

# Improved Regulatory Management: A Framework for Improved Governance and Economic Development

By Edward Donelan

## Abstract

The Institutions and Member States of the EU and most OECD countries have developed policies over the last decade to assess the impact of new legislation. These policies need, however, to be seen in the wider context of Better Regulation policies, that is to say policies aimed at improving the quality of the ‘flow’ of new regulations by better policy making and law *drafting* and by reviewing and keeping up to date and relevant the ‘stock’ of existing regulations. A Better Regulation Policy helps policy makers’ bear in mind the need to keep burdensome requirements to a minimum in meeting public policy objectives.

The purpose of this paper is to make available for participants at the Euro-Med Workshop<sup>1</sup> a framework for understanding Better Regulation policies, as developed by the European Commission and the Member States of the European Union. Better Regulation needs also to be understood in the context of the development of the concept of regulatory management, a term which includes regulatory reform and ‘Better Regulation policies.’<sup>2</sup>

Finally, the Better Regulation Policies in the European Union need to be understood in the wider context of work in OECD countries on Regulatory Reforms and improving regulatory management. The paper explains the common factors between the OECD [Recommendation of the Council on Regulatory Policy and Governance](#) and the Better Regulation policies of the EU and its Member States. It also examines the tools and institutions used in the implementation of a Better Regulation policy.

Many of these reforms originate with concerns about bureaucracy, over-regulation and the need to balance the sometimes competing interests of the free market and the need to enforce standards for the protection of the environment and the promotion of social welfare.

The Euro –Mediterranean Charter for Enterprise<sup>3</sup> sets a framework for the development of an environment to support enterprises in the Euro-Mediterranean region. Guidelines are grouped in eleven “dimensions”. The first of them relates to simple procedures.

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<sup>1</sup> The paper is a more detailed statement of a presentation given by Edward Donelan, *Senior Adviser - Regulatory Governance, SIGMA (Support for Improvement in Governance and Management)* on the occasion of the second Euro-Med Workshop. The Union for the Mediterranean (Euro-Med) promotes economic integration and democratic reform across 16 neighbours to the EU’s south in North Africa and the Middle East. Formerly known as the [Barcelona Process](#), co-operation agreements were re-launched in 2008 as the Union for the Mediterranean. At a Ministerial Council of the Euro-Med countries in 2010 it was decided to hold two workshops. This paper was presented in Paris at the OECD headquarters during the second of those two workshops see: [http://ec.europa.eu/enterprise/policies/international/files/charter\\_11\\_dimensions\\_en.pdf](http://ec.europa.eu/enterprise/policies/international/files/charter_11_dimensions_en.pdf)

<sup>2</sup> Some of the terminology used in this paper may be somewhat specialised for the reader so with this in mind, terms such as regulatory management, regulatory policy and Better Regulation are defined in an appendix to the paper.

<sup>3</sup> [http://ec.europa.eu/enterprise/policies/international/files/charter\\_11\\_dimensions\\_en.pdf](http://ec.europa.eu/enterprise/policies/international/files/charter_11_dimensions_en.pdf)

## Introduction

Over the last 100 years there has been a substantial growth in the number and range of regulatory or legislative<sup>4</sup> interventions globally. This growth has led to the development of the concept of the regulatory state.<sup>5</sup> Regulations reflect the societies in which we live. The box below gives a flavour of the areas of state intervention through regulation.

From the 1980's onwards, a number of trends have provided the drivers for policies to bring about better regulatory management, sometimes referred to as '*Better Regulation*'. A policy on regulatory management may be classified as a policy to ensure that new regulations are as efficient and effective as possible and impose the minimum burden on citizens and business.

Better Regulation features in the rhetoric of many OECD and EU countries and has grown as a subject in its own right in the last twenty years. The agenda has developed from a number of trends which included: New Public Management, a recognition that the Executive Branch of Government needed to be reinvented to a more modern form<sup>6</sup>, demands from business and some citizens groups for less bureaucracy and developments in information technology and telecommunications.

A further trend was the desire, epitomised by the reforms associated with President Reagan of the United States and Prime Minister Thatcher of the United Kingdom, to reduce the size of government. These reforms called 'regulatory reforms, involved privatization, i.e., selling off industries that were traditionally regarded as the exclusive preserve of State, such as monopolies in energy, transport and telecommunications.

Reviews by the OECD of regulatory reforms developed a much wider field of inquiry. For the OECD, Regulatory reform includes any changes that improve regulatory quality and enhance the performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform in this context can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform.

Regulatory reforms have, over the last decade, become an explicit policy of Better Regulation in EU countries. These reforms have been championed by the European Commission and have been subjected to a number of studies.<sup>7</sup> That policy has included the development of tools such as impact assessment, improved consultation and the simplification of regulations and reducing bureaucracy.

## Why regulate?

Before looking at how to regulate better, it is worth reflecting on the issues of why regulate and why has there been such a growth of regulations over the last three decades?

Regulations are enacted for various purposes and as a result of different pressures. They can be developed as a result of the transfer of ideas through globalization, as a result of public demand,

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<sup>4</sup> Confusingly for English speaking lawyers, the term regulation has largely replaced legislation in current writing about public governance. To an English speaking lawyer, "regulations" are secondary legislation but to an economist or political scientist "regulation" means government intervention usually supported by legislation.

<sup>5</sup> The term was coined in *The rise of the Regulatory State in Europe West European Politics*, Majone, G (1989) *From the Positive to the Regulatory State; causes and consequences of changes in the mode of governance*. Journal of Public Policy, Majone, G (1997)

<sup>6</sup> See the classic work on this subject: Osborn, D and Gaebler, T, *Reinventing Government*, Longman

<sup>7</sup> See SIGMA Paper No 42, Regulatory Management in the New EU Member States and the subsequent reviews of the other Member States by the OECD: [www.oecd.org/.../0,3746,en\\_2649\\_34141\\_41909720\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/.../0,3746,en_2649_34141_41909720_1_1_1_1,00.html)

or through the pressures of powerful commercial or political actors. In the case of regulations to intervene in the functioning of the free market, they can be introduced to address market failures, to prevent unfair windfall profits, to address information asymmetries, to ensure continuity of services and to facilitate planning or better allocation of resources.<sup>8</sup>

Regulation has been with us since the beginning of organised government. Much of the modern literature on regulation<sup>9</sup> is concerned with regulation in the public interest in relation to the functioning of markets. However, there is much more to regulation than the management of the economy. Various OECD papers and reports on Better Regulation have enabled us to develop insights into the nature of regulation and how the regulatory management process can be improved with consequent benefits for social welfare, protection of the environment and related objectives of government.

