, the distributional aspects are more difficult to monetise than the overall costs for the business sector. Costs are often immediate and tangible, while benefits may be diffuse and long term, and evolve over time. Distributional consequences may be split across different groups in society, and entail regional dimensions. The issues cover broader dimensions of social inclusion, job related aspects, privacy issues, as well as broader participatory and governance features. Integrating these aspects in a commonly accepted equity metric presents some significant hurdles. The distributional breakdown may fragment overall discussion of efficiency gains from the proposed regulations, confounding the overall welfare analysis and resulting in difficult political tradeoffs. In sum, considerable analytic issues stand between principle and practice. Ways to measure equity are varied, and questions of implementation and cross-national incorporation remain. Finally, different countries may have a different understanding of the distributional implications, with various levels of preference for equity.

- How can national authorities integrate social impacts in new governance frameworks?
- How can they address the political implications of integrating social impacts in overall cost-benefit analysis?
- What analytic challenges do countries face to assess social impacts and integrate them in regulatory management? What are the implications for the information infrastructure?

Chair: **Ms. Elisabeth Hvas**, Deputy permanent Secretary, Ministry of Finance, Denmark

Speakers:

- » **Mr. Matthew Adler**, Leon Meltzer Professor of Law, UPenn Law School, United States
- » **Mr. Etienne Marie**, General Inspector, General Inspectorate for Social Affairs, Ministry of Health and Sports, France
- » **Mr. Ron Blackwell**, Chief Economist, American Federation of Labor & Congress of Industrial Organizations, (AFL-CIO), United States

Session B2. Social Impacts of Regulations

?YmDc]bhg

Quote:

“Measuring the social impacts of regulation is easier said than done. There are many difficult methodological issues. Also difficult normative decisions need to be made. But it can be done.”

Key messages

1. There is a widespread misperception that measuring the social impacts regulation are inherently “soft” data.
2. There are a wide range of methods that have been developed which can measure distribution and equity effects. Some of these are already being used by a number of governments.
3. Choosing between these methods ultimately involve normative and political decisions.
4. Given that regulatory proposals inherently create winners and loser policy makers should not shy away from making normative choices in using welfare/equity measure.
5. There is a trade-off between using equity measures and efficiency measures.

Equity Metrics: How to Choose?

Matthew D. Adler

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OECD Regulatory Policy Conference, 2010

Measuring Equity

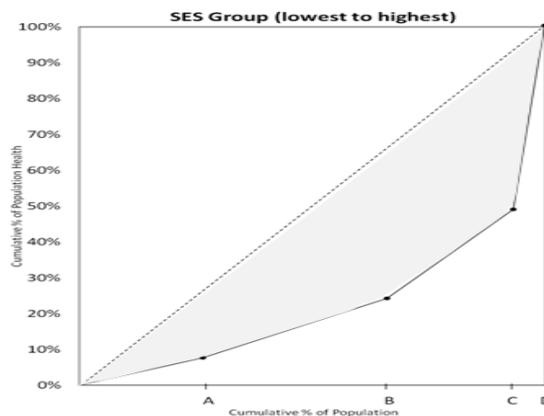
- How should we evaluate governmental policies in terms of equity/fair distribution?
- It is often suggested that equity is a “soft” or qualitative consideration, which cannot be measured.
- In fact, the opposite is true. There are currently a wide range of equity metrics used in academic scholarship and, to some extent, by governments or NGOs. Equity *is* measurable; the real difficulty is choosing between these metrics.

Current Policy Evaluation Metrics that are Sensitive to Equity

- Cost-Benefit Analysis with Distributive Weights
 - Social Welfare Functions
 - Inequality Metrics (e.g., Gini coefficient)
 - Poverty Metrics
 - “Social gradient” metrics
 - “Incidence” analysis
 - Cost Effectiveness Analysis with Equity Weights
-
- CBA with dist. weights: Sum of weighted WTP/WTA amounts. $\sum w_i(\Delta y_i)$. Currently recommended in UK.
 - Social welfare function: Ranks policies as function of individual “utilities.” $s(u_1, u_2, \dots, u_N)$. “Optimal tax,” environmental policy scholarship (e.g., climate change).
 - Inequality metric: Measures distribution of some attribute across entire population. Gini, Atkinson, Theil, coefficient of variation. Often used to evaluate status quo, time trend, but *change* in inequality can be used as policy metric, e.g., predicted *change* in inequality of mortality risk associated with air pollution policies.

- Poverty metric: Measures distribution of some attribute, but insensitive to distribution above poverty line. Predicted *change* used as policy metric, e.g., for education, infrastructure, social programs. Usable, in principle, for regulatory policy.
- Tax incidence: Tax (or policy) burdens as fraction of individual incomes. “Regressive”/ ”progressive. Often used for tax policy, but also some use in environmental policy.
- CEA: C/E ratio. C=cost, E = “effectiveness,” e.g., health impact. If equity weights, $E = \Delta \sum w_i h_i$. CEA used in Australia, Canada, UK, NZ to evaluate pharmaceuticals and medical technology, and in US as regulatory tool.

Social gradient metrics: Correlation between some attribute and some measure of social status (SES, race). E.g., concentration curve. “Health equity” scholarship, under discussion at US EPA as “environmental justice” tool.



Choosing Equity Metrics: A Framework

- Choosing between equity metrics is ultimately a normative/political question
- I suggest that the following framework can help policymakers think about the choice
- First, **in what way** is the metric equity-sensitive? In what manner does it satisfy the **Pigou-Dalton** principle (essence of equity)?
- Second, is the metric consistent with **efficiency** (the **Pareto principle**)?

The Pigou-Dalton Principle

- The PD principle (“principle of transfers”): A “pure” (non-leaky) transfer from someone with more of a relevant attribute, to someone with less, which “shrinks the gap” between them, is an improvement.
 $(2, 6, 14, 20) < (2, 9, 11, 20)$
- This principle is the **cornerstone** of equity. It is the heart of the entire literature on inequality metrics. Moreover, the PD principle is satisfied, **in some manner**, by every existing equity metric.

The Pigou-Dalton Principle: What Currency/Currencies?

- There are different possible “currencies” for the PD principle: income; some non-income attribute; or utility.
- For example, we can use the Gini coefficient (an inequality metric) to measure the distribution of income; the distribution of some “capability” (health, nutrition, education, shelter, subjective happiness, public goods, etc.); or the distribution of utility.
- Multiattribute inequality or poverty metrics: simultaneously satisfy PD principle with respect to multiple attributes.

The Pigou-Dalton Principle: What Currency/Currencies?

- Income: Readily measurable, but fails to capture non-market goods.
- A single non-income attribute: An example: CEA with equity weights for individuals in poorer health status. Why ignore income and other well-being relevant attributes?
- Multiple attributes: Shouldn't we care about interaction between attributes, rather than focusing on distribution of each separately?
- Utility: An inclusive measure of well-being. How to construct? Normalized income as proxy?

The Pigou-Dalton Principle: Population Wide or “Restricted”

- Inequality metrics : If an inequality metric is used to measure the distribution of some attribute (income, non-income attribute, utility), a PD transfer from *anyone* at a higher level to *anyone* at a lower level is seen as reducing inequality.

Although specific inequality metrics (Gini, Atkinson, Theil, coefficient of variation) differ in other ways, they all satisfy the PD principle on an unrestricted, population-wide basis.

- It can be shown that an unequal distribution can always be converted into a perfectly equal distribution by a **series** of PD transfers.

The Pigou-Dalton Principle: Population Wide or “Restricted”?

- Poverty metrics. Satisfy the Pigou-Dalton principle with respect to transfers to below-threshold individuals, *not* between above-threshold individuals.
- With income threshold at \$10,000, a poverty metric applied to the distribution of income will say
 $(\$5K, \$9K, \$20K, \$30K) < (\$7K, \$7K, \$20K, \$30K)$
and
 $(\$5K, \$9K, \$20K, \$30K) < (\$7K, \$9K, \$18K, \$30K)$
but not
 $(\$5K, \$9K, \$20K, \$30K) < (\$5K, \$9K, \$25K, \$25K)$

The Pigou-Dalton Principle: Population Wide or Restricted?

- Social gradient metrics. Satisfy the Pigou-Dalton principle with respect to transfers from high to low-status individuals, *not* reverse direction.
- Assume individuals are in four SES groups, A through D, and that health is measured in QALYs. Then
 $(A, 30), (B, 40), (C, 60), (D, 80) < (A, 30), (B, 50), (C, 50), (D, 80)$
but not
 $(A, 30), (C, 40), (B, 60), (D, 80) < (A, 30), (C, 50), (B, 50), (D, 80)$

Equity Metrics and the PD principle: A Summary Chart

	Income?	Non-income attribute?	Utility?	Truncated?
SWF			Yes	
CBA with weights	Yes			
Inequality metrics	Yes (one version)	Yes (one version)		
Poverty metrics	Yes (one version)	Yes (one version)		Yes
Social gradient		Yes (health)		Yes
Incidence analysis	Yes			
CEA with weights		Yes (health)		

Note: This table focuses on the versions of these metrics in current use

Lifetime versus Sublifetime Equity: A Further Twist

- An equity metric might focus on individuals' "lifetime" or "sublifetime" holdings of some attribute (income, a non-income attribute, utility)
- Scholarship using inequality metrics applied to lifetime incomes. Inequality of lifetime income less than inequality of annual income; time trend and cross-national comparisons also different
- Literature on "chronic poverty." Natural disasters and other "shocks" will increase sublifetime poverty but may have little effect on chronic poverty
- Incidence analysis on lifetime basis. "Progressive" income tax is less progressive, consumption taxes less regressive
- Social welfare functions: usually applied to lifetime utilities

The Pareto Principle

- This principle lies at the foundation of welfare economics. It says: if at least one person is better off with policy A than policy B, and no one is worse off, then A is a better policy.
- The Pareto principle is a rigorous and uncontroversial way to capture the idea of "efficiency."

