

**PUBLIC GOVERNANCE DIRECTORATE
REGULATORY POLICY COMMITTEE**

Cancels & replaces the same document of 28 April 2020

Summary Record

1st NER webinar on “Sector Regulation during the COVID-19 crisis”

16 April 2020, 14:30-16:00 CET

This summary record is provided to NER delegates for information.

Anna PIETIKAINEN (Anna.Pietikainen@oecd.org)

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1 Summary Record: 1st NER webinar on “Sector Regulation during the COVID-19 crisis”

ACTION POINTS

NER delegates are invited to:

- Send examples of the measures they are taking in response to the COVID-19 crisis, to feed into a paper being prepared by the Secretariat.
- Signal their interest in co-organising webinars with the Secretariat on certain themes (e.g. measures to bolster the market, or adapting regulatory practices) or specific sectors’ responses to the crisis.
- The Canadian Transportation Agency has offered to co-host the second NER webinar that would focus on the regulation of transportation during the COVID-19 crisis.

1. The 1st NER webinar on “Sector Regulation during the COVID-19 crisis” was organised in response to demand from delegates and with the support of the NER Bureau. It forms part of the wider OECD effort to support countries as they tackle the health crisis and its economic and social ramifications.¹

2. The session aimed to share regulators’ experiences on their immediate responses to the COVID-19 pandemic and its economic and social effects, and start to reflect on the medium and long term consequences of the crisis for the work of sector regulators. Over 100 participants from regulators across all utility sectors joined the webinar, representing over 30 countries.

Regulators’ responses

3. Presentations covered regulators’ responses in the e-communications, energy, transport and water sectors, highlighting the differing impacts of the COVID-19 crisis between sectors. Importantly, utility sectors overall have shown resilience in continuing to ensure the delivery of essential services thanks to the co-ordinated actions of governments, regulators and industry.

4. Despite sectoral differences, the presentations showcased targeted measures to ensure markets continue to function and deliver and to alleviate pressure on market actors by adjusting regulatory practices. Regulators highlighted the need to adapt certain governance arrangements to enable timely, effective responses. Speakers also reflected on the medium to long term implications of the crisis, for example on competition and investment, and posed the question of how to resume normal operations in

¹ See the OECD webpage Tackling the Coronavirus (COVID-19) : Contributing to a global effort : <https://www.oecd.org/coronavirus/en/>

the post-crisis period. In all areas, in particular for measures for supporting the market and adapting regulatory practices, regulators are reflecting on how long measures should be in place.

Ensuring markets continue to function and deliver

5. Regulators view their primary role in the immediate crisis period as ensuring the quality and reliability of service and protecting vulnerable customers (see Annex for full poll results). Accordingly, regulators are working with providers to ensure network resilience and continued service delivery as demand changes: in the e-communications sector, ensuring network resilience in the face of increased demand is contrasted with a drop in demand in the energy sector.

6. For sectors where demand has fallen or in cases where defaults on payments represent a risk to operators, regulators have been focusing on financial support measures such as special funds to support operators or exemptions from paying compensation for breaching service quality standards. In France, the energy regulator (CRE) has taken measures to help energy suppliers that face the challenge of having purchased energy at a higher price than they are now able to sell it, due to the drop in demand. In Brazil, the Treasury has paid the electricity bills of 9 million of the most vulnerable households for April to June, and an executive order provided legal authorisation for distribution companies to take out loans from private banks with a future tariff coverage guarantee.

7. To support these activities and in order to provide information to decision makers, regulators are intensifying data collection and market monitoring. In France, the transport regulator (ART) has given special attention to monitoring discrimination in path allocation for freight trains and has acted as a facilitator between the infrastructure manager and the railway undertakings to ensure the supply of essential goods.

8. Consumer protection, in particular of vulnerable consumers, is being ensured through several channels, including:

- Prohibiting cuts to service provision even in case of payment issues;
- Requesting operators allow deferred or staggered payments of utility bills and waive financial penalties, suspensions or reductions in supply; suspension of procedures against non-payment;
- Clear communications: e.g. making information accessible in a single portal, in plain language;
- Fighting disinformation on the claimed linkages between 5G and the coronavirus in the case of the e-communications sector.

