



Recommendation of the Council on
Improving the Quality of
Government Regulation

**OECD Legal
Instruments**

This document is published under the responsibility of the Secretary-General of the OECD. It reproduces an OECD Legal Instrument and may contain additional material. The opinions expressed and arguments employed in the additional material do not necessarily reflect the official views of OECD Member countries.

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

For access to the official and up-to-date texts of OECD Legal Instruments, as well as other related information, please consult the Compendium of OECD Legal Instruments at <http://legalinstruments.oecd.org>.

Please cite this document as:

OECD, *Recommendation of the Council on Improving the Quality of Government Regulation*, OECD/LEGAL/0278

Series: OECD Legal Instruments

© OECD 2018

This document is provided free of charge. It may be reproduced and distributed free of charge without requiring any further permissions, as long as it is not altered in any way. It may not be sold.

This document is available in the two OECD official languages (English and French). It may be translated into other languages, as long as the translation is labelled "unofficial translation" and includes the following disclaimer: *"This translation has been prepared by [NAME OF TRANSLATION AUTHOR] for informational purpose only and its accuracy cannot be guaranteed by the OECD. The only official versions are the English and French texts available on the OECD website <http://legalinstruments.oecd.org>"*

Date(s)

Adopted on 09/03/1995

Background Information

The Recommendation on Improving the Quality of Government Regulation was adopted by the OECD Council on 9 March 1995 on the proposal of the Public Management Committee (now called Public Governance Committee). The Recommendation responds to the concerns for the quality and transparency of government regulation, which is crucial for government effectiveness and the efficient use of economic resources. The Recommendation provides an OECD Reference Checklist for Regulatory Decision-Making to respond to the practical need of governments to develop and implement better regulations.

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Resolution of the Council concerning the Mandate of the Public Management Committee of 23 June 1994, noting the importance of public sector management in ensuring policy effectiveness and economic efficiency under conditions of democratic accountability [C(94)125/FINAL];

CONSIDERING that the regulatory instrument is among the most important tools of government in OECD countries and that consequently high-quality regulation is crucial for government effectiveness;

CONSIDERING that the environment in which private enterprises are born and compete is substantially determined by the framework of responsibilities and constraints established by government regulation, and that economic growth and the efficient use of economic resources are promoted by high-quality regulations;

CONSIDERING that structural adjustment to changing social and economic conditions requires the removal of rigidities and barriers to competition within national economies that are often the result of inflexible, costly, or outdated government regulations;

CONSIDERING that the quality and transparency of government regulation is ever more important in an interdependent world where the effects of regulations cross national borders, and where regulatory co-operation is necessary to address urgent issues in areas such as environment, crime, migration, consumer protection, investment, and trade;

RECOGNISING the substantial work being carried out by Member countries to improve and make more transparent administrative processes through which regulations are developed, implemented, evaluated, and revised;

On the proposal of the Public Management Committee;

I. RECOMMENDS that Member countries take effective measures to ensure the quality and transparency of government regulations by steps such as:

- i) Examining the quality and performance of administrative and political processes for developing, implementing, evaluating, and revising regulations, using as a guide the principles set out in the Reference Checklist for Regulatory Decision-making contained in the Appendix which is an integral part of this Recommendation;
- ii) Developing -- as far as practical and in conformity with legal principles and governing traditions -- administrative and management systems through which principles of good decision-making, such as those set forth in the Appendix hereto, will be reflected in regulatory decisions;
- iii) Integrating decision-making principles for efficient, flexible, and transparent regulation into regulatory policy processes at all levels of government;
- iv) Paying particular attention to regulatory quality and transparency with respect to regulations that may have impacts on other countries, or affect international trade, investment, or other aspects of international relations.

II. INVITES the Public Management Committee to:

- i) Monitor how management strategies such as application of the Reference Checklist for Regulatory Decision-making can be used to improve regulatory decision-making;

- ii) Present a report in three years' time on the effectiveness of OECD Member countries in ensuring the quality of government regulation by integrating principles such as those set out in the Appendix hereto into regulatory administrative and management systems.