Conflicts between Equity Metrics and the Pareto Principle

- CBA with distributive weights and SWFs automatically satisfy the Pareto principle. All other equity metrics potentially conflict with it.
- This is a powerful argument for the first approaches
- A possible solution for those who favor some other equity metric [??]: Seeing it as a “partial” metric -- as one component of a broader policy-evaluation framework

Conflicts with the Pareto Principle: Some Examples

- Inequality metric applied to income: prefers (\$50K, \$50K, \$50K, \$50K) to (\$50K, \$50K, \$50K, \$80K)
- Poverty metric applied to income (with \$10K threshold): indifferent as between (\$4K, \$8K, \$20K, \$100K) and (\$4K, \$8K, \$30K, \$100K)
- Social gradient metric applied to health: Improving the well-being of someone in the highest SES group is disapproved, because it increases health/SES correlation

Conflicts with the Pareto Principle: Some Examples

	Individual 1		Individual 2	
	A	B	A	B
Outcome x	10	20	20	10
Outcome y	15	15	15	15

Note that the total amount of each attribute is the same in outcome x and y. An inequality metric, applied to either attribute, or to both, will necessarily say that y is the better outcome, because it equalizes the attributes. But it's an open question whether the individuals are better off in y. Each might prefer the attribute package (10, 20) to (15, 15)

Conflicts with the Pareto Principle: Some Examples

	Outcome x		Outcome y		Outcome z		Outcome w	
	A	B	A	B	A	B	A	B
Individual 1	15	1	16	2	3	17	4	18
Individual 2	18	4	17	3	2	16	1	15

Each individual is indifferent between x and z, and between y and w. Thus Pareto principle says x equally good as z and y equally good as w.

However, an inequality metric, applied to either or both attributes, will say that y is better than x and z is better than w. This yields a contradiction.

Conflicts with the Pareto Principle: Some Examples

	Individual 1			Individual 2		
	Income	Health	Utility	Income	Health	Utility
Outcome x	\$300K	.55	1.72	\$30K	.6	1.55
Outcome y	\$200K	.6	1.73	\$70K	.55	1.58

Each individual has a utility function $u = \log(\text{income})/4.7 + \text{health}$. (This reflects \$50000/QALY and diminishing marginal utility of income.) Note that outcome y has an infinite C/E ratio, with or without equity weights for those in poorer health, so CEA always chooses x. But both individuals are better off in y.

Equity Metrics as “Partial” Metrics

- Can inequality, poverty, social-gradient, or “incidence” metrics be combined with other tools so that conflicts with efficiency (the Pareto principle) are sure to be avoided?
- This is a complicated topic, which requires much more academic research.
- One positive result: Equity-regarding SWFs can be decomposed into overall welfare multiplied by an inequality metric.

Conflicts with the Pareto Principle: Not to Worry?

- It might be argued that, in practice, policies will always have both “winners” and “losers,” so that conflicts with the PP are not relevant.
- Conversely, it can be argued that a policy evaluation framework which potentially conflicts with the PP has “cracked foundations,” and should be rejected outright.
- What position to take, here, is itself a normative/policy question.

How to Choose a Equity Metric: Some Questions for Policymakers

- First, **how** is the metric sensitive to equity? 
In what manner does it satisfy the **Pigou-Dalton principle**?
 - In what currency (income, a non-income attribute, multiple attributes, utility)?
 - On a population-wide basis or a restricted basis (poverty metrics, social gradient metrics)?
 - In terms of lifetime holdings of the “currency” or sublifetime holdings?

How to Choose an Equity Metric: Some Questions for Policymakers

- Second, is the metric consistent with **efficiency**?  Does the metric satisfy the **Pareto principle** (either on its own, or as one component of a broader policy-evaluation framework)? If not, is the metric still acceptable because such conflicts are “merely theoretical”?

The Social Impacts of Regulations

Etienne MARIE,
General Inspector,
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France

- Part 1. Taking into account the social and distributional impacts in the development of regulations is now based in France, given the complexity of this measure, on a set of robust tools, even if they are perfectible.**
- Part 2. Taking into account the social and distributional impacts in the development of regulations also requires their active use in the process of deliberation and political and administrative decision taking, which is still far from being the case despite the limitations of the current situation.**

Part 1.

- Measuring distributive and social impacts is particularly complex
- Measuring distributive and social impacts is based on several solid tools
- The measurement of social and distributional impacts may however be improved

Measuring distributive and social impacts is particularly complex

- **The difficulty of defining a priori the "population" concerned and the typology of impacts and hence the fairness objective;**
- **The need, in order to analyze social and distributional impacts, for the integration of multiple measures, multiple meanings (sampling and benefits) from multiple stakeholders (government, local authorities, operators, social security organizations; recipient's own action).**
- **The difficulty, where costs are often tangible and immediate, of measuring diffuse and long term benefits .**

Measuring distributive and social impacts based on several solid tools

- The generalization of an approach to performance targets
- The development of multiple statistical, economic and social sciences tools
- The development of public policy evaluation

The measurement of social and distributional impacts can however be improved

- The impact typologies are either too general or too technical
- The statistical and economic tools are predominant
- Measurement tools are broadly speaking reserved to state authorities

Part 2

- The process of preparation and central policy decision making is experiencing difficulties in mainstreaming tools for measuring social and distributional impacts
- This situation where the central decision-making process incorporates in an unsystematic and not open way the distributional or social impacts of its decisions has strong drawbacks
- How in the end, given this analysis, can we better integrate the consideration of distributional and social impacts into the development of regulations?

The process of preparation and central policy decision making is experiencing difficulties in mainstreaming tools for measuring social and distributional impacts

- A political process focused on the execution of a program made public to the electorate, on the construction of permanent compromises between highly fragmented social groups and taking into account the tangible impacts, which social impact seldom are
- An administrative process weakened by the comparative “poverty” of social ministries

This situation where the central decision-making process incorporates a non-systematic way and not transparent way the distributional or social impacts of its decisions has two drawbacks:

- Less than optimal decisions
Low acceptability of decisions

How, given the previous analysis, can you finally better integrate the consideration of distributional and social impacts into the development of regulations?

- Reintroduce a dose of politics in the typology of impacts
- Discuss publicly distributive and social impacts of key decisions with all their stakeholders
- Improve structure and working methods of social ministries

Ron Blackwell, Chief Economist, American Federation of Labor & Congress of Industrial Organisations, (AFL-CIO), United States

As a trade unionist I am here representing the *victims* of regulatory policy. As the Secretary-General stated, we have experienced a massive failure of regulation, of supervision, and of corporate governance - and he's only talking about the financial aspects of the crisis we're in. The precise role that financial regulation and its metrics can play in improving that situation is an open question.

Larry Summers, Chief Economist of the Obama Administration and Director of our National Economic Council, came to the AFL-CIO's HQ to talk to union leaders about what they were proposing to do in response to the crisis. After listing about six things that he thought he would never see in his career, all of which happened in 2008, he wisely concluded that anyone thinking about economic policy today the way they were five years ago is almost certainly wrong. This is just as true of regulatory policy as economic policy.

It is strange to cite regulatory policy's achievements of helping to open markets and increase financial innovation, when it is the regulatory failure in finance together with the global imbalances that served to expand the housing bubble that burst to precipitate the crisis and generate the Great Recession.

It is time to review the fundamental assumptions, objectives and methods of regulation to see what we have learned from this massive failure.

"Smart" regulation is an attractive term, but what exactly does it mean? To think of regulatory policy as having a bias either "for" or "against" regulation is really dumb. Neither more nor less regulation is an answer to anything. In 1990s, the overall view of government policy contained a bias against regulations. After this crisis we can no longer look at it the same way.

Some argued that we had too many regulations. That seems arbitrary: the point is not the number of regulations, but their effectiveness; it's not their quantity, but their quality. The goals here are, first, that we have no fewer or more regulations than we need. They should be *effective, efficient, as equitable as possible* and *sustainable*. Regulatory regimes differ significantly, and evolve over time. In a globalised world, these systems interact. We should focus on making judgments, given particular circumstances at a particular time, to see if a particular regulatory feature is necessary, effective, feasible, efficient and equitable. Nothing else matters. If done consistently and with buy-in politically from stakeholders, we'd be in better shape than we now are, and regulatory policy could be a very valuable resource in evaluating what works and is feasible, efficient and equitable. Forget "for/against" bias and the number of regulations.

The Synthesis Report speaks of the difference between regulatory management and regulatory governance. This seemed vague but as best I could understand it, there's a question of the role of regulatory policy in the governance of regulation. In the US, we've had a very mixed experience with centralised regulatory review. In regimes not sympathetic to regulation, this level of review has served to delay, weaken and even obstruct regulatory reform, especially in the areas of health & safety.