9. For some regulators, strong relationships and high levels of trust with regulated entities has enabled a rapid response that has not required rewriting regulations or issuing specific decisions. Nevertheless, regulators highlighted the challenges in gaining a full understanding of the problems that industry and consumers are facing, the speed of decision-making needed (regulators' main challenge, according to the live poll results), managing stakeholder demands, deciding how much flexibility to give to operators and for how long, noting that many measures introduced have no expiry dates. Some regulators are now starting to tackle questions about how to revert and unwind easements.

Adjusting regulatory practices

10. Many regulators are taking a pragmatic approach and introducing measures to ease the regulatory burden on operators so that they can focus on urgent crisis actions. Formal consultation processes have been put on hold; adjudication, mediation and facilitation processes have been paused until 30 June in the case of Canada's transport regulator (CTA); service and compliance requirements have been relaxed (e.g. temporary exemptions on data provision and derogations on performance assessment), and regulatory impact assessment is being based on existing rather than new data. The UK's Ofcom has introduced a number of regulatory easements, many of which have not required changes to regulation, instead taking

a pragmatic approach in the interpretation and application of regulations. In cases where the planned introduction of new regulation has been maintained, for example in the transport sector in Canada, the regulator has signalled to industry that they will be pragmatic in their expectations on operators' implementation.

11. While regulators are under pressure from regulated industry to act as quickly as possible, they nevertheless require a certain level of evidence, data and rationale in order to relax requirements. Regulators have been more flexible than usual on the level of detail of data required and how regulated entities can provide the information (e.g. by phone, email...); consultations also tend to be more informal, often by phone.

12. Work programmes are being re-phased to take account of external stakeholders' limited ability to respond to consultations and to engage with the regulatory policy debate, as well as the regulator's own internal resource constraints. In some cases, discussions with stakeholders are starting on how to eventually resume these processes.

Adapting governance arrangements and internal organisation

13. Regulators underlined their independent status while highlighting the need for a highly collaborative relationship with government and stakeholders to ensure a co-ordinated response to the crisis. Yet, role clarity and co-ordination with other public bodies ranked among the top challenges that regulators are facing according to the poll results. Increased frequency of roundtable conversations between government, industry and the regulator and a collaborative attitude set can lead to positive experiences where the focus is on identifying the best outcomes for consumers and businesses and how to achieve them. Relations with stakeholders tend to be more frequent but informal compared to normal circumstances, as highlighted by Italy's energy and environment regulator (ARERA). Many regulators have been focusing on providing data, proposals and impact analyses to support decision-making by the executive.

14. Regulators' organisational changes have included a shift to remote working (and the use of digital tools to facilitate this), rescheduling duties to free up staff for urgent tasks, and even temporary office closures as a preventive measure to avoid staff burnout, in anticipation of the heavy workload that will be required after confinement measures are lifted. Italy's ARERA has created ad hoc task forces and divided roles between Board members in a change to usual decision-making processes. The regulator has also revised its strategic targets in light of the crisis.

Looking ahead: Long term considerations

15. On an operational level, regulators raised the challenge of deciding when and how to resume normal operations and deal with the backlog of work.

16. Regulators also highlighted some of the medium to long term implications that could affect their work, including:

- the evolution of the market structure, notably the risk of increased market concentration and the challenge of maintaining a level playing field (this ranked as the second highest concern according to the live poll results);
- how to treat operators that are in financial difficulty once the sanitary crisis has ended;
- constrained financing for infrastructure;
- changing priorities or conflicting objectives of policy makers, e.g. developing competition potentially a lower priority; potential misalignment between industrial policy and competition policy.

17. The poll results showed that regulators are also highly concerned about the effect on vulnerable consumers.

18. In the aftermath of crisis, co-ordination between regulators and government will be essential to adapt to new priorities, balance competing interests and clarify the role and mission of regulators in the new context.