APPENDIX

THE OECD REFERENCE CHECKLIST FOR REGULATORY DECISION-MAKING

Government performance is under pressure. Systems of governance are adapting to global transformation involving more co-operation between countries, intensified economic competition, and new technologies. Budget deficits and economic constraints must be managed even as citizens demand more action to deal with emerging social and environmental issues. As a result, public sectors must learn to do more with less, differently and better, as the OECD Public Management Committee has noted. Governments must find effective ways to make responsive policy decisions and to identify the right mix of instruments and incentives to implement them.

The *OECD Reference Checklist for Regulatory Decision-making* responds to the need to develop and implement better regulations. It contains ten questions about regulatory decisions that can be applied at all levels of decision- and policy-making. These questions reflect principles of good decision-making that are used in OECD countries to improve the effectiveness and efficiency of government regulation by upgrading the legal and factual basis for regulations, clarifying options, assisting officials in reaching better decisions, establishing more orderly and predictable decision processes, identifying existing regulations that are outdated or unnecessary, and making government actions more transparent. The Checklist, however, cannot stand alone -- it must be applied within a broader regulatory management system that includes elements such as information collection and analysis, consultation processes, and systematic evaluation of existing regulations.

Question No.1: Is the Problem Correctly Defined?

The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

Question No. 2: Is Government Action Justified?

Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

Question No. 3: Is Regulation the Best Form of Government Action?

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects, and administrative requirements.

Question No. 4: Is there a Legal Basis for Regulation?

Regulatory processes should be structured so that all regulatory decisions rigorously respect the rule of law; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality, and applicable procedural requirements.

Question No. 5: What is the Appropriate Level (or Levels) of Government for this Action?

Regulators should choose the most appropriate level of government to take action, or, if multiple levels are involved, should design effective systems of coordination between levels of government.

Question No. 6: Do the Benefits of Regulation Justify the Costs?

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

Question No. 7: Is the Distribution of Effects across Society Transparent?

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

Question No. 8: Is the Regulation Clear, Consistent, Comprehensible, and Accessible to Users?

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

Question No. 9: Have All Interested Parties had the Opportunity to Present their Views?

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

Question No. 10: How will Compliance be Achieved?

Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

ANNEX

BACKGROUND NOTE TO THE OECD REFERENCE CHECKLIST FOR REGULATORY DECISION-MAKING¹

I. The Need to Improve Regulatory Quality

1. Regulation in its many forms -- from parliamentary law to ministerial orders to municipal by-law -- is among the most important tools of government in OECD countries². In recent decades, Member countries have built far-reaching and complex regulatory systems whose performance is key to maintaining and improving the quality of life of their citizens. By many standards, the development of these regulatory systems in industrialised democracies must be judged a successful governing response to the diverse interests and values of modern societies.

2. Today, quality regulation is crucial for government effectiveness. Member countries have, as a consequence, increased their attention to the quality of regulatory instruments. More broadly, they have also focussed on the functioning of the administrative processes through which regulations are developed, implemented, adjudicated, and revised. Concerns about regulatory quality have emerged at national and subnational levels of government, and also at international levels, as international bodies increasingly set rules or co-ordinate national regulations to address problems that cross national borders.

3. Yet Member countries are experiencing similar and troublesome problems with their use of regulation. The maturing and expansion of regulatory systems has given rise to concerns about:

- The growing quantity and costs of regulation. Complaints are voiced throughout the OECD area about “regulatory inflation”, rising compliance costs, and burdensome administrative formalities. Economic costs stemming from rigidities and anti-competitive effects are often noted. Many of these costs are justified by the benefits of regulation, but often the costs -- in terms of slowed economic growth, sluggish job creation, and barriers to structural adjustment - - appear to be larger than necessary. Yet in very few countries are the costs of regulation assessed, suggesting that a more careful and informed approach to the use of regulatory powers is needed ;
- The quality of individual regulations. Many governments may not wish to regulate less (indeed, in many areas such as environmental quality they wish to regulate more), but the desire to regulate better is universal. New rules should be as well-designed as possible. Governments are emphasizing a variety of quality standards: *user standards* such as clarity, simplicity, and accessibility; *design standards* such as flexibility and consistency among rules and in application; *legal standards* for structure and drafting; and *analytical standards* such as benefit-cost and cost-effectiveness tests. The quality of existing stocks of rules is receiving more attention as governments screen out out-dated or unduly onerous regulations. To expand the range of available policy instruments, governments are looking more closely at alternative approaches such as economic instruments, voluntary agreements, and information disclosure ;
- The legitimacy and openness of regulatory decision processes. Throughout the OECD area, administrative openness and responsiveness have become more important. There are pressures for more accessible processes of regulatory decision-making in which affected parties and the larger public can be involved and can understand how decisions are made.

4. Similar concerns are heard in countries with very different legal and governing traditions. This suggests that national regulatory systems and their problems are becoming more alike.

5. Countries are also focussing on regulatory quality because the governing environment is changing. Economic conditions are becoming more difficult, and are highlighting direct and indirect costs of government actions. Businesses facing tougher competition are asking their governments to reduce regulatory burdens to the extent possible. Impacts on small and medium-sized enterprises are being given more attention within economic policies on job creation. The quality of national regulatory systems is more important than ever to international competitiveness. New global markets and

technologies have rendered some older forms of government regulation counter-productive, as was recognised in the deregulation trend across the OECD area in the 1980s and 1990s.

6. Internationalisation of rule-making is also forcing governments to question long-standing regulatory traditions and to seek innovative forms of regulatory co-operation. Internationalisation is heightening pressure for improvement: the quality of regulatory decisions in one government becomes a matter of concern to other countries that are linked by cross-border effects, or by agreements for regulatory harmonization, mutual recognition, or co-ordination. Improving regulatory quality at the level of national governments is an important condition for sustaining and expanding an open world trading system.

7. Finally, regulatory quality is receiving more attention because countries are learning from each other how to improve regulations. An international flow of information on innovations and experiences is supporting and stimulating new reform movements across the OECD area. The process of continually examining and comparing national activities with those in other countries should continue to ensure that innovations in this rapidly evolving field are recycled to become part of the collective memory on which new advances are made.

II. Using the Checklist to Improve Regulatory Quality

8. Under pressure to regulate better -- more effectively but at lower cost -- governments are slowly building capacities for quality control of regulatory decisions. As part of these reform programmes, several governments have developed principles for good regulatory decisions. These principles often take the form of "checklists" used by regulators as they develop regulations, and by officials at high administrative and political levels as they review or approve regulations. Such checklists create an orderly framework for decision-making that sets out key concepts to guide administrators through the increasing complexity of regulatory design and application.

9. The use of government-wide regulatory principles and checklists to guide regulators in making better decisions was the subject of an OECD meeting in May 1993, under the auspices of the Public Management Committee. There was broad agreement that, properly designed and used, checklists can greatly improve the quality of individual rules, and the effectiveness and transparency of national regulatory systems. Analysis of 15 checklists from 10 countries and the Commission of the European Communities illustrated the degree to which Member countries agree on basic principles and approaches to making high-quality regulatory decisions³.

10. Regulatory principles necessarily differ from country to country, since issues of concern will arise from specific economic, social, and political environments and values. When properly framed, the values inherent in a regulatory checklist -- such as the balance between individual and collective rights, or the role of government in society -- should reflect the values of a government and the society it serves. For that reason, the regulatory checklists of some governments emphasize economic analysis and cost reduction, others stress civic principles such as due process for citizens and the legal basis for government action, while others focus on quality issues such as simplicity, clarity, and minimization of formalities.

11. Within that diversity of needs, however, regulatory management officials agreed that regulators and other responsible officials should consider a number of key principles as they determine whether and how to regulate. Such principles should be flexible enough to apply to regulatory decisions in all or most areas of policy, yet should also provide practical guidance on the design of high-quality regulations. Whether they are codified in administrative procedure laws, or are issued as recommendations by ministers or Governments, their role is to set quality standards for regulations. Ten regulatory principles, based on the principles used in OECD countries, are presented below in the form of questions that decision-makers should consider as they develop new regulations or review existing regulations.

