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REGULATORY SYSTEM OF CROSS- BORDER COOPERATION

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WHY REFORM REGULATIONS?

- A central function of any democratic government is to promote the economic and social well-being of its people. Governments seek to meet that objective in a wide variety of ways, including through policies aimed at macroeconomic stability, increased employment, improved education and training, equality of opportunity, promotion of innovation and entrepreneurship, and high standards of environmental quality, health, and safety. Regulation also is an important tool that has helped governments make impressive gains in attaining these and other desirable public policy goals.

- Governments have long used economic, social, and administrative regulations to align better public and private interests in markets. Regulations will continue to be an important tool for preserving and advancing public interests. There is a real risk, however, particularly in a time of profound and rapid change in economic and social conditions, that regulations can become an obstacle to achieving the very economic and social well-being for which they are intended.
- All governments have a continuing responsibility to review their own regulations and regulatory structures and processes to ensure that they promote efficiently, effectively and democratically the economic and social well-being of their people.

questions of constitutional law

- The basic classical question of constitutional law in the context of individual and collectivity is **WHO** and **WHERE** (functional and territorial) - can and should decide (regulated) **WHAT**, under any circumstances. And add: **WHEN**, **WITH WHOM**, **WITH WHAT**, **WHAT DOES IT COST**, and especially **WHY and HOW**? This is desirable because the optimal decision (optimal control), and that means recognizing the theoretical and practical achievements of **good governance**, and adopt the best possible technology design "rules" and the *ex ante* evaluation of the situation analysis (policy - policy) initiatives across the stage to the stage of adoption, and *ex post* evaluation of the implementation phase, a phase of monitoring and review and re-start the process known as regulatory system.

Causae and teleology

So-called rights issues dating from the time of Aristotle.

- What is the *causa efficient*, a *causa materialis*, as the *causa formalis*, and *causa finalis*.
- On these questions the whole history can be reduced to Hegel's thinking that the whole history down to win **freedom**. The first one was free (despot), it would be just few (great lord/noble, aristocrat, prelate), and then all of them (people).
- History can be viewed through three ontological revolution:
 - Equality before the God;
 - Equality before the law;
 - Equality in work and life.

Resources of regulatory system

- **OSCE** (The Organization for Security and Co-operation in Europe)
- **SIGMA** (Support for Improvement in Governance and Management in Central and Eastern European Countries)
- **PUMA** (*Public Management Service*)

What is regulation and regulatory reform?

- Regulations can be divided into three categories:
 - ***Economic regulations*** intervene directly **in market decisions** such as pricing, competition, market entry or exit. Reform aims to increase economic efficiency by reducing barriers to competition and innovation, often through deregulation and use of efficiency-promoting regulation, and by improving regulatory frameworks for market functioning and prudential oversight.
 - ***Social regulations*** protect **public interests** such as health, safety, the environment, and social cohesion. The economic effects of social regulations may be secondary concerns or even unexpected, but can be substantial. Reform aims to verify that regulation is needed, and to design regulatory and other instruments, such as market incentives and goal-based approaches, that are more flexible, simpler, and more effective at lower cost.

– ***Administrative regulations*** are **paperwork and administrative formalities** – so-called “red tape” – through which governments collect information and intervene in individual economic and social decisions. They can have substantial impacts on private sector performance. Reform aims at eliminating those no longer needed, streamlining and simplifying those that are needed, and improving the transparency of application.

"regulatory answers"

Worlds' changes (globalization; differentiations and integration; transition)

- These changes (reforms) are "**regulatory answer**" to the *vision* and *mission* of state and overstate associations, but increasingly non-state entities, regardless of how it comes to them as belonging to the type of law schools.
- **Regulation is technology (recipe) formatting "rules of the game"** that particular society, government, community, company, physical and legal persons (only) are defined in relation to the visions that are intended to develop and practice, and the missions that are awarded/recognized various institutions selected for implementation of goals and values, and to satisfying the needs and interests of citizens, their families and groups.

- In any way regulatory system can be taken as a **model of traffic control** (red-yellow-green traffic lights and gas and brake), and for all that is not Good, True and Beautiful (so evil, false and ugly), a pale yellow and red traffic lights (STOP!) and to react brake; and that is Good, True and Beautiful open green traffic lights (LET'S GO!) and responds by adding the gas. Of course it can not access the mechanistic (copy paste).
- This is so because the current model of traffic control is *alopoietic*, because the emphasis is on the vehicle and the road (physical capital) and not on the driver (the motivation - the attention, knowledge and cooperation, in short, the moral, intelektual and social capital). New paradigms are needed that bring spirituality, vitality, self-renovate, self-regulation (self-ubringing, self-education, self-organization), briefly *AUTOPIETIC*.