#### **Box 1: Regulation reflects the problems of each period of history**

Regulation generally reflects the concerns of the times<sup>10</sup>. In the UK, in the nineteenth century, for example, there were concerns about the welfare of young people working in mills and later with the state of conditions in factories and mines. As the complexity of commerce grew, so did the need for more complex banking and commercial regulations. As the economy of the United States grew, concerns developed about monopolies and the need to develop an adequate rail network. These concerns were reflected in the development of appropriate regulatory regimes.

In the 1930's the contraction of the global economy was accompanied by an increase in protectionist regulations.

This contrasted with the development in the 1960's and in the 1970's in Europe with the development of regulations to promote and support rights. The included women's rights, protection of workers and the consumer as well as the necessity to protect the environment.

Considerable debate took place in the 1980's concerning the liberalization of industries such as telecommunications, utilities, air transport and broadcasting. Up to that time, these industries were considered to be natural monopolies and the exclusive preserve of government. In both the United States and the United Kingdom, a policy shift occurred to liberalise markets by means of better regulation.

These reforms were followed in many other countries with varying degrees of success and failure. A high point probably occurred in the United Kingdom with the enactment of the Deregulation and Contracting Out, Act, 1994. It gave ministers power to use secondary legislation to eliminate legislative burdens and controls. In the USA, the Paperwork Reduction Act of 1980 was an attempt by President Carter to cut administrative burdens on citizens and businesses.

### **Growth of regulations**

The growth of regulations has also raised questions about the efficacy of traditional command and control regulations. Questions were asked whether self-regulation would be more effective or could controls be better achieved by audits and reviews rather than by the traditional approaches leading to criminal penalties for breaches. More attention was paid also to risk management and recognition that not every detail of commercial or human behaviour can realistically be regulated, nor in some cases, does it need to be. Alternative approaches to

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<sup>8</sup> For contrasting USA and UK views, see respectively: *Contemporary Regulatory Policy*, Eisner, M., Colorado, 2006, chapter 1 and *Understanding Regulation*, Baldwin, R., Cave, M., Lodge, M., Oxford, 2012, Chapter 2

<sup>9</sup> See bibliography at the end of the paper

<sup>10</sup> The means by which issues become selected for public debate and action are very diverse. In modern times, many issues come to political attention for consideration as a result of media attention which in turn may be driven by elite interests.

regulation, such as carbon trading permits have been developed as an effective means of achieving effects.

Questions arose also about the fragmentation of regulatory regimes and the effectiveness of compliance and enforcement processes. All of these issues have come together in a large melting pot in which the complexity of the subject matter and the issues in need of attention are sadly reduced to headlines or slogans about 'red tape', or excessive 'bureaucratization' of commercial and social life.

Since the 1980's, the area of regulation that is most contested is possibly the regulation of the free market. On one side of that debate are those who are of the view that too much regulation undermines markets and encumbers corporations with overly bureaucratic compliance obligations. On the other side of the debate are advocates who support public authorities to hold the corporate world in check so as to ensure consumer protection, safety, health and welfare of workers, the protection of the environment and controls on monopolies and cartels.

The growth in regulations has been accompanied by a concern about how to improve the quality of regulations and how to ensure that regulations do not have unintended consequences. These concerns have found expression in many OECD and EU countries in the form of the development of better regulation policies, i.e., an explicit policy to improve the quality of regulatory processes and the content of regulation.

### Policy on Better Regulation

The main characteristic of a policy on Better Regulation is that it sets out criteria for what constitutes good quality regulation. Of the many sources that may be studied to develop criteria to define quality in regulation, three<sup>11</sup> come to mind: the work of the OECD on this issue, the policy of the Commission of the European Union, and the policies of those EU member states that have developed 'Better Regulation' policies.

#### OECD

The Council of the OECD has made recommendations<sup>12</sup> on regulatory policy and governance. The most recent of these:

- provides governments with clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards;
- advises governments on the effective use of regulation to achieve better social, environmental and economic outcomes; and
- calls for a "whole-of-government" approach to Better Regulation, with emphasis on the importance of consultation, co-ordination, communication and co-operation to address the challenges posed by the inter-connectedness of sectors and economies.<sup>13</sup>

#### EU Policy

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<sup>11</sup> There are many more: see for example, the Canadian proposals:<http://webcache.googleusercontent.com/search?q=cache:NAFAF4DY-vEJ:http://publications.gc.ca/collections/Collection/CP22-78-2004E.pdf%2Bsmart+regulation+canada&hl=en&ct=clnk>

<sup>12</sup> This suggests 12 principles: Proportionality, Accountability, Consistency, Transparency, Targeting, Necessity, Proportionality, Subsidiarity, Transparency, Accountability, Accessibility, Simplicity, Effectiveness, Cost-efficiency, Timeliness, Transparency, Accountability

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[http://webcache.googleusercontent.com/search?q=cache:2aCO\\_uMoNLcl:http://www.oecd.org/%2Boecd&gs\\_l=serp.12..0l10.4640.7422.0.9328.6.6.0.0.0.343.874.0j4j0j1.5.0...0.0.kngLdm8stlQ&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:2aCO_uMoNLcl:http://www.oecd.org/%2Boecd&gs_l=serp.12..0l10.4640.7422.0.9328.6.6.0.0.0.343.874.0j4j0j1.5.0...0.0.kngLdm8stlQ&hl=en&ct=clnk)

Another important example of a regulatory management policy is the European Union Better Regulation policy now rebranded as SMART Regulation. It provides a framework for managing the policy cycle and a methodology to improve the quality and management of the drafting, enactment and enforcement of regulations. It is based on three key action lines:

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

**Regulatory Policy across EU Member States**

There are many examples of Better Regulation policies and initiatives in EU Member States. Table 1 below sets out the most important of them.