Also in the US, if there's a level above the agency that deals with regulatory policy in general, it shouldn't have the power to stop the agency; these agencies know more than the people in the White House. We should add something other than review and approval. The most compelling contribution at the national level and at the OECD is simply to provide expertise and studying of the reviews that have taken place: what worked and didn't work, or worked better or less well, with regard to the dimensions mentioned above. Governments could draw upon that research and wouldn't have to reinvent or rediscover the solutions to the problems they're trying to address, and coordinate cross-cutting issues in governance. A specialized agency should not have to reinvent a regulatory regime already being used in another specialized agency. At the global level, co-ordinate the actions of review of regulations so as to create an even playing field in a global economy and so limit regulatory arbitrage among multinational corporations.

It is important to have an organised process of governance in which the people affected will be consulted - business as well as workers and other stakeholders. Many dimensions of equity and other social measures can be measured, but some can't. It is difficult to quantify fairness and dignity (Fitzpatrick's examples of eliminating immigration bias against HIV and lavatories for the handicapped).

Regulatory capture is a big problem in the US and elsewhere. We don't want unnecessary burdens on business - business is tough enough to conduct without burdens. But that's part of what it means to have effective & efficient regulation. Many of these things are necessary to align the private interests of business people to make money with the social purpose of the private corporation: to create wealth - the real goods and services that meet our country's needs. A governance structure that is adequate and credible would bring a return of buy-in from the citizenry - about confidence in governance in general, about regulation and about regulatory policy.

Our society is being turned over by the impact of these regulatory failures. We must have buy-in and credibility. There is a lack of confidence in the wake of the crisis; we need to rebuild it. Two hundred and twenty million people are formally unemployed in the world today, the highest number ever recorded. The ILO reports that one-half of everyone who is employed is working under some degree of insecurity. We have the highest level of poverty among working-age Americans of both genders since the early 1960s, before we fought a War on Poverty. The level of pain economically is acute, after a full year of recovery. There's pain, anxiety, and - increasingly - anger, focused at the banks, the companies, the unions, and government. The best means for avoiding over-regulation is to have regulations that *work*, because it was the failure of the regulations in the past that generated the crisis.

Regulators and the regulatees: being friendly without being cozy?

Policy makers aim to implement client friendly approaches that reduce administrative burdens, avoid a culture of regulate-first, and promote user-centered approaches. On the other hand, countries face the challenge of redefining the public-private interface in the aftermath of the financial crisis and other catastrophic events. These events have underlined the crucial role of the relationships between regulators and the regulatees, and the importance of ethics. This has shed light on the need to strengthen institutional mechanisms to preserve the public interest, promote integrity, and minimise the risk of capture. Beyond regulatory management, there is a need to enshrine culture change in a new governance approach, one that is client-friendly, through effective enforcement, while strengthening ethics and promoting the core values of the public interest. In a number of countries, issues of revolving doors and disclosure are emerging in the regulatory arena as important elements to be resolved. This implies significant trade-offs and institutional investments, to ensure that the regulatory governance dimension is properly addressed.

This session will offer an opportunity for sharing perspectives on various options to foster culture change among regulators while redesigning the public-private interface. It will discuss options for ensuring that regulation contributes to public governance and for establishing institutional frameworks and policies that promote integrity. This session will also benefit from some recent work by the OECD in the field of integrity in the public governance arena.

- How can governments strengthen the public-private interface in regulatory matters, limiting the risk of regulatory capture and addressing broader challenges of regulatory governance?
- How can client-friendly regulatory processes and compliance mechanisms improve efficiency while preserving the integrity and efficiency of the regulatory framework?
- How can commitments to changing the regulatory culture translate into actual results, fostering client-centered approaches?

Chair: **Mr. Michael Fruhmann**, Head of Unit, Federal Chancellery, Austria

Speakers:

- » **Mr. Francisco Gaetani**, Deputy Executive Secretary, Ministry of Planning, Budget and Management, Brazil
- » **Mr. Clive Grace**, Chair, Local Better Regulation Office, United Kingdom
- » **Mr. Collin Dimakatso Mashile**, Head of Unit, Policy Development and Research: Markets and Competition Division, Independent Communications Authority of South Africa (ICASA)
- » **Mr. Thomas Held**, Director, Avenir Suisse, Switzerland

Session B3. Regulators and Regulatees: Being Friendly without being cosy?

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- The risk of regulatory capture needs to be addressed in the governance arrangements for regulators. The incentives for capture are multiple and diverse. They include political and industry influence as well as the self serving roles of bureaucracies. It is necessary to have robust governance arrangements for SOEs that do not distinguish between private and public ownership.
- The issue of capture cannot simply be resolved by regulators simply keeping at a distance from the regulated sector. Good regulatory services depend upon the regulator being responsive to the needs of citizens and businesses and understanding the effect of regulation. This requires access to the considerable knowledge held by the regulated sector.
- In the case of emerging markets, the performance of regulators is a key factor in the decisions of foreign investors. Good regulatory performance is therefore a source of comparative advantage. Similarly in developed countries, improving the performance of regulators is critical to promoting innovation, reducing the costs of regulation to government and business and improving compliance.
- Innovation requires culture change among regulators. This depends upon improving the competencies of the front line and a new characterisation of the relationship of business, the regulator and the citizen involved in a process of regulatory co production.

Quotes (adapted)

“There is a role for outsiders to exert some influence to overcome the risks of insider problems”

“Greater transparency is the minimum necessary response to prevent the risks of regulatory capture”

Future projects:

The OECD is exploring the issues for improving the governance arrangements for regulatory authorities. The issue of innovation should also get picked up here.

Implications for the Principles:

The OECD principles are central to the relationship of regulators and the regulated, both directly and indirectly. However, they do not deal with the issue. A future revision needs particularly to take up the issue of addressing regulatory quality under multilevel regulatory frameworks, and the design of governance of regulators.

Multiple challenges: different defaults

**Regulators and the regulatees:
being friendly without being cozy?**

Francisco Gaetani – Brazil

Deputy Vice Minister of Planning, Budgeting and Management

Regulatory Policy at the Crossroads

Towards a New Policy Agenda

OECD – Paris October 2010

National State Building ... yet But Different Regulatory Ages

- Line Ministries: work in progress
- Regulatory agencies
- Judiciary establishment: hesitant
- Economic team: suspicious
- Political environment: ambiguous
- Regulatory agencies: distinct generations
- Regulatees: a variety of competition regimes
- Citizens: infant power

Recent and current moves

- Commitment of the Chief of Staff Ministry with the regulatory policy agenda
- IADB capacity development program
- Professionalization of regulatory agencies
- Organization of careers and processes
- Replacement of provisional functionaries
- Organization of the agencies in a forum
- Executive project to be voted by the Congress

Where do the risks of capture of the regulatory agenda come from?

- Private companies
- Bureaucracies
- Politicians & political appointees
- Economic team
- Consumers in general

What are the main difficulties faced by the government?

- Absence of a coordination locus
- Institutional building (line ministries)
- Intergovernmental coordination (e.g. water)
- Capacity development (agencies and ministries)
- “Producing” expertise in the short run
- Handling competition (different markets are organized in distinct ways)
- Arbitrage of autonomy (fuzzy borders)
- Coalition building constraints (politics matters)

Contested Issues

- Funding mechanisms
- Performance agreements
- Profile of directors
- Industrial organization
- Dealing with State Owned Enterprises
- Interacting with Watchdogs
- The role of the Judiciary
- Global and technological trends
- Systemic matters (environment, social movements, indigenous people)

What blocks the governmental moves?

- Political ambiguity
- Doubts about the role of S.O.E.s
- Lack of specialized expertise
- Situation of parental ministries
- Executive coordination (inter ministerial and inter governmental)
- Difficulties in monitoring and anticipating technological changes (speed & directions)
- Coordination problems (especially in inter-related markets such as oil/gas/power, telecoms/TV/cable and others)

The search for governmental efficiency Conceptual confusions

- Efficiency as law abiding
- Efficiency as fundraising power
- Efficiency as expenditure potential
- Efficiency as capacity to deliver
- Efficiency as political responsiveness
- Therefore ... Efficiency is not embedded in governmental institutional arrangements

If efficiency is not at the centre of calculus and procedures ...

- Government tends to be reactive and/or erratic
- Pricing becomes a confusing game
- The investments' policy gets affected
- Governmental intervention tends to distort market mechanisms
- Other variables tend to become dominant (e.g. social objectives, implicit subsidies, vested interests, competition barriers ...)

The role of the watchdogs

- Dealing with information opaqueness
- Mitigating capacity asymmetries
- Facing increasing politicization
- Distortion of risk management behaviors (bureaucratic aversion x political propensity)
- Developing technical dialogue
- Providing public parameters
- Building regulatory regimes

What are the next steps?

- Tackling the coordination challenge (What course of action the new government will take?)
- Supporting the development of institutional capacities within a policy community perspective (e.g. sharing understanding and promoting dialogue)
- Strengthening specialized approaches in the context of multiple sectoral discussions
- Handling the cognitive tension (e.g. economists, lawyers, engineers, managers etc) and making the best of it
- Focusing on improving real competition in markets (taking into account the international moves and trends)
- Intensifying international policy dialogue

Envisaging an atrophied agenda

- How to deal with environmental challenges?
- Are our instruments designed to promote financial regulation suitable to the current status of global finance?
- What sort of risk management approaches should we consider adopting and where?
- How are we supposed to handle technological obsolescence in institutional terms?
- How to manage regulatory policies in a federalist context in which governance mechanisms are not properly settled yet?

The Event Agenda

- How can governments strengthen the public-private interface in regulatory matters, limiting the risk of regulatory capture and addressing broader challenges of regulatory governance?
- How can client-friendly regulatory processes and compliance mechanisms improve efficiency while preserving the integrity and efficiency of the regulatory framework?
- How can commitments to changing the regulatory culture translate into actual results, fostering client-centered approaches?