- It is important to develop a shared vision (according to Peter Senge), which will be continually deepen, expand and elevate into something better, truer and more beautiful than the usual results. With better and more precise vision essentially is well perceive reality in its totality, and especially its people's feelings and thoughts through words and actions that would be realized quality social, economic, legal and sufficient cultural development of society. With the vision necessary to define the mission and goals. It is an area of natural learning, psychological, social and technical sciences

Social development and evaluation of the regulatory system

- It is a system that is focused on the future, contains certain changes (uncertainty), then the risks. Therefore it is necessary to reduce these risks to a minimum.
- However, the *ratio* of the regulatory system is its evaluation in relation to the bid and stipulate the **measures and the effects** that have to be applied to specific social development. Primarily this involves the complete social development of specific areas, whose components are:
 - (i) individual development,
 - (ii) organizational development,
 - (iii) economic development and,
 - (iv) cultural development.

Each for himself, but in synergy give holistic development. It is necessary to identify the main contents and forms of development, to grasp the essence of their (internal and external) and then just explore and create **HOW** to realize.

Autopiesis aproach

- Only just forming, which carries autopoietical, in a manner that ensures **the unity** are simultaneous entities, and **cognitive openness** and **normative closure**, is a challenge for regulators. Only in this way part and part, part and whole, and the whole unit can be networked.
- All of this ongoing process, largely irreversible, which should be enriched with the classic paradigm of a completely new one. We believe that there is no fact that is not connected to each other, but man's knowledge, upbringing, education, culture and general environment is often the limit.
- We should start from ourselves, from **theory of self-organization** and **theory autopiesis** combing questions and answers within these componenets of social development.

- We believe that access to autopoiesis and self-organization (theoretical and practical) enables the connection of *causality and finality, of necessity and freedom, nature and man*. Without it we are forced to live in less democratic and less efficient organizations.
- **High efficiency and high democracy with minimum pollution** of nature can be paths to freedom. With the deepened understanding and appreciation of these three objectives can be overcome sustainable development, stagflation, environmental problems, because knowledge about the goals (teleology) can eliminate entropy. The problem is *how to exercise decision-making process in achieving the goals of efficiency and humanity*.

Nature of law

- *Ubi societas, ibi jus.* It is well known and acceptable that the law is a relationship between people. Therefore, human nature must be familiar with it. It must start from human needs. This helps us understand **Maslow's hierarchy of needs**. In this context, an important motivation, drive, why do something that makes a man do not make, what are the inner motives, to recognize them and how they are met. Manifested through the expression of the will - want to!
- Unavoidable **Plutchik theory of emotion** (positive and negative emotions), which helps in dealing between man and nature, biology and psychology. General theory for understanding human development to free and creative man thinks he remembers, communicates that he thinks, and acts as he says/writes. It is this sense of transformation in thinking, thinking in communication, communication in action is quite neglected in social research.

Instruments

- The **knowledge** (and skills) are necessary for efficiency and effectiveness, and for democracy which requires professional education (formal and non formal), but as more and self-education and life-long-learning.
- Scientific and technological development allows us great freedom to create, a better quality of life and higher standard of spiritual and material. These are likely to be used.

- **Economic development** can be reduced to the question / answer in order to realize the fastest return on investment of resources (rationality, efficiency, effectiveness, productivity,). In other words, where most investments - in buildings, equipment, people. *The economy can be reduced to optimal resource allocation.* We are all aware of the importance of investing in human capital (human resources - HR). This implies a **moral, intellectual, aesthetic capital**.
- Rules of game should be controlled through ranking of the capital.
- Until we are significantly more invested in the development of motivation (according to self-actualization), the knowledge (technical, economic, humanistic), the self-organization within and between organizations, we will have a constant low level of life.

Regulation as political instrument

- Be sure to always control as a political instrument should take account of the process, which must be democratic, because it always threatens to "democracy deficit". Although democracy is known to reduce the procedure, and often only a majority decision, increasingly in modern democracies to calculate and with the participation of interested parties, human rights and fundamental freedoms and tolerance, and good judicial review. The same is tantamount to "**good regulation**" or "**better regulation**", we can be described as **optimal** regulation

Regulation as the rule of law

- Regulation as the rule of law - rules that are realized through the *power, legitimacy and legality of government*.
- The Rule of Law or a legal state (Rechtsstaat) is a form of government in which government activity is not arbitrary but are based on pre-established rules of the game, legalized by the people invited to participate in decision rules (rule - making process).
- *The world is composed of coexisting conflicting values and principles and the institutions and processes.* At this interpretation includes any element of choice and creativity in the context of liberal ideas, where social causes its *raison d'etre* have the **standards, processes and institutions**, which must be considered in their social and political aspects. Especially stressed that the main "regulators" become judges. All this opens up new approaches to legitimacy and regulation.

- The rule of law, especially its changing mission, bearing in mind the crucial changes when its welfare state legislative activity focuses on **social policy** (legislation in labor law, health care, social security, etc.). Changes taking place and to engage the state in economic policy through legislation in antimonopol law, in competition, transport and agriculture, to the present situation is more topical involvement in the public sector.
- Thus the doctrine of parliamentary sovereignty, which is based on trust in the wisdom of the majority in the parliament today is on the serious temptations. The modern parliament is not a question of majority, but often works through compromise (not to say trade) competition between interest groups. That is why democracy can not be reduced to the idea of the majority, but it implies participation, tolerance and freedom for all and everyone.