**Table 1: Examples of Better Regulation Initiatives in Selected EU Member States**

<b>Examples of Better Regulation Initiatives</b>	<b>Country of Origin</b>
<b>Action Plan to reduce Administrative Burdens on businesses now extended to reduce administrative burdens on public sector workers in central and local Government. Programme has led to a 15.3% reduction in administrative burdens.</b>	Denmark (see Better Regulation in Europe: Denmark, OECD)
<b>Reforms driven by a special unit at the centre of Government, the Better Regulation Group complemented by independent watchdog body, ACTAL, has ensured successful delivery of Standard Cost Methodology (a tool for measuring and eventually reducing the administrative burden on businesses.</b>	Netherlands (see Better Regulation in Europe: Netherlands, OECD)
<b>National Action Plan for Burden reduction</b>	Spain, Germany, Italy (see Better Regulation, OECD)
<b>Better management of the stock of legislation by a programme of statute law revision (weeding out spent and unused statutes), consolidation (rewriting and re-enacting texts that have been amended frequently into one coherent Act) and restatement (publishing informal consolidations of legislation. These texts are not enacted, as is the case with consolidation, but are reviewed and certified by the Attorney General as a correct version of the text.</b>	Ireland (see Better Regulation, OECD)
<b>Very well- developed use of impact assessment</b>	United Kingdom (see Better Regulation, OECD)
<b>Impact assessment in Legislative Drafting</b>	Finland

## Good regulation

Any discussion about better regulation raises the question: what constitutes good regulation? One group of authors <sup>14</sup>sets out the following questions as the basis for criteria for assessing regulatory quality:

1. Is an action supported by legislative authority?
2. Is there an appropriate scheme of accountability?
3. Are procedures fair, accessible and open?
4. Is the regulator acting with sufficient expertise?
5. Is the action or regime efficient? <sup>15</sup>

## Convergence

A number of studies suggest that there is a degree of convergence in Europe, at least around the development of a national policy on regulatory management or Better Regulation.<sup>16</sup> A similar observation can be made about the majority of OECD countries and there are even traces of better regulatory management in the form of tools such as impact assessment in places as diverse as Bhutan and Colombia.

While there is a degree of convergence on the development of Meta policies on regulation to bring about Better Regulation, there is less convergence in the use of tools and institutions.

## Tools in regulatory management

The main tools in regulatory management are: impact assessment, consultation, administrative simplification.<sup>17</sup> There is widespread agreement that impact assessment and consultation are the two most important tools to improve the quality of regulations.

## Impact Assessment

Impact assessment is "a process aimed at structuring and supporting the development of policies. It identifies and assesses the problem at stake and the objectives pursued. It identifies the main options for achieving the objective and analyses their likely impacts in the economic, environmental and social fields. It outlines advantages and disadvantages of each option and examines possible synergies and trade-offs".<sup>18</sup>

At its simplest, impact assessment is a tool used to improve the formulation of policies. It involves appraisal of the data available, a dialogue within government and with society and then drawing up recommendations which are usually then articulated in some form of regulation.

Policies can be developed in a variety of ways using a variety of tools. Most policies require some sort of systematic policy analysis. Impact assessment can be applied to great effect in such a systematic process. Impact assessment gives a frame of reference to policy-makers and, typically, involves making a clear definition of the problem to be solved, an analysis of the options and, crucially, an analysis of the costs and benefits of the options identified and then a decision needs to be taken on the final policy choice.

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<sup>14</sup> *Regulatory Quality in Europe*, Radaelli, C., De Francesco F., (Manchester, 2007) see Chapter 2

<sup>15</sup> *Understanding Regulation*, Baldwin R., Cave, M., Lodge, M., Oxford, 2012, p 26 et seq.

<sup>16</sup> *Regulatory Policy and Governance Supporting Economic Growth and Serving the Public Interest*, OECD, 2011

<sup>17</sup> See p 63 OECD Reviews of Better Regulation: Taking Stock of Better Regulation, a Multidisciplinary Synthesis, (OECD, 2005)

<sup>18</sup> [http://ec.europa.eu/governance/impact/index\\_en.htm](http://ec.europa.eu/governance/impact/index_en.htm)

The European Commission suggests the following procedural steps methodology for undertaking impact assessments:

- |     |   |                    |
|-----|---|--------------------|
| 1.  | Planning of impact assessment (IA): Roadmap, integration in the Commission's strategic planning and programming (SPP) cycle and | timetable.         |
| 2.  | Work closely with your IA support unit throughout all steps of the IA   | process            |
| 3.  | Set up an impact assessment steering group and involve it in all IA   | work               |
| 4.  | phases.   |                    |
| 5.  | Consult interested parties, collect expertise and analyse the results.  |                    |
| 6.  | Carry out the IA analysis.  |                    |
| 7.  | Present the findings in the IA report.  |                    |
| 8.  | Present the draft IA report together with the executive summary to the  | Impact             |
| 9.  | Assessment Board (IAB) and take into account the possible time  | needed to resubmit |
|     | a revised version.  |                    |
| 10. | Finalise the IA report in the light of the IAB's recommendations.   |                    |
| 11. | IA report and IAB opinion(s) go into inter-service consultation   | alongside the      |
|     | proposal  |                    |
| 12. | Submission of IA report, executive summary, IAB opinion(s) and  | proposal to the    |
|     | College of Commissioners.   |                    |
| 13. | Transmission of the IA report and the executive summary with the  | proposal to        |
|     | the other EU institutions.  |                    |
| 14. | Final IA report and IAB opinion(s) published on dedicated Europa  | website.           |
| 15. | In the light of new information or on request from the EP or the  | Council, the       |
|     | Commission may decide to update the IA report <sup>19</sup>   |                    |

There are several analytical methods to look at costs and benefits of proposed regulations. These include: cost benefit analysis, cost effectiveness analysis, risk assessment and uncertainty analysis, and a range of partial analysis such as administrative burden estimates, business impact tests or specific tests of impact on small to medium enterprises.<sup>20</sup>

Regulatory impact assessment (RIA) was developed to great effect by the Office of Management and Budget in the Office of the President of the United States of America and disseminated widely through the work of the OECD.

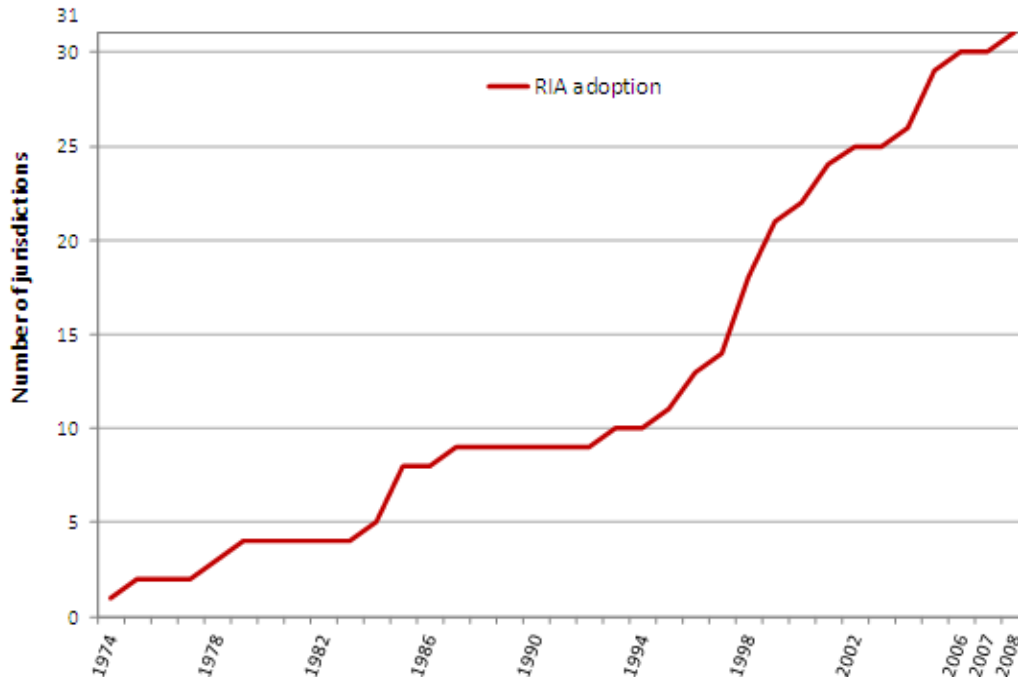
It is a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives. As employed in OECD countries it encompasses a range of methods. At its core, it is an important element of an evidence-based approach to policy-making. For the majority of OECD countries, their individual models of RIA align closely with the European Commission model of IA.