Focus without Friendship

The Practice (and Principles) of Modern Regulatory Governance and Management

Clive Grace

Chair, LBRO

OECD Paris: 28th October 2010



Structure of Presentation

- 1: The case for a business friendly approach
- 2: Leading examples of modern regulatory practice
3. Co-production and the model of modern regulatory governance & management
4. LBRO's work to create new relationships between regulators and the regulated
5. Depicting the new relationships and their limits - new 'friends' or new horizons?

Section 1

The case for business-friendly local regulation

LBRO Business perspectives survey 2010:

48% of businesses feel that local councils do not understand businesses well enough to regulate

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The demand for business-friendly local regulation

LBRO Business perspectives survey 2010:

The maintenance of an ongoing relationship with regulators is very or fairly important to 74% businesses

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The benefits of business-friendly local regulation

- Being business friendly can...
 - save wasted time and effort
 - promote a better relationship between regulators and regulated
 - better deliver long term sustainable compliance
 - lift burdens and promotes growth
 - facilitate a focus on the rogues
 - be more cost effective (for regulators, regulated and UK tax payers)

The themes of business-friendly local regulation

- **Create ‘accountability’ to regulated entities**
 - Understanding/responding to businesses’ and regulated entities’ needs
- **Change culture**
 - New behaviours to underpin ‘friendly’ approaches
- **Create the right framework conditions**
 - Embedding client-focus across the system

Section 2

Modern Regulatory Practice

- National Business Award for Better Regulation
- 10 Shortlisted Projects
- Major themes of regulator/regulated relationships....
-reflecting attempts to change cultures along with (and through) changes in processes and procedures
- 4 'quick' examples

Example 1

Export Control Organisation

Statutory authority for licensing export of military and dual use goods

“To promote global security through strategic export controls, facilitating responsible exports”

ECO - The challenge

- Promoting Global Security
 - WMD
 - Regional conflicts
 - “UK fighting edge”
 - Human rights
- Facilitating responsible exports
 - Rapid growth in exports
 - Time-critical

ECO - Our success

- “The UK operates the most industry-friendly export licensing system of any major Western country (although there is room for improvement)” BAe Systems, April 2010
- Key features
 - Single agency
 - Risk-based approach
 - Fully electronic process
 - Culture of business engagement and dialogue

ECO - Business Engagement

- Engagement as the route to quality enforcement
- Stakeholder engagement – ECAC
- On-site audit and advice
- Training and awareness

Example 2

National “Scores on the Doors” User Group

“The world’s largest food hygiene rating site.”

Putting food hygiene on the menu

Before you fork-out, check out

www.scoresonthedoors.org.uk



Scores on the Doors: Independent study by Northumbria University

- ★ Evidence of real improvement in compliance
- ★ Fewer inspections
- ★ Popular (business advantage)
- ★ Changed relationship between inspectors and premise

Four-star treatment for Bombay Brasserie

Lutfur Khan, owner of the Bombay Brasserie in Gratham, Lincolnshire was awarded a four-star food hygiene certificate at the Best of the Best in the Midlands awards ceremony in South Easton DC, one of the first activities to develop a scheme on the doors food hygiene rating scheme.

David Price, head of the county's health protection team, said since the scheme had been introduced in 2006 the number of premises that have been inspected has increased from 100 to 1,000.

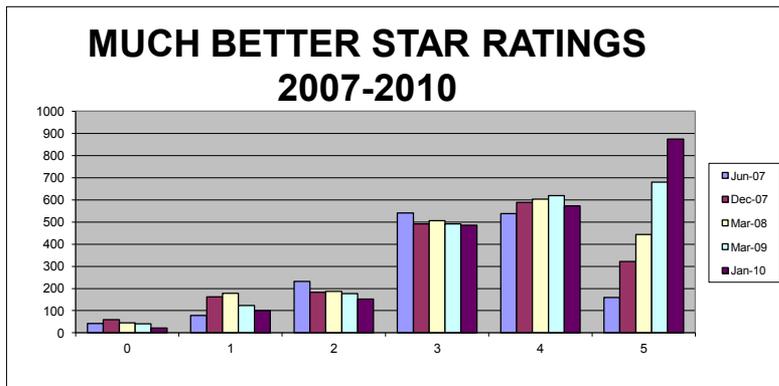
He said: "This is the best illustration of how we intended the scheme to work."

Nottingham resident Mr Khan said: "I was overwhelmed by the invitation to the conference. It was the last thing I'd have ever expected. I'm proud to be here and we couldn't have done it without the help and support from the district council."

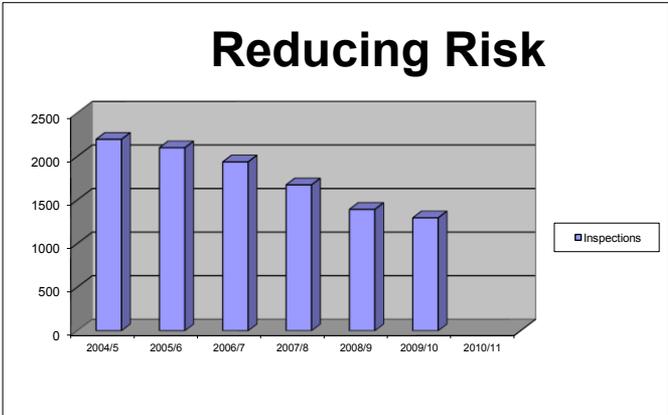
For more information about HSE's food stars, visit www.norththames.gov.uk/health



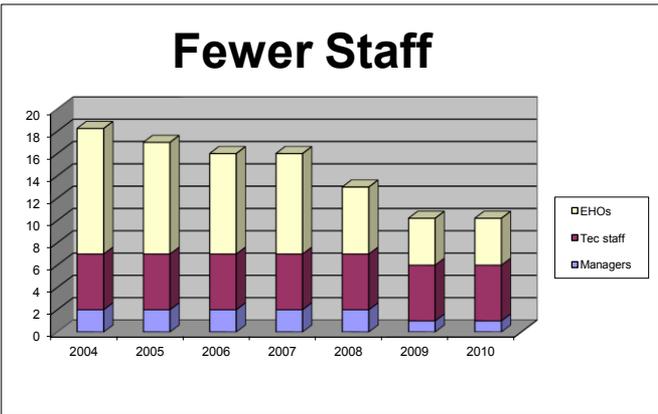
Scores on the Doors: Bradford City Council



Scores on the Doors: Bradford City Council



Scores on the Doors: Bradford City Council



Scores on the Doors: Bradford City Council



Scores on the Doors

Independent study by Northumbria University

- ★ Real consumer choice and transparency
- ★ Biggest ever improvement in food standards
- ★ Reduced business burden
- ★ Significant council savings
- ★ Can now focus resources where it really matters

Example 3

Trading Standards North West

Arnold Clark

TSNW
Trading Standards North West

- Largest independent motor group in the UK
- 152 retail branches throughout Scotland and England
- 205,000 car sales per year
- 8322 employees
- 61% repeat purchase
- 23 Local Authorities
- Small TS services
- Dense population
- Over 7 million residents
- 18 AC branches within 10 LA's

Why Arnold Clark?

- Identified as a company generating a large number of complaints
- Complaint analysis highlighted a regulatory concern
- Improvements would have a regional/national impact

TSNW
Trading Standards North West

Regulatory Compliance Model

Our Aims

- Improve regulatory compliance
- Reduce complaint numbers
- Increase complaint resolution
- Provide a better deal for consumers
- Reduce the regulatory burden on businesses and Trading Standards Services



The Regulatory Compliance Model

10 key components of the process

1. Complaint Analysis
2. Consultation with stakeholders
3. Consultation with Trader
4. Trader Engagement
5. Improvement plan/ Business review
6. Stakeholder engagement
7. Seminar/Training
8. Measuring performance
9. Impact assessment
10. Self regulation



Results

Benefits for Trading Standards

- Consumer complaints to Consumer Direct reduced by 44%
- 42% reduction in complaints per sale
- 64% reduction in referrals from Consumer Direct
- Improved relationship with business
- TS Impact Assessment ratio 36:1
- Reduced regulatory burden



Results

Benefits for consumers

- Saving £2.18 million
- Improved customer service and satisfaction
- Fair and safe trading environment
- Less cause for complaint, increased complaint resolution
- Reduced Regulatory Burden



Results

Benefits for business

- Improved regulatory compliance without significant cost
- Improved relationship and transparency with Trading Standards
- Improved customer experience, customer satisfaction and customer retention
- Measurable outcomes and improvements
- Reduced regulatory burden



Example 4

Schools' Portal: Meeting the „More for Less' Challenge

A web based communication system that allows providers a means of exchanging information securely and quickly between the Authority and its 647 schools. Lancashire County Council's Schools' Portal has improved schools related regulation and processes to deliver a more effective operating environment within schools and the County Council.

The Schools' Portal provides opportunities to:

1. Quality assure communications with schools
2. Utilise e-communications and e-data collection processes to reduce the bureaucratic burden on schools
3. Monitor and regulate (gatekeep) requests made to schools for data so information is collected once and used many times
4. Achieve significant savings within schools and the Authority
5. Improve the quality of services provided to schools
6. Improve the relationship between the Authority and schools
7. Achieve More by Doing Less

Schools' Portal: The Aim

To deliver the potential benefits with less effort and less resource to the advantage of schools and the Authority. Promote a culture change – think, understand and respond to the needs of schools, not the Authority.