Public sector

- Here, among other things, to be expressed recognition of the oligarchy, that the incidence of many different entities in the state, private and public sector, but also a plurality of levels (multi-level governance). This especially applies to the public sector. Regulatory Reform, as part of public sector reform, refers to a change of use regulation as a policy instrument. There is still the central government, the state retains the authority and decision-making power for the allocation of responsibilities, but at least it recognizes the existence of other entities that have the "right and ability" to be the regulator and make decisions and manage a "substantial part of public affairs." **The fundamental question is how to animate horizontal and vertical division of power, and coming to the synergy of "top-down" and "bottom up" methods of regulation.**

Elements of regulation

- Regulation in its design and implementation inherently includes five different elements. It is recommended that there are five such elements or tasks: This includes **detecting** undesirable or non-yielding behavior, **developing** tools and strategies that are appropriate to the behavior, the **implementation** of those tools and strategies which are based, the **assessment** of their success or failure, and corresponds to the **modification**.

Regulation contents

- Regulation contents: constitutions, laws, (founding) agreements, both formal and informal regulations, by-laws of all levels, the rules of the NGO sector or self-regulatory body which the government has entrusted authority. Mostly content regulation can be classified into:
 - (i) economic regulation (competition, market, pay ..)
 - (ii) social regulation (health, safety, ...);
 - (iii) administrative regulation "red tape" administrative formality which the government gather information and intervene in individual decisions.

Law making phases

- In principle, the draft regulations (law making) has two phases: **policy development** and **preparation of the legislative text** that would be achieved was adopted.
In the first stage, key decisions are needed on issues such as:
 - Which of the possible policy options takes precedence (priority)?
 - Whether this option will be implemented through the laws, or rather through non-legislative?
 - That governments should adopt legislation and the basic approach should be adopted in legislation, and that legal and administrative mechanisms are needed to make this selection was appropriate and that enters into force?

Standards of regulatory quality

- One should always bear in mind the attainment and achievement as possible higher standards of regulatory quality. OECD has established a system of standards:
 - *Consistency and balance* among competing policies;
 - *Stability and predictability* of regulatory requirements;
 - *Ease of management and supervision*, and to respond to political demands;
 - *Transparency and openness* to the political level and the public;
 - *Consistency, fairness and decency* of the implementation process;
 - *Adoption* to change circumstances (up to date).

Regulatory measures

- To achieve such recognized criteria, it is necessary to operationalize the same as measures (instruments). Differ **regulatory measures** as:
 - *User standards*, such as clarity, simplicity, accessibility, and for private citizens and businesses;
 - *Design standards*, for example flexibility and consistency with other regulations and international standards
 - *Legal standards*, such as structure, neatness, clarity of drafting and terminology, and the existence of clear legal authority to act; relevance to clearly defined problems in real world conditions;
 - *Economic and analytical standards* benefits and costs and , for example cost effectiveness; measure the impact on business competitiveness and trade;
 - *Implementing standards*- such as practicality, feasibility, public acceptance and availability of required resources.

quality of legislation (regulations)

- (i) *ways of passing laws* (timely decision-making, ability to influence all stakeholders in making legal decisions, the availability of the draft law to the public and conducting public hearings on the proposal, leaving plenty of time since adoption of the Law and its application to citizens could meet with the content of the law, developing detailed proposals for better explanation of interpretation);
(ii) *Quality of legislation* (regulations that are written in clear language understandable to everyone, to be specific and do not limit the excessive degree of freedom of citizens, to leave no legal loopholes, that the laws are harmonized, to ensure adequate resources for law enforcement and predict the mechanisms controlling its implementation and sanctions for failure);
(iii) the *stability of the law* (the requirement that the laws are not often mijenjajum).

policy impact assessment

- Assessment of influence comes down to three phases in which the policy impact assessment is particularly useful:
 - **The stage of development policies.** Once the political decision has opened the possibility of articulating and achieving specific goals and objectives, impact assessment is used to develop policy options and to select the most appropriate instrument (actions and measures) to achieve policy goals.
 - **The development phase of the instrument.** After being chosen instrument, the impact assessment is used, making the instrument, to ensure that a well designed and will meet our goals in an efficient, cost-effective and democratic way.
 - **Ex post evaluation.** In the evaluation phase (After the instrument has been used for some time, environmental impact assessment is used to verify the actual performance, the evaluation of the extent to which a goal that is chosen corresponds to the selected regulatory amendments / corrections.

the drafting of regulations

- As good practice in OECD has spawned what is important in the drafting of regulations, in five phases:
 1. Understanding of the project.
 2. Analyzing the project.
 3. Shaping scheme.
 4. The preparation and development of the draft.
 5. Scrutiny of the draft.

verification

- In the end, followed by **verification of the final version** of the text, which includes:
 1. constitutional and legal compliance;
 2. convergence with the EU;
 3. conformity with international treaties, conventions, particularly important;
 4. implementation;
 5. making powers of secondary legislation;
 6. legal form, clarity and understandability

"production" of regulations

Technology "production" of regulations has its sequence. Phases are:

- starting a process or an initiative with the development of the draft (proposed) law,
- preliminary discussions on the draft,
- a major debate with a vote and the definition of the proposal,
- promulgation,
- publication and entry into force,
- interpretation and implementation,
- and monitoring.