OECD analysis shows that the conduct of RIA within an appropriate systematic framework can underpin the capacity of governments to ensure that regulations are efficient and effective in a changing and complex world. Some form of RIA has now been adopted by nearly all OECD members, but they have all nevertheless found the successful implementation of RIA administratively and technically challenging.

<sup>19</sup> [http://webcache.googleusercontent.com/search?q=cache:4F5X300gE0gl:http://ec.europa.eu/governance/impact/index\\_en.htm%2Bimpact+assessment&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:4F5X300gE0gl:http://ec.europa.eu/governance/impact/index_en.htm%2Bimpact+assessment&hl=en&ct=clnk)

<sup>20</sup> *Regulatory Impact Assessment – Towards Better Regulation?* Kirkpatrick C, Parker D, (CRC, 2007) see Chapter 2 Current trends in the process and methods of impact assessment, Jacobs S

## Trend in RIA adoption across OECD jurisdictions



Source: OECD (2009), *Indicators of Regulatory Management Systems*, p. 64, Paris.

The graph conceals as much as it reveals and the story of impact assessment is by no means a tale of adoption and linear improvement. Possibly the best examples of the development of impact assessment are to be found in Europe in, for example, the experiences of the European Commission and those of the United Kingdom.

The development of impact assessment in the United Kingdom has been dramatic and visible. However, it has not been without its critics. Indeed, successive national audit reports have provided mixed reports<sup>21</sup>. The report in 2009, for example, observed that the 'new' IA process has helped to improve the standard of Impact assessments but the standard of IAs still varied widely. It reported that in the weaker assessments there was insufficient analysis of evidence. In favour of impact assessments, the National Audit Office noted that the Better Regulation Executive's introduction of a new IA process provided a catalyst for change and departments have strengthened scrutiny processes.

There are wider criticisms of impact assessment and these may help develop an understanding of why an intelligent policy idea has not been universally successful and should be introduced with extreme caution by developing and transition governments.

<sup>21</sup> See, for example, *Making Good Use of Regulatory Impact Assessment* (2001) also 2004, 2005, 2006



Advocates of impact assessment argue that it improves the mandate of policy goals by considering alternatives; it improves accountability, supports due process and increases the efficiency of regulations. In a number of Member States, however, impact assessment continues to be perceived as a tick box exercise that is used after much of the policy development has taken place, when decisions have been made and when the legal drafting team start to develop the laws to give effect to policies. The European Commission believes that the most effective way of improving the quality of new policy proposals is by making those people who are responsible for policy development also responsible for assessing the impact of what they propose. It also advocates that impact assessment should occur in tandem with the policy development process.

Unfortunately, not all of these benefits flow automatically all of the time.<sup>22</sup>

As regards efficiency, there are problems in relation to the data needed to conduct effective impact assessments. It is usually relatively easy to assess the costs associated with a particular regulation but not so easy to quantify the benefits. What value, for example, should be attributed to a human life or health?<sup>23</sup>

## Consultation

Consultation is a process by which the public's input on matters affecting them is sought. Its main goals are in improving the efficiency, transparency and public involvement in large-scale projects or laws and policies. It usually involves notification (to publicize the matter to be consulted on), consultation (a two-way flow of information and opinion exchange) as well as participation (involving interest groups in the drafting of policy or legislation). A frequently-used tool for understanding different levels of community participation in consultation is known as Arnstein's ladder.

There is great variation in the nature of public consultations across EU and OECD member countries. In the United States, consultation is often referred to as "notice and comment". The European Commission pays great attention to public consultation and has many web sites designed to encourage and facilitate consultation with the public.<sup>24</sup>

The United Kingdom has a Code of Practice on Consultation<sup>25</sup>. It sets out 7 criteria for consultation and provides guidance on: when to consult, the duration of a consultation exercise, and the necessity to keep the burden of consultation to a minimum. The Guidelines also require that consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation. Officials running consultations are asked seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The OECD, noting that governments are under pressure to do more with less, argue that public consultation offers a means of improving public policy performance and meeting public expectations. The OECD suggest that

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<sup>22</sup> For an interesting discussion on these issues see *Understanding Regulation*, Baldwin R., Cave, M., Lodge, M., Oxford, 2012 Part 1V

<sup>23</sup> Some US studies have used valuations of human life ranging from \$300,000 to \$3.5 million *Reinventing Rationality*, McGarity 275

<sup>24</sup> For example, [http://webcache.googleusercontent.com/search?q=cache:Lca6WzXII3AJ:http://ec.europa.eu/trade/public-consultations/%2Bpublic+consultation++european+commission&gs\\_l=serp.3..0i19.3562.8281.0.8953.21.9.0.12.12.0.250.937.0i4j2.6.0...0.0.fPWVKi6E0QU&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:Lca6WzXII3AJ:http://ec.europa.eu/trade/public-consultations/%2Bpublic+consultation++european+commission&gs_l=serp.3..0i19.3562.8281.0.8953.21.9.0.12.12.0.250.937.0i4j2.6.0...0.0.fPWVKi6E0QU&hl=en&ct=clnk)

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[http://webcache.googleusercontent.com/search?q=cache:l1ZlduzztcOJ:http://www.bis.gov.uk/files/file47158.pdf%2Bconsultation+guidelines&gs\\_l=serp.3..0.59671.66796.0.67859.32.20.0.10.10.3.438.2845.0i5j4j2j1.12.0...0.0.3TY8UThExe4&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:l1ZlduzztcOJ:http://www.bis.gov.uk/files/file47158.pdf%2Bconsultation+guidelines&gs_l=serp.3..0.59671.66796.0.67859.32.20.0.10.10.3.438.2845.0i5j4j2j1.12.0...0.0.3TY8UThExe4&hl=en&ct=clnk)

*“public engagement in the design and delivery of public policy and services helps governments better understand people’s needs, leverage a wider pool of information and resources, improve compliance, contain costs and reduce the risk of conflict and delays downstream.”<sup>26</sup>*

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<sup>26</sup> See OECD Studies on Public Engagement, Focus on Citizens, Public Engagement for Better Policy and Services, OECD, 2009

## Administrative simplification

There have been concerns for centuries about red tape<sup>27</sup>. Concerns have accelerated in most OECD countries since the mid 1980's<sup>28</sup>. Some countries began work in this field earlier than others. The Paperwork Reduction Act 1980 in the USA is a good example of the effort in the United States to cut administrative burdens.