ANNEXES

1. Programme

Chair: Anne Yvrande-Billion (ART, France)

Moderator: Anna Pietikainen, Senior Policy Analyst, Regulatory Policy Division

Speakers:

Clive Carter, Director of Strategy, Ofcom, United Kingdom [E-communications]

Camilla de Andrade G. Fernandes, Advisor to Board, ANEEL, Brazil [Electricity]

Christian Minelli, Co-ordinator, European Water Regulators' Association (WAREG) [Water]

Miyuki Tsuchiya, Policy Officer, CRE, France [Energy]

Andrea Guerrini, Commissioner, ARERA, Italy [Energy and environment]

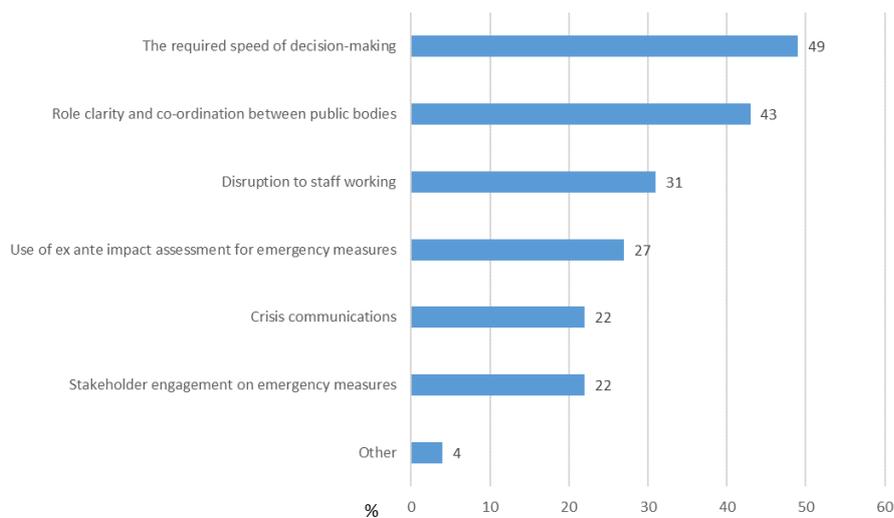
Scott Streiner, Chair and CEO, CTA, Canada [Transport]

Anne Yvrande-Billon, Vice President, ART, France [Transport]

2. Results of live poll

Regulators responded to the following poll questions:

What has been the most challenging aspect of responding to the COVID-19 crisis?

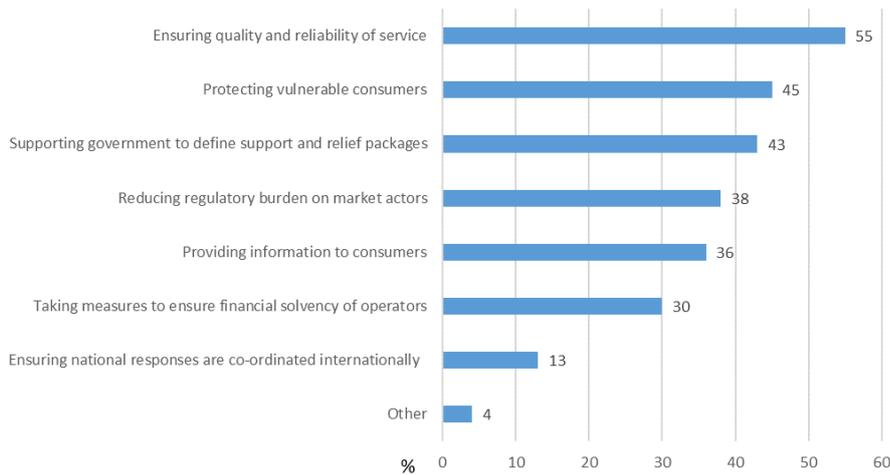


Note: Questions were multiple choice, percentages do not add up to 100%

Responses given to “Other”:

- Having formal regulatory levers that could directly assist on the revenue or network capacity challenges faced by communications sector providers
- One of the challenges is the fact that national rules are based on international rules, and in the constantly changing situation it is difficult to follow how other authorities react. A consistent approach is always preferable.

What do you see as the primary role for your regulator in the immediate crisis period?



What is the longer-term implication of the crisis that your regulator is most concerned about?