The legislative procedure is regulated by the Constitution and rules of the legislature.

The nucleus of regulatory reform is to rationalize and simplify the regulatory system is primarily expressed as **deregulation** particularly in the corporate sector and the market economy.

regulatory action under consideration

The OECD Council (on 9 March 1995) recommended:

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of governments for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible, and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

The legitimacy

- its *raison d'être* is to **express the belief** (hope) in some kind of power by the of citizens.
- Without legitimacy, regulators would not be able to motivate others to adopt and support offered to regulatory strategy. Modern technology while recognizing the necessity of including all who know, can and will, most evident through the organization of a **consultative process**. Known as the tripartite system (government, trade unions, business), but more multipartite systems, as an increasingly important role given by the various operators, mostly from civil society such as NGOs, interest groups (scientific, religious, environmental, etc.). So we are seeing that in addition to the state as regulator, more in regulatory share "to include non-state entities.
- One should always bear in mind that any regulation, by anyone, can interfere with the privacy and liberty of the individual, so that they are all equally dangerous. In other words it is necessary to search for their control, monitoring, and self-limitation.

"The regulatory responses"

- Unavoidable is to calculate with **the principle of subsidiarity**, but also other principles such as the principle of proportionality, the principle of loyalty, etc., which is particularly topical in the EU. In a way it is autopoietical "regulatory answer" to a deficit of democracy. Lisbon Treaty with its protocols, particularly the **Protocol on the principle of subsidiarity and proportionality** is determined by a European framework and the legislative process at both EU and Member States. It is precisely the principle of subsidiarity carries the idea of quality control. This is so because "the Union works only if and to the extent that member states can not satisfactorily achieve the goals contained in the proposed measure, whether at central, regional or local level, which may be, to the scope or effects arising from proposed measures, the better achieved at Union level."

improve regulatory quality

- *Regulatory reform* is used in the OECD work to refer to changes that **improve regulatory quality**, that is, enhance the performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform 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.
- **Deregulation** (One stop shop; HITROREZ) is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic and democratic performance.

- If a government wants to improve regulatory compliance, it must understand what the target group is doing in real life and use that understanding to inform regulatory design. **Policymakers and regulators** must develop a sophisticated view of the population of individuals and organisations targeted for regulation, including such factors as:
 - The characteristics of the market place.
 - How the individual organisations are structured and make decisions.
 - What incentives are likely to motivate both the affected individuals and organisations to comply with the regulation.
 - The obstacles to their compliance.

- The degree to which a target group complies with a regulation is based on how various characteristics of the target group interact with the design and quality of the regulation. In this context, a regulation can be seen as one component of a larger structure whose effect is to create incentives for private actors to behave in certain ways. This is often difficult to do when governments compete against very powerful institutional, market, and cultural incentives.

- **Why do people obey any rule?** Several conditions are needed. The first condition is that the **target group has to be *aware of the rule and understand it***. For example, lack of clarity in a rule may bring about unintentional non-compliance. Second, the target group has to be ***willing to comply***.
- Economic incentives can motivate compliance. A strong enforcement programme can discourage noncompliant behaviour. The third condition is that the target group **is *able to comply***. For some regulations, implementation of the policy should include activities such as the provision of necessary information and other technical support. If any one of these conditions is not met, non-compliance occurs. In order to ensure regulatory compliance, policymakers should direct their quality control activities not only to the drafting and publishing of a rule, but also to ensuring that the three conditions are met.

conditions for compliance

Reasons for non-compliance can be found at three different levels:

- The degree to which the target group knows of and comprehends the rules.
- The degree to which the target group is willing to comply either because of economic incentives, positive attitudes arising from a sense of good citizenship, acceptance of policy goals, or pressure from enforcement activities.
- The degree to which the target group is able to comply with the rules.

At each of those three levels governments should employ a mix of activities to ensure that its policy will take effect:

- Communication with the target group to inform it about its rights and duties and to explain the rules.
- The use of many kinds of policy instruments (taxes, prohibitions and subsidies for example) to influence the behaviour of the target group, backed up with a variety of enforcement activities (such as inspections and sanctions).
- Adequate implementation to make the policy workable in practice, which means that governments have to ensure that the necessary information is provided to the target group and other technical facilities or mechanisms are taken.

At each of the three levels, failures can make government policy ineffective.