Formalities are of course essential to ensure the fair operation of regulations and to provide some form of coherence and consistency to government activities. However, if carried to extremes they can be counterproductive. The European Commission and many EU Member States and OECD countries have embarked on extensive programmes to reduce 'red tape' and administrative burdens. An advance in information technology has facilitated the ability of countries to tackle innovatively unnecessary burdens, for example through enabling online filing of taxes or applications for permits.

Given the importance of SME's to the development of economies, increasing efforts are being paid to ensure that special assistance and guidance is made available to SME's and that administrative requirements are made less stringent for small businesses. In addition, special efforts are being made when new regulations are drafted to be sensitive to the needs of SME's.

The European Commission has a simplification programme which aims to produce benefits for market operators and citizens and thus enhance the competitiveness of the European economy. It is geared to stimulate innovation and reduce administrative burdens stemming from regulatory requirements, as well as to move towards more flexible regulatory approaches and to bring about a change in the regulatory culture.

In October 2005, following the European Commission communication 'Better Regulation for Growth and Jobs in the EU', the Commission launched a new phase for the simplification of existing EU law by setting out a rolling programme, initially covering the years 2005-2008 (based on the Commission's 2002 Action Plan for simplifying and improving the regulatory environment).

This programme draws extensively on stakeholder input and focuses on sectoral simplification needs. It initially listed some 100 initiatives affecting about 220 basic legislative acts, to be reviewed over the following three years.

In January 2009 the Commission presented its Third Strategic Review on Better Regulation and updated its simplification rolling programme<sup>29</sup> The Simplification rolling programme currently covers 185 measures of which the Commission has already adopted 132. During 2009, 33 initiatives are foreseen to be adopted. Some of these initiatives are entirely new (22) and cover policy areas such as state aid, accountancy law, enforcement of court judgments in civil and commercial matters and late payments in commercial transactions.<sup>30</sup>

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<sup>27</sup> The English practice of binding documents and official papers with red tape was popularized in Carlyle's writings, protesting against official inertia with expressions like "Little other than a red tape Talking-machine, and unhappy Bag of Parliamentary Eloquence" though it seems the practice of binding government documents with red tape goes back many centuries but it is less clear when it became a term of abuse.

<sup>28</sup> See From Red Tape to Smart Tape: Administrative Simplification in OECD Countries, OECD, 2003

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[http://webcache.googleusercontent.com/search?q=cache:XiK6flqTtjwJ:http://ec.europa.eu/governance/better\\_regulation/simplification\\_en.htm%2Beuropean+commission+simplification&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:XiK6flqTtjwJ:http://ec.europa.eu/governance/better_regulation/simplification_en.htm%2Beuropean+commission+simplification&hl=en&ct=clnk)

Most European countries have specific policies to simplify the stock of legislation. France, for example, has a Commission for Simplification in the Office of the Prime Minister. There has been a strong focus in the Netherlands, Denmark, Norway and Sweden on measuring administrative costs and reducing them where possible.

The Netherlands developed the Standard Cost Model (SCM) as a method for determining the administrative burdens for businesses imposed by regulation<sup>31</sup>. It is a quantitative methodology that can be applied in all countries and at different levels. The method can be used to measure a single law, selected areas of legislation or to perform a baseline measurement of all legislation in a country. The SCM is also suitable for measuring simplification proposals as well as the administrative consequences of a new legislative proposal. It has been followed by a number of countries and found to be a useful tool in improving regulatory regimes.

### Alternatives to regulation

The traditional approach to regulation is ‘command and control.’ This approach presents a number of problems including: rigidity, especially as regards standard setting, problems of enforcement, and problems of cost (both on those regulated and on enforcing authorities)<sup>32</sup>. To address these problems a number of models have emerged including self-regulation by professions and self-p regulation by industries<sup>33</sup>.

In some areas the approach of co-regulation has proved successful in the UK and with

### Quality of law drafting

In principle, the preparation of legislation is best conducted in two stages: *policy development*, followed by the *drafting of legislation* to give effect to the policy adopted.

At the first stage, certain key decisions are needed on such questions as:

- What is the precise nature of the problem to be dealt with, and what are the policy objectives for its resolution?
- What are the possible options for giving effect to the desired policy and which of these is to be preferred?
- Should this option be realised through legislation rather than by non-legislative means?
- Which authorities or agencies should be given responsibility for putting the legislation into effect?
- What is the basic approach that the legislation should adopt and what are the essential legal and administrative mechanisms that are necessary to put that approach into effect and make it workable?<sup>34</sup>

Globally, there are two broad approaches to drafting legislation: the civil law approach and the common law approach. In the civil law systems the same officials ‘usually’ formulate policy and draft legislation. These countries have a different approach to quality review. For example, countries like Belgium, France and Italy have a Council of State which reviews primary legislation before it is submitted to parliament. Countries like Croatia, Serbia and Jordan have government legislation offices which review draft legislation before it is submitted to government.

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<sup>31</sup> A manual has been developed and is easily accessible at [http://webcache.googleusercontent.com/search?q=cache:CGw\\_lkaZ09sJ:http://www.oecd.org/dataoecd/32/54/34227698.pdf%2Bstandard+cost+model+netherlands&gs\\_l=serp.3...5062.8499.0.9203.17.15.0.0.0.407.2281.0j2j5j1j1.9.0...0.0...1c.-VOXdFd\\_aRE&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:CGw_lkaZ09sJ:http://www.oecd.org/dataoecd/32/54/34227698.pdf%2Bstandard+cost+model+netherlands&gs_l=serp.3...5062.8499.0.9203.17.15.0.0.0.407.2281.0j2j5j1j1.9.0...0.0...1c.-VOXdFd_aRE&hl=en&ct=clnk)

<sup>32</sup> See *Managing Regulation*, Lodge, M and Wegrich, Palgrave (2012) Chapter 5.