Schools' Portal: Engagement – The Key to Success

- Visited schools – asked Headteachers, staff and Governors questions – got some honest answers!
- Feedback facility on Portal.
- Improving Communications with Schools Group (Star Chamber) – schools, senior officers, Elected Members.
- External Scrutiny Group – schools teaching and non teaching staff, school governors

Schools' Portal: Achievements – so far

- | | | |
|---------|---|--|
| 2005 | – | 2,500 requests for data from schools |
| 2010 | – | 220 requests made |
| 2005 | – | Estimated cost of printing and postage £1.6m |
| 2010 | – | Estimated cost - £100,000 |
| 2009-10 | – | 3,500 gatekeeping interventions which stopped or improved the quality of communications with schools |

Schools' Portal: Achievements ... continued

- 2005 – 900 active Portal users in schools
- 2010 – 7,000 active users of the „DDM’
(receiving directed mail)

Improved Safeguarding

- Urgent sharing of information to targeting school staff
- CRB returns via „My School Folder’ – 3 to 8 week reduction on manual process
- 2009-10 – Re-engineered 83 processes and e-enabled communications – efficiency savings of £3m in LCC and significantly reduced the burden on schools

These examples of Modern Regulatory Practice....

- Demonstrate the importance of engagement by regulators...
- ...and an appropriate sense of ‘accountability’ to the regulated entities...
-and an emphasis on culture change.
- They also demonstrate that its not just about the regulator and the regulated....
- ...its also about citizens and consumers, the intended beneficiaries of regulation

Section 3

Modern regulatory governance & management

- Client-centred approaches & Alford's work on client focus
- Helps give effect to key principles of transparency and proportionality
- Two way relationships
- But not just 'friendly' – or friendly at all...
- ...but about co-producing better regulatory outcomes

Co-production & Co-responsibility

Defined generally as:

„the means by which the beneficiaries of public services are instrumental in the design, planning and delivery of specific services or broader social outcomes as a way of improving the service’.

In a regulatory context?

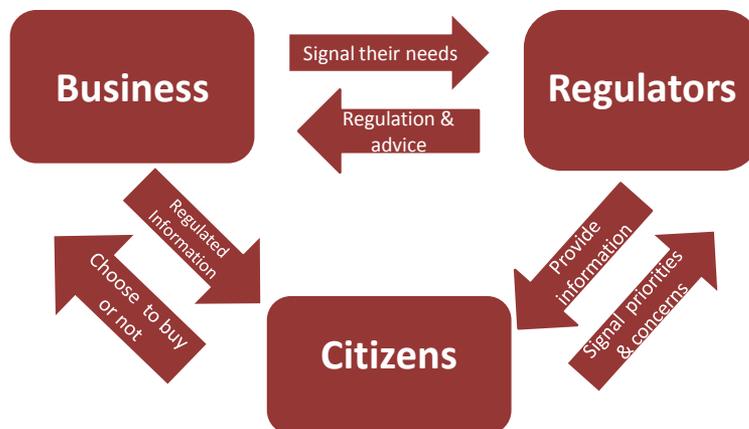
„the means by which regulated entities and the intended beneficiaries of regulation contribute alongside the regulator to produce better regulatory compliance and outcomes’

Regulators and the Regulated: Co-production



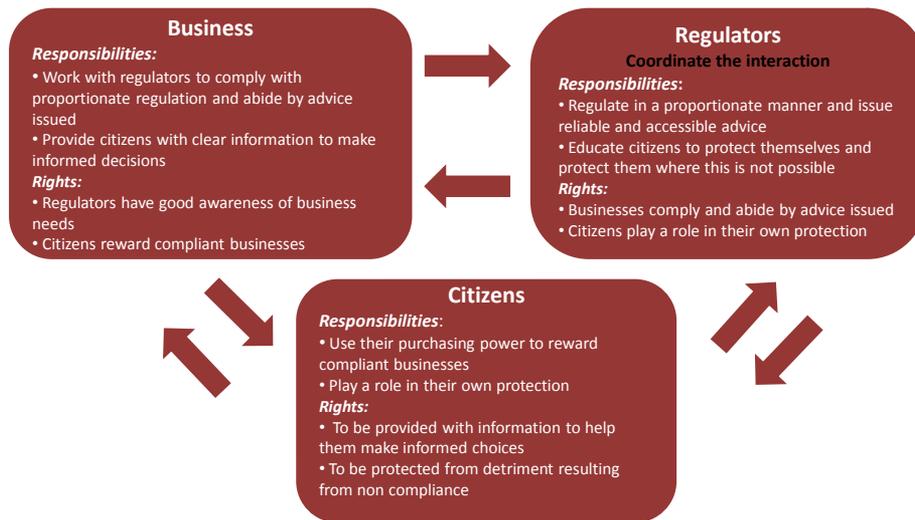
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Citizens and Consumers in Co-production



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Accountability, Rights & Responsibility



LBRO

Section 4

LBRO and new relationships between regulators and regulated

- **Seeing** the ‘Business End of the Telescope’
- Crystallizing & channeling the **business voice**
- **Listening** via the Business Reference Panel
- ‘Trading Places’ – **understanding business** and what you regulate
- Creating a **new culture and behaviours** through the Primary Authority scheme
- Supporting more **professional** relationships

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Seeing from the Business End of the Telescope

- Input from 35 leading UK trade associations and business organisations
- Provides insight into business views on local regulation and enforcement
- Copies available



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Crystallizing and channeling the business voice

- Age restricted products
- Significant & complex issue
- Many uncoordinated business voices...
- ...not fully evidenced based
- **Business** working group supported by LBRO
- Key report for Government
- LBRO not the 'business voice' but helping it to crystallize and be heard by Government

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Hearing via LBRO's Business Reference Panel

- Connects to in excess of 300,000 individual businesses
- Key business federations participate
- Identifies and takes forward key regulatory issues for UK businesses
 - VAT
 - Better Regulation of Age Restricted Products
 - From the Business End of the Telescope
 - Labelling issues

LBRO
Better Local Regulation

Understanding business and what you regulate

- “You can’t regulate (properly) what you don’t understand”
- **‘Trading Places’** gives regulators structured experience of business processes and problems
- Part of accredited Continuous Professional Development
- Major programme of exchange – 500+ local regulators

LBRO
Better Local Regulation

Positive change in behaviours and culture through the Primary Authority Scheme

- Creates partnerships between a business and one (of 400+) local authorities
- Privileges the advice & regulation by that local authority and so ensures consistency
- Enables in-depth understanding of the partner business to resolve issues more efficiently
- Promotes a more collaborative and less burdensome way of working
- Progressive partnership that enables the use of more tailored approaches

LBRO
Better Local Regulation

Relationships underpinned by professional standards

- Promotes business-focus as a core regulatory skill
- Develops 'softer skills', enabling use of discretion and judgement to support proportionate decision making
- Encourages officers to work in line with the better regulation principles

LBRO
Better Local Regulation

Section 5

New Relationships and their Limits

- not just about closeness without coziness
- this is about new relationships which should be 'win/win/win' for business, regulators, and citizens...a case of prosperity and protection
- need to capture the essence of the new relationships:
 - business choice?
 - business preference?
 - a sense of 'accountability' to business?

Mechanisms?

- **Preserving citizen accountability**
 - Recognising and understanding the role of the citizen in delivering regulatory outcomes
- **Minimising the risks of a business friendly culture**
 - Ensuring strong regulatory governance mechanisms such as the independence enshrined in the Primary Authority scheme, and perhaps such as public audit can contribute
- **Creating the conditions**
 - The UK and OECD Principles

UK Better Regulation Principles and OECD Principles of Regulatory Quality

- Absolutely central to the issue of new relationships between regulators and the regulated
- Both directly.....and indirectly
- Imperative that they are at the leading edge:
 - Not only consistent with how to deal with modern and emerging problems...
 - ...but also actively supportive of leading edge solutions to current and emerging problems

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UK Better Regulation Principles

Targeted
Accountable
Consistent
Transparent
Proportionate

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OECD Principles

High level political commitment

Assess and review regulation

Transparency and non-discrimination

Strengthen competition policy

Design regulation to stimulate competition/efficiency

Eliminate barriers to trade and investment

Link to other policy objectives

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Problems....and new Principles?

- Taking account of issues of multi-faceted governance
- Sponsoring culture change and continuous improvement
- Address the differentiation of enterprises/markets
- Embracing the technological transformations of both commercial and enforcement environments
- Recognising empowerment in achieving compliance and outcomes through co-production and co-responsibility

**So, important to review and revise both
UK and OECD sets of principles**

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Better Local Regulation



**REGULATORY POLICY AT THE CROSSROADS
TOWARDS A NEW POLICY AGENDA**

**REGULATORY GOVERNANCE THE NEW
FRONTIER: REGULATORS AND THE
REGULATEES - BEING FRIENDLY WITHOUT
BEING COZY?**

**OECD CONFERENCE CENTRE, 28-29 OCTOBER 2010,
PARIS**

Mr. Collin Dimakatso Mashile

**Head of Unit, Policy Development and Research:
Markets and Competition Division,
Independent Communications Authority of South
Africa (ICASA)**



The author is responsible for the choice and the presentation of the facts contained in this presentation and for the opinions expressed therein, which are not necessarily those of ICASA and do not commit the Authority



ACKNOWLEDGEMENTS

- ❖ Good afternoon Ladies and Gentlemen.
- ❖ It is a great pleasure for me to have this opportunity to address the OECD and on issues of regulatory capture and how to ensure an efficient interface between regulators and the private sector
- ❖ My contribution to the above discussion will mainly focus on the experience of the Independent Communications Authority of South Africa (ICASA) in this field
- ❖ Before I get to that though, I feel compelled to acknowledge the work of the OECD's Public Governance and Territorial Development Directorate in general
- ❖ ICASA strives to create a conducive and predictable regulatory environment to achieve the stated objects of EC Act of 2005, section 2 (S2).
- ❖ It is for this reason that we continue to strongly support the OECD's efforts of bringing together world-wide regulators and regulatory experts to share their experiences/information and strengthening existing international collaborations/relationships as the best contributor ensuring and making regulatory policy predictable, effective, stable and secure.
- ❖ The results of your efforts and enhanced engagement on regulatory policy reform within BRICSA, will in good time be reflected in the evidence based quality regulations starting to emerge from these and other such countries



WHO IS ICASA?