- **Definitions of regulatory compliance and results-oriented regulatory policy**
 - ***Regulatory Compliance:*** Obedience by the target population(s) with regulation(s).
 - ***Compliance-Oriented Regulation:*** Regulation that is designed to achieve a high level of obedience by the target group.
 - ***Results-Oriented Policy:*** Policy that is designed to improve substantive policy outcomes; *i.e.* where regulatory drafting, implementation, monitoring, and enforcement are designed as an integrated whole to maximise the potential for target groups to achieve substantive regulatory goals at lowest cost.

- OECD report identified eight **causes of non-compliance** from the point of view of those targeted:
 1. Failure to understand the law.
 2. Collapse of belief in law.
 3. Procedural injustice.
 4. Costs of regulatory compliance.
 5. Deterrence failure.(zastařiti, odvratiti)
 6. Incapacitation of those regulated.
 7. Failure of persuasion.(uvjeravanje, nagovaranje).
 8. Failure of civil society.

regulatory inflation

- The OECD has previously studied how **regulatory inflation** is increasing the volume and complexity of regulation in most OECD countries. In France for example, the size of the
- Official Gazette, where regulations are published, more than doubled from 1976 to 1990.
- The annual production of new laws increased by 35% from 1960 to 1990, and of decrees by 20 to 25%. The average length of French laws increased from 93 lines in 1950 to over 220 in 1991.¹⁰ Even where an effort is made to reform regulation to make it simpler, easy to understand, and to include the private sector in drafting rules, a “regulatory ratchet” takes effect. This means that, without vigilance, the overall regulatory structure tends to become more technical and unworkable as details are added and loopholes are closed.

improve regulatory quality

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- **Deregulation** (fast slice – HITROREZ) is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic and democratic performance.

- ***Overly legalistic regulation.*** People lose confidence in regulators and governments if they are required to comply with technical rules that do not appear to relate to any substantive purpose. An overly rule-based or “legalistic” approach to compliance can have the same effect, undermining a government’s achievement of substantive policy objectives. Overly legalistic regulation can take the form of:
 - **Regulatory unreasonableness**, or imposition of uniform, detailed and stringent rules in situations where they do not make sense.
 - **Regulatory unresponsiveness** or failure to consider arguments by regulated enterprises that exceptions to the technical rules should be made.

consultation

- ***Prior consultation with target group failed or never happened.*** Failures of consultation with target populations may cause regulatory failures because regulators may not find out about factors falling into the categories described above, or because lack of adequate consultation may fail to secure target group support for the proposed regulation. For example, without adequate consultation, regulators may not be able to identify unanticipated costs of compliance, lack of regulatory clarity, or clashes between regulatory requirements and existing cultural/market practices. Effective consultation of the target group involved can be an effective way to inform target populations about the new regulation and the consequences for them. It allows target populations to have an input into the proposed regulation so that they understand why it is necessary and how their concerns have been addressed.

- This can build in the target group a sense of “ownership” or understanding that will increase commitment to the objectives of regulation. In addition, input to the regulator that is based on real-life experience in the activity being regulated can help the regulator find better solutions.
- Substantive dialogue between regulators and the target group contributes to a win-win strategy, since dialogue can increase the quality of regulation and ease compliance concerns, which is good for both sides.

- ***Failure to monitor.*** A rule that is on the books, but not monitored is unlikely to elicit compliance. Random inspections among the target group have the effect of making people and enterprises that are normally law-abiding constantly aware of the existence of enforcement activities and tend to reduce the likelihood of future non-compliance. However, monitoring that is not rigorous enough or not targeted at high-risk areas is less likely to be effective.

- ***Procedural injustice.*** Researchers have found that if people feel they are treated unfairly by the government or a regulatory agency, then they will often respond by refusing to comply with regulatory requirements. People who believe they have been or will be dealt with fairly by a regulatory system are much more likely to comply with its requirements, whatever they are, than those who believe the system is not fair. Regulatory agencies perceived as unfair during inspections and enforcement are likely to elicit lower compliance. A 1992 study in the United States found that taxpayers that reported having heard accounts of others being treated unfairly in the course of audits themselves expressed a disinclination to comply in the future.

- ***If the problem was clearly understood, objectives could be more effectively attained through other means.*** Governments and regulators sometimes rely through habit upon certain types of regulatory instruments to solve problems, without first adequately defining and analysing the particular problem to determine the most appropriate solution. Too often, the problem itself is defined as “a lack of regulation”. If a government accurately defines the causes of the problem and clearly defines its policy objective, the government can then use the least coercive and most effective means to achieve that objective.