<sup>33</sup> The advertising industry in the UK and Ireland is a successful example of this approach

<sup>34</sup> *Law Drafting and Regulatory Management in Central and Eastern Europe*, SIGMA Paper No 15 [www.sigmaweb.org](http://www.sigmaweb.org)

In the common law countries there are specialist lawyers<sup>35</sup> who draft legislation mostly primary legislation (laws passed by parliaments). Whereas secondary legislation (regulations to give effect to primary legislation) is drafted by officials in Ministries and sometimes reviewed by the specialist lawyers who draft primary legislation. There is usually a strict line between policy formulation and legislative drafting.

### Features in common

There are some features in common in the two systems. Policy formulation and legislative drafting are 'notionally' separated in both systems. Civil law countries do not have lawyers who specialise in drafting but, typically, Ministries have legal departments who gain experience of drafting. In both systems, there are reviews of quality. In both systems, the inter-ministerial consultation process prior to submission to government provides a form of quality check.

In Ireland, the Office of the Parliamentary Counsel<sup>36</sup> is located in the Office of the Attorney General<sup>37</sup>. Drafts of legislative texts are prepared in Ministries and sent to the Office of the Parliamentary Counsel to the Government for drafting and each draft is then reviewed by a lawyer on the advisory side of the Office of the Attorney General. In civil law countries there is a variety of approaches to the review of drafts. In the Czech and Slovak Republics there are Legislation Offices who perform that function. In Estonia there is a Legislation Council (Legal Ombudsman). In Sweden, the review is undertaken by judges.

In both systems, there is a growing convergence in the use of policy development tools such as impact assessment and consultation. There is also a growing understanding in OECD and EU countries of the need to have, and apply, indicators of the quality of legislation. Typically, these indicators are similar in all countries and a review of manuals<sup>38</sup> and similar materials all reveal the requirement for legislation to be clear, coherent, consistent and be efficient (provides maximum benefit at least necessary cost).

Legislation also in most countries needs to be effective (enforceable or readily complied with) and must achieve stated political, social and economic objectives. In addition, legislation must satisfy the more traditional criteria that it be consistent with constitutional standards and comply with the general principles of law operating in a given legal system.

Drafting of legislation (i.e., the preparation of the legislative text which converts a policy into laws) is a difficult task which requires a very good knowledge of constitutional and administrative law as well as knowledge of the legal and substantive issues associated with the proposal to be drafted. It also requires excellent written skills and good communication skills to be able to explain why a text is drafted in a particular manner. Legislative drafting is a task that is little understood and the amount of time needed to draft is frequently underestimated. It is work that cannot be undertaken by every lawyer and it is estimated that it takes between 5 and 10 years to achieve full competence.

Legislative drafting is, generally, not taught in law schools and, as a result, there are very few competent experts in the discipline. The work requires specialist training which is usually best achieved by a combination of 'on the job' experience and theoretical training in substantive law

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<sup>35</sup> These lawyers are usually called Parliamentary or Legislative Counsel and they owe their existence to the development of a specialist drafting service established in 1869 in the United Kingdom Treasury Department (Finance Ministry).

<sup>36</sup> The full title is parliamentary counsel to the government

<sup>37</sup> The Attorney General is the legal adviser to the government.

<sup>38</sup> See, for example, Joint Practical Guide of the European Parliament, the Council and the Commission for the drafting of Legislation within the Community Institutions, (Luxembourg, 2003) (being revised)

and writing skills. Most developing and transition economies do not have a cadre of experts to draft legislation.<sup>39</sup>

## Evaluation

One of the challenges facing regulators is to establish whether or not their regulatory efforts are working. Some outcomes are more clearly visible than others. A ban on smoking in public places in many European countries produced instant results and now no one smokes in public places. A similar ban in Albania had effect for a few weeks but was soon forgotten. Evaluation of projects and programmes is a well-established tool and there is substantial guidance available. In that context, evaluation is “*judgement of interventions according to their results, impacts and needs they aim to satisfy*”. The key notion in this definition is that it is a process that *culminates in a judgement (or assessment)* of an intervention. Moreover, the focus of evaluation is, first and foremost, on *the needs, results and impacts* of an intervention<sup>40</sup>.

The main purposes for carrying out evaluations are: to contribute to the design of interventions, including providing input for setting political priorities, to assist in an efficient allocation of resources, to improve the quality of the intervention and to report on the achievements of the intervention (i.e., accountability). It is reasonable to argue that regulations should be evaluated more systematically, as well as projects and programmes.

## Policies to manage the stock of legislation better

A number of tasks need to be undertaken to effectively manage the stock of legislation in any country. These are to: accurately identify the stock of legislation; to store it electronically so that it may be appropriately accessed by business and the public; to review the whole of the stock to eliminate duplications and confusion caused by excessive amendments, and finally to put in place institutional arrangements to maintain the stock in a well-managed format<sup>41</sup>.

A number of countries have explicit policies to manage the stock of legislation<sup>42</sup>, while, for others, the management of the stock is a consequence of other policies such as simplification, burden reduction or improving competitiveness through improving the administrative environment for business. Technology has transformed the potential to manage the stock of legislation.

Some countries have organised the publication of legislation in Codes<sup>43</sup> which makes accessibility easier. In the common law countries, there are procedures for consolidation of legislation, sometimes with accelerated procedures in parliament for enactment of consolidated texts<sup>44</sup>.

There are number of options on how best to manage the stock of legislation, from simple review and rationalisation of existing laws, to a more radical review of all laws in a given subject matter. A good example of the former is the work of the Law Commission in the United Kingdom and the Law Reform Commission in Ireland. These are statutory bodies mandated to keep the law under

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<sup>39</sup> See SIGMA paper no 15, p 17,

<sup>40</sup> In the Context of the activities of the Commission of the European Union, see [http://webcache.googleusercontent.com/search?q=cache:7jb2oZ1e2vUJ:http://ec.europa.eu/dgs/secretariat\\_general/evaluation/docs/eval\\_activities\\_en.pdf%2Bevaluation+of+EU+activities&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:7jb2oZ1e2vUJ:http://ec.europa.eu/dgs/secretariat_general/evaluation/docs/eval_activities_en.pdf%2Bevaluation+of+EU+activities&hl=en&ct=clnk)

<sup>41</sup> See: European Approaches to Improving Access to and Managing the Stock of Legislation, *Statute Law Rev* (2009)

<sup>42</sup> For example, Denmark, France and United Kingdom

<sup>43</sup> Belgium, France, Spain, etc.,

<sup>44</sup> See, for example, the procedures of the parliament of the United Kingdom. Ireland has a more complex process called restatement which is similar to the Australian process of reprinting consolidated texts.

review and, from time to time, to make recommendations to government to undertake reforms. A good example of the latter was the creation of the Egyptian Better Regulation Activity which was established to identify and revise or repeal all business- related regulations in Egypt.