- ❖ The Independent Communications Authority of South Africa (ICASA): The Independent Communications Authority of South Africa (ICASA) instituted in May 2000 by the Independent Communications Authority of South Africa Act No 13 of 2000 (ICASA Act);, is the convergence regulatory authority that monitors the electronic communications and postal sectors in the public interest of South Africans
- ❖ ICASA is overseen by the Ministry of Communications and Parliament which established the Authority: They both determine public policy for these sectors
- ❖ ICASA operates at arm's length from Government and Parliament on the basis of Government allocated annual budget, with 9 publicly nominated and appointed Council(Board) members
- ❖ The 2005 Electronic Communications Act No 36 of 2005 (ECA) lays out the regulatory structure for all electronic communication networks and services in South Africa



- ❖ The passage of this new act strengthened and expanded the regulatory authority of the ICASA to open communications markets, promoting conditions for self-sustaining effective competition, intervene where market players with significant market power are hindering competition for services and facilitate the difficult transition from monopoly to full competition
- ❖ ICASA is a licensing body, a regulator and a quasi judicial body because it licenses, regulates, adjudicates and issues sanctions; and its mandate and functions include the following:
 - ❖ To license broadcasters, signal distributors, providers of telecommunication services and postal services;
 - ❖ To make regulations;
 - ❖ To impose license conditions;
 - ❖ To plan, assign, control, enforce and manage the frequency spectrum;



- ❖ The Authority subscribes to the six principles which are generally accepted as good governance principles:
 - ❖ Regulation should be kept to a minimum
 - ❖ Regulation should be flexible to be able to respond to rapid market developments, through minimal procedure requirements and discretionary powers
 - ❖ Regulation should be objective and non-discriminatory, i.e. competition, services and technological neutrality
 - ❖ Regulation should be transparent: widely consult the stakeholders and make their information and decisions easily accessible to outsiders.
 - ❖ Regulation should ensure legal certainty and be consistent over time to allow companies to make investment decisions with confidence: having clear and stable strategy, and should follow strict procedures before taking decisions.
 - ❖ Regulation should be enforced as strictly as practicable on the activities being regulated.



- ❖ The regulators and regulatees can and should meaningfully coexist
- ❖ All regulatory regimes are vulnerable to capture by organised interest groups, particularly by those whom the regulation seek to control/regulate as they can use their resources of expertise to influence regulatory outcomes
- ❖ When regulators begin to identify with industry and ethic boundaries are breached they tend to suffer from appearances of capture. It is equally important to be independent from the organised interest groups, which means regulators should not be captured by the interests of the regulatees
- ❖ The risk of capture can increase if regulators are under-equipped and under-financed, if incumbent firms have political power and can intimidate regulators through the political system, and if regulatory systems allow excessive appeals and layers of decisions, so that regulatory decisions become delayed in years of controversy before they become effective



- ❖ Due to the technically complex nature of the regulatory issues that comes in front of the Authority, much of its decision-making and implementation involves the exercising of serious discretion and due diligence/process through dialogue with regulatees and other external interests
- ❖ This does not necessarily translate into a fact that the regulated interests have a strong say in the Authority's interaction with them
- ❖ But theory indicates that such interactions can:
 - ❖ provide access and potential for influence outside of more fair and independent processes
 - ❖ have distorting effects, breach ethical boundaries and show the regulator as suffering from appearances of capture.



REGULATORS AND THE REGULATEES: BEING FRIENDLY WITHOUT BEING COZY?

- ❖ No one should be under any illusion that the regulators and regulated entities should not have a close-cooperation.
- ❖ Regulators and regulated entities should interact with each other as no organisation can generate all needed resources on its own.
- ❖ This requires regulators and regulated entities to fulfill their separate but complementary responsibilities; where regulators continue to be strong, independent and developing the needed framework of regulatory stability and regulatees meet their obligations to the public as well
- ❖ Regulators and regulated entities should not pull in different directions to the detriment of the sector, both perspectives or insights should converge somewhere, but not always.
- ❖ As regulators, it is in our best interest that the regulatees have confidence in our regulatory regime where they are not burdened unnecessarily and can progressively make reasonable returns on their investments



REGULATORS AND THE REGULATEES: BEING FRIENDLY WITHOUT BEING COZY?

- ❖ Our regulations should positively contribute to making the electronic communications and postal sectors highly robust, dynamic, stable and innovative to facilitate the introduction of new applications and services that have made these markets an important engine for economic growth and job creation
- ❖ As regulators we should rely upon market forces, where necessary, by encouraging and allow the private sector to take the lead in its continued introduction of day-to-day expansion, dramatic changes and new developments in the sector: because innovation and progress should emanate from entrepreneurial and research activities, and not from regulators
- ❖ As regulators we should increasingly be aware of the possible distortions, multiple/secondary effects of the unintended consequences of actions, events and decisions that emanate from their offices
- ❖ The performance of the sectors we regulate should be the best indicator of our performances: we must support all initiatives that contribute to the expansion of networks for the development and competitiveness of our economies and provide the right incentives



CONCLUSIONS



- ❖ Ladies and gentlemen, as a last comment on this topic and before I step down, I would like to close today on a bit of a personal note.
- ❖ As evangelists for good public governance and creation of efficient, reliable, sustainable and robust regulatory frameworks and processes conducive to facilitating investment in the electronic communications markets, we must continue to expand the dialogue initiated by institutions like the OECD
- ❖ I would once again thank the OECD very much for their invitation and to all of you in the audience for your kind attention.
- ❖ That concludes my remarks today! Please enjoy the remainder of the conference.

Panel B3. Regulators and the Regulatees: Being Friendly without Being Cozy?

Remark by Thomas Held, Avenir Suisse

The focus of the opening session of the conference was better, even smart regulation. Speakers emphasized the quality of the regulatory process, the evaluation of relations and, in general, methodological issues like e-solutions, 24h-availability, etc. An example was the suggestion to use social sciences research to improve the language of laws so the broad population. Another important point was to simplify regulations, applying quantifying «filters» and cost-benefit calculations.

But most interventions concentrated on the world of regulators, *i.e.* agencies, the various layers of government administration, the imagery of a (more or less efficient) regulatory machinery was evoked often. The society or polity as whole was rarely addressed; at best «stakeholders» were to be consulted. Therefore, a certain centralist, technocratic element in the discussion is unavoidable - the citizen, the political process and political economy questions are much less present.

My goal is to look at broader polity picture, the political and institutional context of regulation, *i.e.* at the state of «the regulated», drawing from the Swiss example. It is well known that Switzerland ranks very high on competitiveness (WEF, IMEDE, European Innovation Scoreboard, etc.). Due to relatively low debt levels and a very measured fiscal response to the economic downturn, it is in a very good after-crisis position despite the fact that the financial sector contributes approx. 15% to GDP and despite the challenge which the Too-Big-To-Fail problem poses for especially here.

This success is generally attributed to a reasonable tax rate (today, the average of Swiss cantons compared to countries ranks 8th in Europe), but more often, experts cite the *general regulatory environment*, *i.e.* an extremely stable and differentiated Rule of law, but also a specific «closeness», *i.e.* a small organizational distance between citizens («the people») and the state, *i.e.* the regulators and administrators. Figuratively, political commentators sometimes use the term «identity» to characterize the relations between regulators and regulatees in Switzerland.

What does this mean? Without going into the dangerously open field of history and culture, I would like to point to three *institutional* elements of this «closeness»:

- 1 Federalism and subsidiarity, with a limited role for the federal government especially with regard to taxes but also with regard to education, police,

infrastructure, which are all regulated at the cantonal level. Most importantly, the specific implementation and enforcement (if not also interpretation) of federal law is also in cantonal or even communal hands.

The most important consequence of this distribution of competencies and powers is a sharp *competition* between jurisdictions, not just about tax levels, but for good regulation (and services) in general. So the real driver for better regulation is not well designed process and/or sophisticated methods and evaluations but economic and fiscal success, *i.e.* attractiveness for people and business.