- When used appropriately, command-and-control regulation can provide clarity, certainty, and predictability. Perhaps most important, this approach can provide a yardstick that allows the government, the general public, and the regulated firms to know what is required and whether it is being achieved. This is essential if enforcement is to **be fair and effective.**

National legal and administrative cultures

- Different countries have different cultural attitudes toward regulation and different patterns in the use of policy instruments. Instruments that elicit compliance in one country may not necessarily do so in another.
- Such national differences mean that, to be most effective, mixes in alternatives to regulation will vary in different countries.
- –Sweden and the Netherlands are smaller and more homogenous, with deeper corporatist traditions and more highly organised manufacturing sectors compared to most OECD countries. These aspects may make regulation through voluntary agreements more feasible. The use of environmental covenants in the Netherlands is well-known (see OECD (1999),

The Netherlands Table of Eleven (T11) key determinants of compliance

- *Spontaneous compliance dimensions* (factors that affect the incidence of voluntary compliance – that is, compliance that would occur in the absence of enforcement):
 - T1. Knowledge of rules:* Target group familiarity with laws and regulation, clarity (quality) of laws and regulations.
 - T2. Cost-benefit considerations:* Material and non-material advantages and disadvantages resulting from violating or observing regulation.
 - T3. Level of acceptance:* The extent to which the target group (generally) accepts policy, laws, and regulations.
 - T4. Normative commitment:* Innate willingness or habit of target group to comply with laws and regulations.
 - T5. Informal control:* Possibility that non-compliant behaviour of the target group will be detected and disapproved of by third parties (*i.e.* non-government authorities), and the possibility and severity of sanctions that might be imposed by third parties (*e.g.* loss of customers/contractors, loss of reputation).
 - Control dimensions* (the influence of enforcement on compliance):
 - T6. Informal report probability:* The possibility that an offence may come to light other than during an official investigation and may be officially reported (whistle blowing).

T7. Control probability: Likelihood of being subject to an administrative (paper) or substantive (physical) audit/inspection by official authorities.

T8. Detection probability: Possibility of detection of an offence during an administrative audit or substantive investigation by official authorities. (The probability of uncovering non-compliance behaviour when some kind of control is applied).

T9. Selectivity: The (increased) chance of control and detection as a result of risk analysis and targeting firms, persons or areas (*i.e.* extent to which inspectors succeed in checking offenders more often than those who abide by the law).

Sanctions dimensions (the influence of sanctions on compliance):

T10. Sanction probability: Possibility of a sanction being imposed if an offence has been detected through controls and criminal investigation.

T11. Sanction severity: Severity and type of sanction and associated adverse effects caused by imposing sanctions *e.g.* loss of respect and reputation.

- *Source:* Dick Ruimschotel, Compliance Methodology Consultants, Amsterdam and But Klaasen, Ministry of Justice, the Hague.

The A2E methodology

- **The A2E methodology in the EBRD's Czech Capital Markets Reform Project**
- Key to resolution of the problem is the restoration of a compliance ethic internally within the Czech financial sector. In doing so, it is important to determine the dependency of compliance on unrelated external factors. The Project Team selected by EBRD accordingly based its approach on the A to E Model of compliance ("A2E") developed by Compliance Chain Limited. This model looks at the delivery of successful policy from the point of formulation to the point of compliance in terms of internal and external factors effecting the outcome
- (*c.f.*, Supply Chains, Value Chains). The top level A2E factors are effectively links in the compliance chain, as shown below.

- *A2E factors:*
- Authority - Quality of the rule maker, rule-making process, and rules themselves.
- Behaviour - Tendencies in groups and individuals.
- Controls - Effect of supervision and enforcement activity.
- Distortions - Within systems established to ensure compliance.
- External Events - Impacting systems established to ensure compliance.

RESULT-ORIENTED POLICY DESIGN

- – ***Problem identification and analysis:*** Use data collection mechanisms and methodologies to systematically identify important hazards and risks (that may need to be the subject of new regulation) or patterns of non-compliance (that may indicate the need to amend existing regulations).
- – ***Identify feasible policy objectives:*** Analyse the causes of the problems identified above.
- Identify potential solutions by data analysis and consultation with the target population and stakeholders. Involve enforcement officials into the policy preparation process at an early stage. Use this information to set achievable policy objectives.

- – ***Consider potential policy options including both regulation and alternatives to regulation:*** Determine what regulatory options are available and whether there are any ways to meet the policy objective identified that do not rely on traditional regulation *e.g.* self-regulatory codes of conduct, voluntary agreements, management standards agreed between industry, government and stakeholders, third-party enforcement, economic incentives.
- – ***Design regulation to maximise the possibility for compliance:*** Use information, as collected above, to ensure that the regulation or policy is designed to be as easy to comply with as possible. Take such steps in developing the regulation as using clear, transparent language; using standards or process regulations instead of command-and-control rules, if possible; not including rules that are impossible to monitor and enforce in practice; or providing alternative compliance mechanisms where possible. (This latter step necessitates determining how the regulation will be implemented and compliance monitored and enforced, as set out below.)

Dialogue

- ***Dialogue between governments and target populations:*** Too often, government acts upon the false assumption that passing a law is sufficient by itself to create acceptance of, and compliance with, its policy. Poor quality regulation, regulatory procedures, and enforcement can cause serious compliance problems. A sophisticated compliance analysis of proposed or existing regulation implies a sophisticated understanding of the target population:
 - What will make compliance difficult for them?
 - What will motivate them to want to comply?
 - What technical changes will compliance mean for their business or manufacturing processes? What financial impacts will compliance have?