Programmes to manage the stock of legislation better may also be known as statute law revision programmes. In Ireland, there have been several efforts made to revise pre-independence legislation. The most recent effort was the establishment in 1999 of the Statute Law Revision Unit in the Office of the Attorney General. Its function was to review legislation remaining in force from the 13<sup>th</sup> century to the date of independence of the State in 1922 and make recommendations for repeals or modernisation of those laws in force. It was also asked to make recommendations to improve the accessibility of legislation. In this regard, it made two recommendations: to improve the accessibility of laws, electronically, and to enact the Statute Law Restatement Bill. The latter, based on a practice common in Australia, was to enable the Attorney General to reprint consolidations of legislation.

### **Institutions of regulatory management,**

As regards institutions of regulatory management, there are a number of approaches, some of which have been operation for long periods of time, while others have been developed specifically in the context of 'Better Regulation' reforms. Examples of the former are bodies like the Conseil d'état in countries like Belgium, France and Italy or Government Legislation Offices in the Balkans. Examples of the latter are the Office of Management and Budget in the United States or the Treasury Board in Canada.

Parliaments also have a crucial role to play in the development and maintenance of standards for good quality regulations. The judiciary has always played a role in ensuring the quality of regulations from the point of view of constitutionality, respect for the rule of law and the general principles of law. The courts also ensure that secondary legislation (regulations, etc.) remain within the parameters permitted in its enabling primary legislation. Judicial review of regulations and administrative procedures has long had a role in ensuring the quality and consistency of regulations.

### **Can improved regulatory management lead to Better Regulation?**

The evolution of regulation briefly described in this paper supports the Confucian view that the only constant in life is change. The challenge for observers of regulation is to assess whether the developments discernible in relation to regulatory management are bringing about Better Regulation. It seems self-evident to assert that improved regulatory management leads to Better Regulation. However, there is a need for some degree of proof that improved regulatory management brings about Better Regulation. This is particularly the case in the circumstances where the OECD, the EU and many governments are advocating that developing and transition administrations should adopt improved regulatory management policies and techniques.

In reality, the jury is still out on the question of whether improved regulatory management brings about Better Regulation. There have been so many developments over the past 25 years and such an amount of work has gone into improving regulatory management that it is worth the effort in unbundling the global move towards more coherence in regulatory management and to assessing each component element by element. This will better enable a debate as to whether better regulatory management leads to Better Regulation.

## Role of Better Regulation in good governance

There is growing evidence from EU Member States, OECD countries and developing or transition states that the lessons from Better Regulation should not be ignored. Given the importance of regulation as a lever of state power it is clear that regulation plays a powerful role in developing social welfare, promoting efficiency in markets and protecting the environment. The development of regulatory policies through a process of Better Regulation has sharpened the capacities of governments to regulate better.

There is equally no doubt that recovery from the current financial crisis and putting all countries back onto a path of cumulative, sustainable growth that respects the environment will require better and better regulatory management. Policy-making must be improved so that the right outcomes will be delivered. This means a much more educated and evidence-based approach must be adopted to take the place of the politically expedient and short term approaches that seem to predominate in public life<sup>45</sup>. The use of impact assessment, while not a panacea, offers a formula for the development of better policy instincts for governments and their advisers. Greater use of the collective intelligence of society through skilled consultations should provide government with access to a relatively low cost resource in the policy making process.

## Next likely Developments

The economic and financial problems which began to dominate the headlines from 2007 onwards are a grim reminder that much remains to be done to improve regulatory management and that further social and economic developments face continual inherent risks that no amount of regulation can deal with.

Regulation is something that we cannot live without but countries and other entities need to develop regulations that they can live with and that achieve their stated objectives. The economic and financial crisis is forcing EU and OECD countries to address again how to improve the 'flow' of new regulations and the 'stock' of existing ones so as to ensure they continue to serve a good purpose.

In the context of the Institutions of the European Union, notably the European Commission, there is a view that there is a need to close the policy cycle and move from better to smart regulation.<sup>46</sup> This assumes that one great push will solve all problems. Whether it does or not, the development of a 'smart regulation' policy offers the opportunity to examine what we do and why in the context of regulation and stimulates questions about the possibility of doing it better.

It is arguable that the Better Regulation agenda has already led to a significant change in how the Commission makes policy and proposes to regulate. It asserts that:

“Stakeholder consultations and impact assessments are now essential parts of the policy making process. They have increased transparency and accountability, and promoted evidence-based policy making. This system is considered to be good practice within the EU and is supporting decision-making within the EU institutions. The Commission has simplified much existing legislation and has made significant progress in reducing administrative burdens.”

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<sup>45</sup> See Regulatory Policy and the Road to Sustainable Growth, OECD, 2010

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[http://webcache.googleusercontent.com/search?q=cache:glqGyX114MEJ:http://ec.europa.eu/governance/better\\_regulation/index\\_en.htm%2Bsmart+regulation+eu+commision&hl=en&ct=clnk](http://webcache.googleusercontent.com/search?q=cache:glqGyX114MEJ:http://ec.europa.eu/governance/better_regulation/index_en.htm%2Bsmart+regulation+eu+commision&hl=en&ct=clnk)



The new approach by the European Commission is that there should be a ‘smart regulation’ approach to the policy cycle. Put simply, there should be an approach taken to the whole policy cycle - from the design of a regulation to its implementation and enforcement. The Commission proposes that, in addition to these elements, attention should be paid to evaluation and revision. This approach seems unanswerably intelligent and is an approach worthy of consideration by all those who make regulations.

As part of the ‘smart regulation’ policy, the Commission proposes that attention, therefore, should be paid to the following issues: the management of the quality of regulation throughout the policy cycle, the stock of legislation this includes simplifying EU legislation and reducing administrative burdens, the evaluation of the benefits and costs of existing legislation, making legislation clearer and more accessible.

## Conclusion

It is very hard to prove conclusively that improved governance and economic development can be achieved through having a Better Regulation policy. Substantial Better Regulations have been undertaken over the last 30 years with mixed results. The OECD argues that Better Regulation leads to enhanced long term productivity and resilience, contributing to sustainable growth.<sup>47</sup> More effective policy making, improved legislative drafting, better management of the stock of legislation and implementation of policies should lead to better outcomes. Conversely, there can be very little doubt that bad regulation leads to bad outcomes in the form of increased costs, lost opportunities and nuisance to citizens and businesses.

There is recognition by the Institutions of the European Union, the OECD and the majority of EU Member States and OECD countries that there is a continuous need to manage the regulatory process better. The relevance for transition and developing countries of these experiences is that EU and OECD countries recognise the need to review and continually improve their regulatory management practices to ensure a flow of good quality regulation and a proper management of the stock of legislation.