- 2 Direct democracy, *i.e.* not just participation in the sense of involving stakeholders and/or a exploring the will of the public, but as the ultimate, binding legitimation for regulatory decisions. Thus, tax rates at the cantonal as well at the communal level are voted on, and the VAT at the federal level can only be changed (*i.e.* increased) by a constitutional amendment which requires the majority of the voters and of the cantons. In the same vein, the Swiss voters have adopted with a four-fifth-majority a constitutional debt brake which cannot be overturned by parliament.
- 3 A third element for «closeness» is certainly the size of population relative to the globalized Swiss economy and Switzerland's role an important financial and trade center of the world (with the highest number of global players per capita). The multiple, complex and often vast regulatory requirements call for multifunctional experts, and this expertise can only be provided in a relatively small pool if people take on multiple, sometimes even conflicting roles (or wear many hats, as the Swiss saying goes). In politics, the limited pool of resources requires active citizen participation, *i.e.* *part-time* civic duty in
 - Communal governance and administration
 - Cantonal parliaments and/or (in smaller cantons) governments
 - Both chambers of parliament at the federal level
 - Countless trade, professional and civic associations

With the exception of most cantonal government and the federal council there are almost no professional politicians in Switzerland. A major source of income and the organisational base for the majority of the MP's are interest groups ranging from the big trade and industry association, the unions etc. to "idealistic" groups of all kind. This direct representation of special interests beyond party politics or ideological differences allows for an efficient, cost effective mechanism that doesn't need much lobbying from the outside. Another consequence of the limited pool of political resources and the need to find compromises is an extensive formal, pre-parliamentary consultation process.

Four examples, two «positives» ones and two rather critical ones, shall illustrate these Swiss peculiarities of the regulatory *context*:

I Taxes: Individual self-assessment for income taxes (with the exception of foreign nationals) reflect a contractual relationship between citizen and tax authority, *i.e.* the state. This results in very high tax compliance. The safety net from the taxman's point of view is a rather high withholding tax on interest and dividends of 35% (which can be reclaimed). Tax evasion results in very costly administrative punishments but not in criminal charges. By the way: Tax authorities are the most ardent supporters and defenders of system.

Companies have in most cases the possibility to «talk to the taxman» in order to adapt to or to smooth out changes in profit. For these procedures, the cantons use specific rules and toolboxes which can be challenged. Corruption cases are extremely rare.

The flexibility with regard to income tax and corporate tax, and the advantage of close relations to communal and cantonal tax authorities contrast with the bureaucratic application and enforcement of the VAT at the federal level.

II SME: The federal government and more and more cantonal and municipal administrations) has introduces a SME-compatibility test for all new laws and regulations with the goal to

- avoid a competitive bias of all regulations against SME due to economies of scale effects
- avoid a streamlining of relations which would lead to less variety between jurisdictions and thus to less innovation
- avoid regulations as the lobby result of partial, special interest (e.g. barriers to market access of competitors, special deals and subsidies)
- Examples for successful application of the SME-compatibility Test:
- Employer tax form
- Accountancy rules in corporate law

III Regulations of Exchanges: Lack of information disclosure rules and/or enforcement of these rules.

IV Difficulties to find a political «solution» for the TBTF-challenge in Switzerland (with its two very large financial institutions).

TH/November 20th, 2010

Open government towards user-centered regulation

Information and communication technologies create new opportunities and challenges for open government and good public governance. E-rule making, through Internet-based approaches and web 2.0 technologies, has significant implications for the efficient and transparent delivery of information as well as for the involvement of stakeholders. Information transparency and interchange have increasing relevance as countries strive to meet increased public demands for transparency and trust, calling for more effective ways to ensure responsiveness and engage citizens in the process of regulation making. At the same time, governments have to balance such concerns with public access and transparency with the need for information security in the context of global international threats.

The new tools of e-rulemaking have the potential to foster more inclusive and participatory processes, enabling government to obtain real time feedback on crucial dimensions of regulatory policy while encouraging citizens to be more active. They also require capacity, to ensure the interface with regulatory management systems. There is also a need to foster new attitudes to encourage civil society, citizens and businesses to engage in new forms of public dialogue. This presents challenges in terms of developing the appropriate infrastructure, and enabling capacity within governments. The session will discuss the promises and implications of e-rulemaking and its potential to increase the involvement of stakeholders in regulatory design.

- What are the opportunities and the challenges of increased openness in e-rulemaking processes? How can government benefit from web 2.0?
- What are the cultural challenges to engage stakeholders through the Internet? What is the scope for substitutability with existing approaches?
- How can governments balance information security and public access to information in crafting e-government policies?
- How can complex issues – scientific, financial, environmental – be made more accessible for public input?

Chair: **M. Edward Donelan**, Senior Adviser - Regulatory Governance, SIGMA (Support for Improvement in Governance and Management), OECD

Speakers:

- » **Mr. Alexander Hunt**, Branch Chief, Office of Information and Regulatory Affairs, United States
- » **Ms. Katju Holkeri**, Head of Governance Policy Unit, Public Management Department, Ministry of Finance, Finland; Chair of the OECD Public Governance Committee
- » **Mr. Luzius Mader**, Deputy Director, Federal Office for Justice, Switzerland

Session B4. Open government through user-centred regulation

Key Points

- Governments are on the threshold of significant culture change and many challenges lie ahead. Creation of a culture of openness is important. This must be fully embedded in all phases of the rule-making process.
- Need to build confidence in citizens' participation and enable the willing but unable to participate and encourage the unable and unwilling to have their say.
- The issue of cost-effectiveness of using the new technologies is important. For example, the European Commission when trying to use Web 2.0 technologies needs to operate in 22 languages while the response is anyway rather limited.
- Some may fear that too much e government would create expectations of instant responses that could not be delivered.
- Consultations, when developed thoroughly such as the ones in Switzerland, are not very much improved by new technologies. However, in other aspects technologies play a significant role (political campaigns, referenda, petitions).
- Another important issue is how to ensure that the consultation process is not overtaken by interest groups and professional lobbyists that have sufficient resources.

Quotes (adapted)

“Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge.” (Pres. Obama)

“How could Madison’s fears concerning tyranny by the noisy and aggressive be dealt with by new technology?”

Future projects:

The OECD project on Open Government and E-Rulemaking appears to be very timely.

Implications for the Principles:

Future revision should take into account results (principles?) of the project.



U.S. Office of Management and Budget
Office of Information and Regulatory Affairs

**eRulemaking: Promoting Transparency and
Participation in the U.S.**

Alexander T. Hunt

Office of Information and Regulatory Affairs

Office of Management and Budget

Any views expressed here are solely those of the presenter, and do not necessarily reflect the position of the Office of Management and Budget or the Executive Office of the President.



January 21, 2009: President's Memorandum on
"Transparency and Open Government"

- ❖ Knowledge is **widely dispersed** in society...My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can **readily find and use.**"
 - January 21, 2009, Memorandum
- ❖ President Obama: "...sunlight is the best **disinfectant.**"
 - January 28, 2009
- ❖ Three core principles - Transparency, Participation, and Collaboration.



OMB Open Government Directive

- ❖ The December 8, 2009, Directive seeks to advance the goals of transparency, participation, and collaboration by calling for:
 - ❖ the dissemination of government information to the public online, using open, searchable formats;
 - ❖ improving the quality of information available to the public;
 - ❖ instilling the values of transparency, participation, and collaboration into the culture of every agency by requiring every agency to formulate an Open Government Plan and website; and
 - ❖ the review government-wide information policies that may need updating or clarifying.



Key Directive Milestones

- ❖ January 22nd:
 - ❖ Identify and publish online at least three new, high-value data sets at Data.gov. – Completed
 - ❖ Establish interagency working group to oversee Open Government implementation. – Completed
 - ❖ Designate agency senior accountable officials to ensure the quality of Federal spending information. – Completed
- ❖ February 6th: Agencies create open government webpages to serve as gateways activities related to the Directive. – Completed
- ❖ April 7th: Publish Open Government Plans describing steps to improve transparency and ensure public participation and collaboration. – Completed



The Open Government Initiative and Regulation

- ❖ Many of the topics discussed have touched on important OMB responsibilities, including oversight of the Federal regulatory process.
- ❖ One posting described the Federal government's eRulemaking Program, and how Regulations.gov is considering the use of Web 2.0 technologies to facilitate the public comment process.
- ❖ With the Open Government Initiative and the [Regulations.gov Exchange](#) — where we suggested possible enhancements to Regulations.gov and asked for public feedback — we looked for new ways to utilize Web 2.0 tools.



Regulations 1.0

- ❖ The Administrative Procedure Act of 1946 law requires that agencies go through a notice and comment process open to all members of the affected public, both U.S. and foreign.
- ❖ Before agencies can issue a final regulation, they must respond to the public comments, make sure that the final regulation is a logical outgrowth of the proposal and the public record, and is not arbitrary or capricious.
- ❖ The public record is used by the courts in settling any challenge to the regulations brought by the affected public.



Regulations 2.0

- ❖ Goal: Provide more convenient, public-centered ways of obtaining input on regulatory proposals.
- ❖ Improve and modernize well-established legal and administrative procedures so that it is easier for members of the public to participate in the development of regulations.
- ❖ Web 2.0 tools can be useful even before an agency issues a proposal.