Reform deregulation AND better regulation

- Regulatory reform is not, of course, new, and is itself evolving. Modern reform involves a mix of regulation, deregulation, and re-regulation across the entire economy, backed up by institutional reform where necessary. In general, deregulation strategies are applied to economic regulation, while various means of improving regulatory quality and reducing burdens are used for social and administrative regulation.

STRATEGIES FOR SUCCESSFUL REFORM

- The challenges of initiating and completing regulatory reform are familiar. Vested interests in public and private sectors, fears of the consequences of change, and the complexity and uncertainty of reform in dynamic economic and social environments must be dealt with effectively if reform is to succeed. Optimal approaches to structuring reform are as yet inadequately understood and highly variable according to context, but experiences in OECD countries suggest common themes.
- ***Political leadership is essential.***
- Skilful political leadership is needed to improve the capacity for change in the absence of crisis, and to design and implement strategies for reform earlier to reduce the cost of lost opportunities and the pain of transition. Reform is not, however, a task only for governments;
- other stakeholders such as firms and workers have roles in helping to build support for reform and in sharing information across borders.

- ***The need for reform must be communicated.***
- To the extent possible, all interested parties should be given opportunity to express their views in developing the reform policy, though consultations must be carefully structured to avoid undue delays or giving affected parties too much influence in blocking needed reform.
- ***Comprehensive reform works better than piecemeal reform.***
- Comprehensive reform is based on a complete and transparent package of reforms (aimed at a single policy area, sector or multiple sectors) designed to achieve specific goals on a well-defined timetable.

- While improved regulatory quality and processes are first and foremost in the interest of the domestic economy, they can also underpin market openness. To this purpose, six principles have been identified by the OECD member countries to guide sound regulatory processes:

- Transparency and openness of decision-making;

- Non-discrimination;

- Avoidance of unnecessary trade restrictiveness;

- Use of internationally harmonized measures;

- Recognition of equivalence of other countries' regulatory measures;

- Application of competition principles.

- **Experience demonstrates that the nature, pace and sequencing of regulatory reform and liberalization undertakings must be assessed with care.**

Good practices

- **Good practices for improving the capacities of national administration to assure high quality regulation**
- The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making
3. Build regulatory management capacities

- **B. IMPROVING THE QUALITY OF NEW REGULATIONS**

1. Regulatory Impact Analysis
2. Systematic public consultation procedures with affected interests
3. Using alternatives to regulation
4. Improving regulatory co-ordination

- **C. UPGRADING THE QUALITY OF EXISTING REGULATIONS**

(In addition to the strategies listed above)

1. Reviewing and updating existing regulations
2. Reducing red tape and government formalities

EX POST EVALUATION OF REGULATORY POLICIES

EX POST EVALUATION

- As governments progress in the development of regulatory policies, growing attention is being paid to the evaluation of regulatory tools, institutions and practices. Do regulatory policies deliver high quality regulation and better regulatory results? The growing interest in answers to this question reflects three inter-related developments emerging over the past few years:
- First, policy-makers involved in regulatory policies are being held *accountable* for the significant economic resources as well as the political capital invested in regulatory management systems now established in most OECD countries.
- Second, there is a growing interest in exploring how regulatory policies can be more *evidence-based* and supported by empirical findings. More evidence-based approaches to the assessment of regulatory quality allows for a review of the effectiveness of policy tools used in practice, for a review of their performance and for improving the design and implementation of the policy.
- Third, the move toward ex post evaluation is part of the *progressive development* of regulatory policies, complementing the current dominant focus on ex-ante evaluation.

regulatory performance

Why focus on regulatory performance?

- Improve the quality of regulations and the net benefits that can be derived
- Change the regulatory culture
 - Increase commitment to the Regulatory Policy and its principles within the full cycle of policy development
- Signal a commitment to transparency and accountability
 - Scrutiny about decisions and accountability for results
 - Performance monitored, measured and reported systematically
- Improve understanding to deliver a *protecting* and *enabling* agenda (e.g., regulation and instrument choice)

Regulaitnig for results

Objective: assessment of the state of the art

- How/when regulatory performance indicators are developed
- How regulatory results are captured, transmitted and communicated
- Methodology:
 - Interviews, workshops, document review and best practices
- Conclusions:
 - Performance Orientation (flexibility and adaptation)
 - Level of Implementation (towards managing for results)

Key Lessons:

- Focus on outcomes - logic model or chain of results
- Involvement and support across corporate and line functions, between regions and headquarters
- Interested people; small, incremental steps; significant and ongoing resource effort at all levels
- Integration of management concepts into key processes
- Good performance measurement requires a climate of trust that is built and sustained throughout the system.
- Objective: develop an evaluation framework to track and assess contributions to the Smart