12. In countries where such principles have been adopted, however, their application has not, in general, been adequate. Regulatory officials have not welcomed the disciplined framework they bring to decision-making, nor have governments generally followed up with necessary investments in information and human resources. Adoption of good decision principles is not, in itself, a sufficient condition for improvement. If such principles are to produce genuine benefits in the quality of

regulations, governments must develop systematically-organised procedures, with sustained political support at the highest levels, for the implementation of such principles. That is to say, checklists should be one element of a broader regulatory management system.

13. Management strategies for giving effect to checklists have included: designating ministers or senior officials as responsible for checklist application, clarifying management responsibilities for compliance with each checklist principle, establishing central oversight bodies or independent regulatory review processes, developing staff training, and disclosing responses to checklists to the affected public. It is a necessary condition for success that regulatory officials at all levels of administration be familiar with the quality principles established for regulatory decisions, which places special emphasis on training and incentive programmes within the civil service. Finally, governments should develop processes for the systematic evaluation of existing regulations to ensure that they continue to be relevant and consistent with current conditions.

III. The OECD Checklist for Regulatory Decision-Making

Question No. 1: *Is the Problem Correctly Defined?*

14. The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen (that is, identifying the incentives of affected entities and their consequent behaviors). Properly done, problem definition will itself suggest potential solutions, and eliminate others that are clearly not suitable. Many problems are multi-faceted -- affecting a variety of groups in a variety of ways -- and in these cases regulators should document the full scope of the issue, drawing particular attention to supporting and opposing linkages between groups and their incentives. Regulators reviewing existing regulations should assess whether the nature or scope of the problem has changed since the regulation was adopted in ways that require changes in the regulation itself.

15. Not all problems are resolvable by government action. A major objective of problem definition is to isolate the relevant factors that government can influence most powerfully through intervention, or, alternatively, to illustrate that the government may have little capacity to address the issue.

Question No. 2: *Is Government Action Justified?*

16. Government intervention should be based on clear evidence that a problem exists and that government action is justified, given: the values at stake and current government policies; the likely benefits and costs of action (based not on "perfect" government, but on a realistic assessment of government effectiveness); and alternative mechanisms for addressing the problem. Markets should always be considered as an alternative to government action, and the capacity of the private sector and individuals to deal with the problem should be assessed.

17. Assessment of the need for action should also consider related government actions. Further action may not be necessary if other programmes or legislation, including international norms, can be adjusted to deal with the problem. In some cases, today's problem may be the result of yesterday's intervention; in these cases, the solution may be to reduce rather than increase government intervention. Re-evaluating the need for government intervention is particularly important when governments review existing regulations, since conditions may have changed since regulations were adopted. To compensate for the tendency for regulations to become outdated and inconsistent with current needs, governments should establish processes for systematic and periodic review of the need for existing regulations.

18. Globalisation is increasing attention to this stage of decision-making. As individual governments take actions that affect other countries, they are expected to ensure that justification for their actions is empirical and transparent.

Question No. 3: *Is Regulation the Best Form of Government Action?*

19. The decision about how to intervene may be as important as the decision whether to intervene. Governments can choose from a variety of regulatory and non-regulatory policy instruments with very different implications for results, costs, distribution of benefits and costs, and administrative

requirements. Considerable work in OECD countries suggests that a skillful use of alternatives can reduce costs and increase the effectiveness of government action.

20. Yet in practice regulators rarely consider non-traditional approaches. The “command-and-control” form of regulation is preferred by regulators for a number of reasons, including a preference for standardized solutions, ease of enforcement, clarity for regulated groups, and certainty of intent. The drawbacks to this form of regulation - including its rigidity, tendency to be over-detailed, inability to adapt to changing conditions, high costs, adversarial nature, and ineffectiveness in many situations -- have led governments to consider alternative forms of action such as economic instruments, voluntary agreements, self-regulation, information disclosure, persuasion, and various types of performance-based regulation. In practice, regulation and other instruments are usually combined into a carefully-designed policy mix.