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<sup>47</sup> *Better Regulation for Recovery Lessons from Implementation During Crisis, OECD, 2010* Note also that in the Introduction to that report the Australian Prime Minister, Kevin Rudd is quoted as saying that setting “an ambitious programme for competition and Better Regulation” was one of the key elements in achieving long term productive growth the only reliable driver of improvements of living standards. (2009).

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# Appendix 1

## Definitions

A large body of scholarship has developed over the last 15 years in relation to policy-making, regulation and issues such as Better Regulation, deregulation and improving the quality of regulation. Some terms in the literature are clearly defined. Others vary with their use and context. For this reason, it is necessary to start any discussion on regulatory management with clear definitions of what certain words mean. Apart from the specific words defined below, the other words used in this paper have their normal dictionary meaning, unless otherwise stated or nuanced for the purposes of a particular observation.

## Better Regulation/regulatory policy

Generically, this means an explicit, dynamic and consistent “whole of government” policy to promote continuous improvements in the quality of rule-making. Better regulation is largely interchangeable with the term regulatory policy.

In the OECD context, the **OECD’s Guiding Principles for Regulatory Quality and Performance** encourage countries to adopt at the highest political level broad programmes of regulatory reform that establish principles of “good regulation”.

In the EU context, the **Lisbon Strategy** for growth and jobs which was renewed in 2005 includes **National Reform Programmes** to be carried out by member states, an important part of which addresses the need for better regulation. Specifically, the term is associated with the **EU Commission’s 2006 Strategic Review of Better Regulation and related working documents**.<sup>48</sup>

See also **regulatory reform**.

## Regulation

Regulation means any of the range of legal instruments that may be made by parliament, the government or the public administration to influence behaviour (i.e. law-making instruments, such as primary and secondary legislation, and non-law-making instruments, such as circulars, directions, guidance or instructions).<sup>49</sup>

Regulation may also mean the way in which government controls or attempts to control behaviour<sup>50</sup>. It is normally thought of as a set of commands, deliberate state interference and a wide range of social or economic influence.<sup>51</sup> It tends to be thought of as something that restricts. Regulation can equally be enabling. Examples of the latter are the regulation of the broadcasting or the telecommunications markets, the licensing for exploration and exploitation of minerals, regulations by governments that make provision for health, education and social services.

According to the OECD, regulation concerns how governments intervene in the economy through laws and other instruments, in pursuit of social, economic and environmental objectives. From this perspective, the emphasis is on ensuring and promoting regulatory quality

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<sup>48</sup>. [COM (2006) 689 final] of 14.11.2006. (EU Council 2006 Strategic Review and Better Regulation); [COM (2006) 691 final] of 14.11.2006. (Administrative costs measurement and administrative burden reduction in the EU); [COM (2006) 690 final] of 14.11.2006. (First progress report on simplification of the regulatory environment); [COM (2007) 23 final] of 24.1.2007. (EU Commission’s Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007); [COM (2008) 32 final] of 30.1.2008. (A second Strategic Review was published in January 2008); [SEC (2008) 35 final] of 30.1.2008. (2007 progress report and 2008 outlook on administrative burden reduction).

<sup>49</sup> *Checklist on Law Drafting and Regulatory Management in Central and Eastern Europe SIGMA paper No 15* [www.sigmaweb.org](http://www.sigmaweb.org)

<sup>50</sup> Focusing Organisational Research on Regulation in Noll, R. *Regulatory Policy and the Social Sciences* (Berkeley, Cal, 1985) in which P. Selznick suggests the most significant growth in regulatory controls probably occurred in the 19<sup>th</sup> century with the development of railways, the supply of water and gas, the development of social welfare and controls over prices and standards. Further expansions occurred in the twentieth century as technology developed and trade increased.

<sup>51</sup> Much of the literature focuses on the regulation of business activity: pricing, competition, information provision, limits on activities and other requirements. However, in legal terms regulation concerns a much wider field of activity than business or commercial life.

- combining both good regulation where needed to enhance the functioning of markets or to protect health, safety, or the environment, with deregulation when appropriate, to encourage more open competition.<sup>52</sup>

### **Regulatory management**

There is capacity inherent in government to promote **better regulation**. Key elements of this capacity are to be found in the existence of a clear regulatory policy or policies, an institutional framework which is capable of promoting the policy, and the tools and processes deployed for the management of the stock of existing regulation, as well the development of new regulations (for example, administrative simplification, impact assessment).

### **Regulatory Policy**

Regulatory policy appears to have at least two meanings. The first describes the situation where policy makers use regulations to achieve a policy outcome.<sup>53</sup> Within the rubric of regulatory policy, regulators have a range of tools such as licensing, price controls, prohibitions or the establishment of rights such as intellectual or real property rights. These tools are generically called regulation. Regulatory policy is, therefore, a class of policy given effect to by means of regulations. Alternatives to regulation can also exist but they do not form part of regulatory policy. These alternatives include tools such as information campaigns, taxes, subsidies or incentives<sup>54</sup>.

In the second meaning of regulatory policy, the focus is on process and within the rubric of this definition regulatory policy may be defined to include “all policies aimed at improving the development and application of rules and other instruments public authorities use to influence the behavior of (private or public) actors in the public interest.” As such, regulatory policy can be classified as a ‘meta’ policy. The OECD has been an advocate of this ‘meta’ policy. It has defined ‘regulatory policy’ as an explicit, dynamic, continuous and consistent “whole of government” policy to pursue high quality regulation.<sup>55</sup>

Within the terms of this definition, regulatory policy is concerned with both the elimination of ‘bad’ regulation and by the management of the stock of legislation and the development of Better Regulation by the management of the flow of new regulations. Its primary focus is on mechanisms to replace purely market mechanisms. However, there is no reason why regulatory policy should not apply to any form of regulation.

gdrive/Euro-Med/Regulatory management draft: 4\_25\_20 October 2012  
Final 26/11/12

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<sup>52</sup>

<http://webcache.googleusercontent.com/search?q=cache:FW6pbAldcEEJ:http://www.oecd.org/regreform%2Bregulatory+reform&hl=en&ct=clnk>

<sup>53</sup> See *Contemporary Regulatory Policy*, Eisner, M., Colorado, 2006, p. 16

<sup>54</sup> The OECD has a regulatory policy division which aims at building policy support for the development of good regulation and regulatory management in member countries. Particular emphasis is placed on researching and disseminating information on best practice relating to regulatory policy, institutions and tools. The intent is to establish a long-term basis for efficient and responsive regulation.

<sup>55</sup> OECD Reviews of Better Regulation: Taking Stock of Better Regulation, a Multidisciplinary Synthesis, (OECD, 2005), see p.57