Regulation agenda

Regulation agenda

- Specific smart regulation initiatives
- External Advisory Committee on Smart Regulations (EACSR)– System-wide issues involving regulatory governance
 - Methodology:
 - Interviews, focus groups, documentation review
 - Performance indicators to reflect outcomes at different levels
 - Measurement and reporting approaches – learning opportunity
 - Status: early stages, link to institutional efforts
 - Objective: framework for the application of performance measurement principles to regulatory programs
 - Demonstrate and further support:
 - Transparency and accountability in the public sector
 - Capacity building and community-wide continuous learning (e.g., through learning events, lessons learned, tools)
- Responsiveness to interested parties (e.g. private sector, the Office of the Auditor General and parliamentarians)
 - Horizontal assessment of regulatory programs, their priorities and resource allocations
 - Status: identify key partners and scope out a work plan

legislation conformity

- the responsibility for legislative quality implies the task to warrant – as much as possible in a political decision making process – that legislation is in conformity with the following requirements:
 - Legitimacy and conformity with law of higher order
 - Necessity
 - Subsidiarity and proportionality
 - Effectiveness and efficiency
 - Consistency (in itself and with other legislation)
 - Practicability and enforceability
 - Technical quality (simplicity, clarity etc.).

Law Drafting Procedures

- The actual drafting of legislation (i.e. the preparation of the legislative text which converts a policy into legally enforceable normative rules) is somewhat more expert work than is generally recognised. It cannot be assumed that it can be undertaken by every lawyer; the skill usually has not been acquired as part of legal education and in the course of legal practice. Law drafting is a type of specialist legal practice (for which some have more talent than others) which demands special skills and relevant experience. Expert understanding of the work is also desirable in those required to carry out verifications of legislative text, whether for Government or Parliament.

A. Consultation and RIA

1. May broaden the range of policy alternatives;
2. May facilitate the collection of some categories of data needed for RIA;
3. May be used to verify the results of completed analyses;
4. May make the law-making process, and the reasons for policy choices, more transparent to affected groups.

B. Consultation and Other Verifications

1. May give rise to a better understanding of the activities to be regulated and the problems to be solved;
2. May result in more informed choices as to the appropriate legal mechanisms to give effect to the preferred policy;
3. May result in legal solutions more likely to encourage compliance;
4. May lead to improvements in the legal text, ensuring clearer communication of requirements;
5. May enable government to be more responsive to the needs and interests of affected persons.

- A principal aim of legislation is to enable those affected by it to organise and regulate their activities in accordance with its normative requirements, and so to provide security and legal guarantees for their transactions. Ready access to that legislation is a necessary concomitant. Full collections of legislation, primary and secondary, currently and formerly in force, must be readily available, and copies of individual instruments must be easily acquired by officials, legal representatives and members of the public.

strategies for improving law drafting

The following are seven strategies for improving law drafting that should be considered:

1. Creating and enforcing a regulatory framework for law drafting;
2. Improving policy development prior to drafting;
3. Setting and maintaining law drafting standards;
4. Making fuller use of consultation;
5. Applying equivalent procedures and standards to Parliamentary initiatives;
6. Applying equivalent procedures and standards to secondary law-making;
7. Improving access to legislation.

RIA Strategy

- **Elements to Be Defined in an RIA Strategy**

1. The bodies that are to be responsible for RIA: i.e. those bodies, including
 - private bodies, that are actually to carry out RIA and those governmental or
 - parliamentary bodies that are to exercise scrutiny or control over those
 - activities.
2. Allocation of adequate resources, both financial and personnel, for
 - undertaking RIA and for training.
3. The analytical methods to be used or developed.
4. The types of legislative project to which RIA is to be applied.

- **The Five Stages of the Drafting Process**

- 1. Understanding the project.
- 2. Analysing the project.
- 3. Designing the scheme.
- 4. Composing and developing the draft.
- 5. Scrutinising and testing the draft.

5. The procedures and criteria to be followed for targeting the projects for RIA, and for deciding the stage at which RIA is to be carried out and the analytical method to be used.
6. The procedures to be followed in RIA and for integrating RIA into the policy development process and for communicating the results.
7. Collection and provision of the data necessary for RIA.
8. Procedures for ensuring compliance with a requirement to carry out RIA.

Primary and Secondary Instruments

- **Dividing Matters Between Primary and Secondary Instruments**

Bills should contain the principal substantive rules of a new legislative scheme, which give effect to the new policy and should settle its core features, in particular:

- matters that involve significant questions of policy;
- rules which will have a significant effect on individual rights and duties;
- significant criminal offences and penalties;
- taxes and significant fees and charges;
- procedural matters that go to the essence of the legislative scheme;
- amendments and repeals to existing law.

- **Secondary regulations** should build upon the policy and principles established by the parent Act, and deal with matters of less significance or with the detail of the legislative scheme, filling it out and supplementing the core features in the Act and providing for procedures and administrative arrangements.