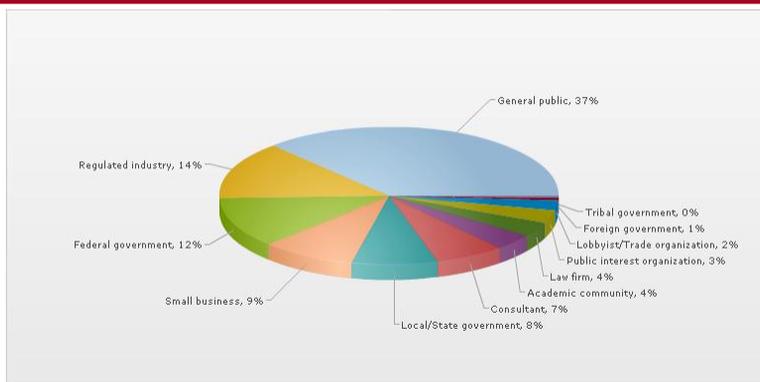


Regulations.gov

- ❖ Regulations.gov - The program uses the Internet to make the Federal rulemaking process more accessible, participatory, and comprehensible.
 - ❖ Direct data feed from the *Federal Register*, the daily U.S. publication that publishes all regulatory actions.
 - ❖ Over 2 million documents available to the public; including public comments and supporting materials.
 - ❖ Improve navigation, search, and layout
 - ❖ Upgrade underlying technology to enable rapid and dramatic changes to user interface at lower cost
 - ❖ Web 2.0 tools (e.g. expanded RSS feeds, social bookmarking, video contest)



Regulations.gov Audience



- Who comes to Regulations.gov?
 - 40% General Public
 - 36% Industry
 - 21% Government
 - 4% Academic Community
- Why do they come to Regulations.gov?
 - 65% Find or download a document
 - 31% Submit a comment
 - 16% Browse by keyword/topic

The screenshot shows the Regulations.gov search results page. At the top, there are navigation links for Contact Us, About Us, Help, Flags, Site Map, and RSS. The main heading is "Search Results" with a search bar and a magnifying glass icon. Below the search bar, there are filters for Agency, Document Type, Comment Period, and Docket Type. The search results are displayed in a table with columns for Title, Document Type, Summary, Agency, Document ID, and Actions. The results are sorted by Relevance and show 3 results for the keyword "energy".

Title	Document Type	Summary	Agency	Document ID	Actions
Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Review From Deltek, Inc. (America) Inc. and Granting of the Application of Issues Waiver From the Department of Energy Commercial Package Water Source Air Conditioner and Heat Pump Test Procedures	Proposed Rules	Summary would go here and would have a character limit with an ellipsis at the end for anything would not fit. A pop up box would appear with full summary...	CMS	CMS-2008-0148-0001	Submit a Comment Open Docket Folder Sign up for Email Alert
Medicare Program: Revisions to the Medicare Advantage and Prescription Drug Benefits Program: Compensation Plans	Final Rules	Summary would go here and would have a character limit with an ellipsis at the end for anything would not fit. A pop up box would appear with full summary...	DOJ	DOJ-CIV-2008-0024	Submit a Comment Open Docket Folder
Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards			HHS	HHS_FROOC_0001	Submit a Comment Open Docket Folder Sign up for Email Alert



Federal Register 2.0

- ❖ The *Federal Register* is the daily newspaper of the U.S. government.
- ❖ A new online version of the *Federal Register* was launched on July 26, 2010, the 75th Anniversary of the Federal Register Act.
- ❖ By the end of September, the “FR 2.0” pages had been viewed 514,893 times by more than 221,000 unique visitors (about 82 percent were new customers discovering the site for the first time).
- ❖ Other Key Features:
 - ❖ Hard-to-read PDFs replaced with graphical information searchable by topic or location.
 - ❖ Every entry can be exported to social media for easy discussion.
 - ❖ Cited regulations and statutes are linked from within the text.



Recent OMB Guidance to Agencies

- ❖ **Regulation Identifier Numbers.** To promote transparency and to help aggregate information, OIRA issued a memorandum directing agencies to use the Regulation Identifier Number on all relevant documents throughout the entire “lifecycle” of a rule.
- ❖ **Improving Electronic Dockets.** To promote greater openness in the regulatory process, this guidance memorandum will help agencies compile and maintain comprehensive electronic regulatory dockets on Regulations.gov.
- ❖ **“Cookies.”** This memorandum allows agencies to use web measurement and customization technologies to improve the Federal government’s services online while safeguarding the privacy of the American public visiting government websites.



Next Steps

- ❖ OIRA and regulatory agencies are exploring a number of ideas to enhance online rulemaking:
 - ❖ Videos to explain rules and the rulemaking process.
 - ❖ A taxonomy of regulatory terms.
 - ❖ Creating virtual versions of paper regulatory dockets.
 - ❖ Enable visitors to customize review of regulatory information (My Regulations).



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 - ❖ "Cookies": http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-22.pdf
- ❖ White House Press Release: Obama Administration Marks Major Open Government Milestone: <http://www.whitehouse.gov/the-press-office/obama-administration-marks-major-open-government-milestone>



Open government towards user-centered regulation



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How? Everything starts with principles

- Commitment
- Rights
- Clarity
- Time
- Inclusion
- Resources
- Co-ordination
- Accountability
- Evaluation
- Active Citizenship

Cultural changes



- Willing and able
- Unwilling but able
- Willing but unable
- Unable and unwilling

FEAR



- Engagement has to be embedded into the process and culture
- It does not happen by itself or as an afterthought or on the periphery
- The choice of the engagement tool by the need, not by technology
- Not just thinking – actions needed
- Engagement works when organisations are prepared to listen
- Risk aversion and fear of exposing the organisation are most important blocks of successful online engagement

Luzius Mader, Deputy Director, Federal Office for Justice, Switzerland

Switzerland has a long tradition of citizen involvement in the legislative process, through both institutions of direct democracy and the referendum forum, a public consultation system - a Swiss specialty. Context and culture are important. If you're willing to bring new technologies into the legislative process, you need to understand what role they can play when you're trying to have an open government strategy that involves citizens - individuals and companies. All this depends on the culture and the practices already existing within an agency or administration. You cannot open up government without having new technologies for all agency practices. These technologies, as well as the desire to involve citizens and individuals, must be integrated from the start in the legislative process itself, at all stages. You must be transparent; authorities must be proactive in providing information and access to the official documents. This is important in applying standards, norms and (even more importantly) services. Determining whether an agency is open or not entails, first, looking at its culture. If you want its services to be open, you must open the culture. If you use new technologies, they must be integrated in *all* the agencies' activities. Files must be managed by technology, with laws available in digital format. In Switzerland, laws can be consulted in paper or digital form, in chronological order and in consolidated formats. Technologies must also be included in contacts with users; the practice must already exist. *Only if these technologies are already integrated can they be involved in the legislative process.* The new technologies are not in and of themselves levers; they are not sufficient to open up a government system that is hostile to the participative approach.

In Switzerland, the legislative process is extremely open, involving citizens before and after the laws - both primary and secondary legislation - are adopted. Public consultation has been around for about 100 years, and the procedures haven't changed since the 1970s. For the past 10 years it has been explicitly included in the Constitution, and so is now enshrined in law.

New laws, changes in law, international treaties that require parliamentary approval, and all other major projects (e.g. major infrastructure) must be the object of a public consultation before the government can submit them to Parliament. They are accompanied by an explanatory approach and a questionnaire emphasising specific aspects on which the government wants responses. There is also a simplified consultation procedure, which applies to secondary legislation - simplified in that the body initiating the consultation is not the government but a ministry.

The process lasts three months, which is fairly long but called for. The consultation procedure concerns cantons as well as local municipal authorities. It concerns political parties, social partners, trade unions and employer organisations, and NGOs that may be stakeholders in a specific project. Any person or organisation can express an opinion, including those not invited to do so. Very often, the points of view expressed by individuals are not insignificant when you pull together results. Opinions expressed are evaluated by the government, which then drafts a report before deciding on the action to take. Opinions and the report are all made public and are accessible, so citizens can see the extent to which the government has taken account of the voice of the public.

As of 2005, new technologies began to play a role, initially minor, in the public consultation process. Projects are now published on government websites; similarly, opinions expressed and the government report are available online. Those consulted receive a letter indicating the address at which they can download the file, and the public is informed by the official bulletin. Opinions can also be sent to the government in electronic format.

The main change after introducing electronic technologies some five years ago is that we've shifted to a new platform, and electronic supports have partially replaced paper. Interactivity per se hasn't improved. Civil society can have easier access to the information now online on a somewhat selective basis, but this hasn't increased the number of opinions submitted. It hasn't reduced the red tape, simplified the procedure or reduced spending significantly - so the outcome is fairly limited.

That said, the public consultation process - regardless of the medium - is a key stage in the Swiss legislative process. The government collects additional factual information that it needs to make enlightened legislative decisions, and those decisions are more legitimate: because it takes in relevant opinions, the government doesn't make decisions on its own. It can determine when legislative measures are practical and feasible, whether projects are acceptable or not, and so consultation makes it easier to implement legislation.

There is also an awareness-raising role - those who will be subjected to future norms are informed ahead of time and can modify their behaviour accordingly - sort of an early warning system. This is particularly helpful in context of referendums.

Four final comments on the use of new technologies in the legislative process:

1. The impact of new technologies on the consultative process is not very significant to date, but in other stages and other aspects of the legislative process, upstream and down, the situation is very different: for example, in political campaigns concerning referendums, or collecting signatures for initiatives to revise the Constitution.
2. The use of new technologies in legislative procedures facilitating participation is not particularly risky. Still, we must be more cautious regarding votes, elections and referendums. Electronic voting has been introduced on a trial basis, with limited scope of action.
3. New technologies have been criticised for making political activity seem more trivial (such was the case with voting by correspondence), and for debasing voting in general. I don't share this criticism, which mostly reflects the problem of accepting changes in government practice and accepting new technologies.
4. There *is* a risk, however, that their use will encourage the idea of "instant democracy", which is incompatible with the role that government should play as a stabiliser in our society.