21. Regulatory officials should be encouraged to carry out, early in the regulatory process, an informed consideration of regulatory and non-regulatory instruments. Such a consideration will support a process of systematic and open decision-making that uses the range of policy instruments more skillfully and creatively to achieve better policy outcomes. When information is inadequate to move into full-scale alternative approaches, experimentation and pilot testing may be appropriate intermediate steps.

Question No. 4: *Is there a Legal Basis for Regulation?*

22. All OECD countries agree that restrictions on private action should be based on valid legal authority, and should be exercised only by those who are properly authorized. That is, regulatory processes should be structured so that they rigorously respect the “rule of law”. At the highest level, this may involve examination of constitutional authority to act; at lower levels, it involves systematic scrutiny of consistency with higher-level regulations and with treaty or other international obligations.

23. The growing tendency in many OECD countries for parliaments to delegate broad regulatory powers to ministries, to sub-ministerial bodies, and to independent regulators has increased the difficulty of ensuring legality. When regulatory authority is exercised by delegation -- whether by ministers acting on authority directly delegated by law, or by local officials exercising power that must be traced through several levels of delegation -- the nature and limit of that authority become more open to interpretation. Delegating instruments should be as clear as possible about the nature and boundaries of the regulatory authority so delegated. Some OECD countries require regulators to explicitly assess, using a set of substantive criteria, whether they have properly exercised their discretion.

24. A key question to ask is whether the regulation is compatible with existing legislation, including international norms or agreements. New regulations must comfortably co-exist with existing regulations; to that end, regulators should examine whether other regulations should be repealed or amended to ensure legal consistency. Examination of international norms or agreements not only indicates whether the problem has been dealt with elsewhere, but also supports a longer-term process of regulatory co-ordination and harmonization.

25. Administrators may also need to examine regulatory proposals for compliance with obligatory legal principles such as certainty, proportionality, and equality before the law. Where necessary, decision-makers also need to ensure compliance with procedural requirements that are required by law. In several Member countries, administrative procedure laws set out specific steps - such as review by legal experts, publication, or public consultation - for developing new regulations.

Question No. 5: *What is the Appropriate Level (or Levels) of Government to Take Action?*

26. This question is both legal and pragmatic in nature. In some cases, competencies are designated by higher-level regulations, and regulators have no discretion. But in many cases, governments can choose who should act. In these cases, the question is, given the nature of the problem, what level, or system of co-operation between levels, of government can regulate most efficiently? This issue is raised under many policies, including decentralization, federalism, subsidiarity, internationalisation. As they distribute regulatory competences, governments are choosing more carefully today between subnational, national and international levels of government.

27. The answer to this question will rest on several criteria: does the problem cross legal and political boundaries (that is, are there negative or positive externalities?) Does it involve issues of a primarily regional or local character? Are there economies of scale in regulating across a larger territory? What are the institutional capacities of various levels of administration? In many cases, the need for national (or international) uniformity of regulatory standards must be balanced by a sensitivity to local differences. Harmonization can achieve efficiency gains by removing regulatory barriers to trade, but over-harmonization can be as inefficient as under-harmonization.

28. Multiple levels of government are often involved in regulatory development or implementation. In these cases, the regulator should ask: How can consultation and co-ordination be best carried out between levels of government? Problem-solving, whether regulatory or not, will often involve co-operative action between levels of government. Co-operation, in turn, may require the building of new forms of administrative partnerships and relationships. So that regulations can be implemented successfully, regulators should ensure that administrative capacities to accomplish tasks and duties are fully in place, and should carry out necessary consultation and training programmes to achieve this.

Question No. 6: *Do the Benefits of Regulation Justify the Costs?*

29. A clear assessment of total costs and benefits -- including those to businesses, private citizens, and administrations -- likely to be realised in practice is crucial information for decision-makers. These estimates are needed to make judgments about the reasonableness of a regulation and its practicality for those who will comply; to design an approach with the lowest costs and highest benefits; and to assess its effectiveness in solving the problem. Their objective is to enable policy and political officials to ask the right questions and reach confident judgments that a regulation is, on net, beneficial. Yet regulators in most OECD countries do not assess the economic costs of new regulations, nor do they assess the magnitude or value of expected benefits.

30. Regulators should routinely estimate the expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make those estimates available in accessible format to administrative and political decision-makers. Such estimates should include all economic costs to businesses, to citizens, and to other levels of government arising from compliance with the regulation, including both the costs of the policy content and the costs of administrative formalities, such as paperburden. Estimates should also include the administrative or fiscal costs of regulation and non-regulatory alternatives, including enforcement costs, although these costs are likely to be much lower than costs borne directly by the private sector. A quality control process, such as through independent reviewers, is necessary to ensure that analysis is consistent and reliable.

31. Governments should take a pragmatic and realistic approach to this issue. Resources invested in cost and benefit estimation should increase with the potential impact of the regulation. A variety of techniques are available. For less important regulations, rough cost estimates can be gained through consultations with the regulated community. Qualitative assessments may be a useful beginning where analytical skills are low, where the cost of information collection is high, or where there is little consensus on how to value benefits. Regulations with larger effects might justify, in addition to consultation, more precise forms of benefit-cost analysis or various kinds of market analyses of effects on competition, international competitiveness, or technological innovation. Rules intended to reduce health or safety risks may require risk assessment techniques. Estimates of major regulations should include costs and benefits of major sub-elements of the regulation to identify those elements that are justified, and those that are not. In all cases, however, a reasonable judgment should be made that the costs of government action are justified by its benefits before action is taken.

32. Governments should also work to improve centralised capacities for assessing total regulatory burdens. Costs that seem reasonable when one hundred regulations are considered separately might seem excessive when all hundred are considered together. Governments should take steps to develop indicators of aggregate regulatory cost to assist governments in monitoring increases in regulatory costs and in identifying areas where burdens are excessive.

Question No. 7: *Is the Distribution of Effects Across Society Transparent?*

33. To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups. Often, costs are not imposed on the same segment of society that benefits from regulation. Labor regulations, for example, may benefit workers with jobs, but make it harder for the unemployed to find jobs. There may be disproportionate effects on particular groups, such as small and medium-sized enterprises, or on certain regions. Such effects may not mean that action is undesirable for society as a whole, but, rather, that policy officials should consider the issue explicitly to determine, for example, if compensation is needed for disadvantaged groups.

Question No. 8: *Is the Regulation Clear, Consistent, Comprehensible, and Accessible to Users?*

34. Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible. This step in the decision process can improve not only the text of regulations, but can reveal unexpected ambiguities and inconsistencies. Clear and precise language also reduces the costs of learning about rules, minimizes disputes during implementation, and improves compliance. Regulators should also examine regulations for consistency of language and format with other regulations, the logical sequence of drafting, the adequacy of definitions. Use of technical jargon should be minimized. Regulations incorporated by reference should be easily available. Finally, the strategy for disseminating the regulation to affected user groups should be considered.

Question No. 9: *Have All Interested Parties had the Opportunity to Present Their Views?*

35. Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, wider interest groups such as consumer or environmental organisations, or other levels of government. To gain the benefits of public consultation, administrations should make available to the public as much information as is feasible, including proposed texts, explanations of the need for government action, and assessments of the benefits and costs. Such transparency is particularly important when regulations have effects on international trade or on international treaties or other co-operative agreements.

36. Consultation and public participation in regulatory decision-making have been found to contribute to regulatory quality by (i) bringing into the discussion the expertise, perspectives, and ideas for alternative actions of those directly affected; (ii) helping regulators to balance opposing interests; (iii) identifying unintended effects and practical problems; (iv) providing a quality check on the administration's assessment of costs and benefits; and (v) identifying interactions between regulations from various parts of government. Consultation processes can also enhance voluntary compliance, reducing reliance on enforcement and sanctions.

37. Consultation can be a cost-effective means of responding to other regulatory principles in this checklist, such as identification of the problem, assessment of need for government action, and selection of the best type of action.

Question No. 10: *How will Compliance be Achieved?*

38. Even after the most rigorous decision-making process inside the administration, regulation has yet to pass the most demanding test of all -- the public must agree to comply with it. Yet implementation -- consisting of strategies such as education, assistance, persuasion, promotion, economic incentives, monitoring, enforcement, and sanctions -- is very often a weak phase in the regulatory process in OECD countries, who tend to rely too much on ineffective punitive threats and too little on other kinds of incentives⁴.

39. After assessing the incentives and institutions through which regulations will take effect, administrators should design multi-faceted implementation strategies suited to them. Information disclosure that alerts consumers to problems may be more effective than fines or warnings. Co-operative relations with enterprises may produce better results than confrontation. Third parties, such as communities, trade unions, or even business competitors, can be empowered to monitor behavior.

40. Implementation should be considered at all phases of decision-making, rather than left to the very end. One common source of non-compliance, for example, is failure of affected groups to understand the law, which may result from poorly-drafted or too-complex regulations, or inconsistent interpretations by enforcement officials. Implementation considerations will also strongly affect decisions about alternative forms of action. Realistic assessment of expected compliance rates, based on available compliance and enforcement strategies, may suggest that one policy instrument is more attractive than another that appears more effective on paper, but is likely to be more difficult to implement.

41. Effective implementation schemes will be responsive to the variety of conditions among regulated groups, to new information, and to changing conditions. Continuing efforts to evaluate and improve implementation strategies will assist in detecting problems early and in adjusting implementation strategies, or regulations themselves, to improve effectiveness.

¹ This background note is not part of the Recommendation but, upon its approval the Council noted that the Public Management Committee agreed that the Background Note to the OECD reference checklist for regulatory decision-making [Annex 2 to C(95)21] was a useful reference for Member countries in implementing the Recommendation.

² Although there is no accepted international definition of regulation, the term "regulation" is used broadly in this document to include the full range of legal instruments by which governing institutions, at all levels of government, impose obligations or constraints on private sector behaviour. Constitutions, parliamentary laws, subordinate legislation, decrees, orders, norms, licenses, plans, codes and even some forms of administrative guidance can all be considered as "regulation".

³ Analysis of regulatory principles and checklists from Member countries can be found in "The Design and Use of Regulatory Checklists in OECD Countries" (1993) *OECD Occasional Papers in Public Management, Regulatory Management and Reform Series No. 4*, [OCDE/GD(93)181]. This paper also contains the text of 15 principles and checklists used in OECD countries.

⁴ An overview of common compliance failures is given in "Improving Regulatory Compliance: Strategies and Practical Applications in OECD Countries" (1993) *OECD Occasional Papers in Public Management, Regulatory Management and Reform Series No. 3*, [OCDE/GD(93)63].

Adherents*

OECD Members

Australia
Austria
Belgium
Canada
Chile
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Israel
Italy
Japan
Korea
Latvia
Luxembourg
Mexico
Netherlands
New Zealand
Norway
Poland
Portugal
Slovak Republic
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom
United States

Non-Members

* Additional information and statements are available in the Compendium of OECD Legal Instruments:
<http://legalinstruments.oecd.org>

About the OECD

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD Member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Legal Instruments

Since the creation of the OECD in 1961, around 450 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions:** OECD legal instruments which are legally binding on all Members except those which abstain at the time of adoption. While they are not international treaties, they entail the same kind of legal obligations. Adherents are obliged to implement Decisions and must take the measures necessary for such implementation.
- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
- **Declarations:** OECD legal instruments which are prepared within the Organisation, generally within a subsidiary body. They usually set general principles or long-term goals, have a solemn character and are usually adopted at Ministerial meetings of the Council or of committees of the Organisation.
- **International Agreements:** OECD legal instruments negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several ad hoc substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.