



# Recommendation of the Council on Regulatory Policy and Governance

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## Background Information

The Recommendation on Regulatory Policy and Governance (hereafter the “Recommendation”) was adopted by the OECD Council on 22 March 2012 on the proposal of the Regulatory Policy Committee (hereafter “RPC”). The Recommendation is the first comprehensive international legal instrument on regulatory policy since the global financial and economic crisis that uncovered major failings in governance and regulation. It reflects the fact that a well-functioning national regulatory framework for transparent and efficient markets is central to re-injecting confidence and restoring growth.

### *OECD’s standards on regulatory policy*

Regulatory policy is a core part of the OECD’s work, touching aspects in every sector of the economy and affecting the everyday life of businesses and citizens. It is important that governments ensure that what they do in economic and social affairs is efficient and effective. Through the use of regulations, laws and international instruments, governments intervene in the economy in pursuit of their objectives.

In 1995, OECD Ministers requested that the OECD examine the significance, direction and means of reform in regulatory regimes in Adherents. The 1995 Recommendation for Improving the Quality of Government Regulation [[OECD/LEGAL/0278](#)] was the first international legal instrument setting out regulatory principles common to OECD Member countries. Building on this instrument, and broadening its focus to embrace market openness, competition policy and microeconomic principles in a multidisciplinary framework, the OECD produced a Report on Regulatory Reform in 1997. The report’s recommendations have provided guidance to Member countries in improving their regulatory policies and tools, strengthening market openness and competition, and reducing regulatory burdens. Moreover, these recommendations have provided a fundamental cornerstone for OECD country reviews carried out both in sectoral and policy areas. In 2005, [Guiding Principles for Regulatory Quality and Performance](#) were developed, based on the 1997 report’s recommendations and evidence obtained from the OECD country reviews carried out up to that point.

While the 1995, 1997 and 2005 documents remain relevant, it was acknowledged at the International OECD Regulatory Policy Conference of 28-29 October 2010 that their coverage should be expanded in the light of more recent experience, additional reviews, and the broad mandate of the Regulatory Policy Committee. This recognition led to the development of the 2012 Recommendation.

### *Process for developing the Recommendation and its scope*

The Recommendation was developed by the RPC through a thorough a process of public and committee engagement throughout 2011. It underwent a broad public consultation and benefitted from a wide and diverse range of input from within the OECD and from external sources, in particular academic commentators, the Business at OECD (BIAC) and the Trade Union Advisory Council (TUAC).

The Recommendation is the result of careful assessment of best practice identified by the RPC from over a decade of country reviews. It develops a systemic governance framework that can deliver ongoing improvements to the quality of regulations. It offers advice on the development of institutions and the application of tools, and provides practical measures against which Adherents can assess their capacity to develop and implement quality regulation. The twelve principles set out in the body of the Recommendation are elaborated on in an Annex, which forms an integral part of the Recommendation, to provide Adherents with further guidance on the principles’ implementation.

The Recommendation begins by noting the importance of having political commitment at the highest level, proposing that this be expressed through a whole-of-government regulatory policy directed at the public interest. Of the remaining eleven principles in the Recommendation, five may broadly be categorised as pertaining to good governance:

- Transparency and public consultation;
- Establishing oversight institutions and support mechanisms;

- Publication of regular reports on regulatory and regulator performance;
- Designing regulatory agencies to secure their objectivity and consistency;
- Ensuring procedural fairness and access to review mechanisms.

The remaining six principles relate to action or process requirements for a sound regulatory system:

- Integrating Regulatory Impact Assessments (RIA) into early stages of regulatory development;
- Conducting systematic reviews of regulations in place;
- Applying risk management and risk communication strategies;
- Taking into account existing international standards and external impacts;
- Promoting regulatory coherence across domestic jurisdictions;
- Fostering regulatory management capacity at sub-national levels.

### ***Follow-up and support for the implementation of the Recommendation***

To help Adherents implement the Recommendation, the RPC has developed a range of “Best Practice Principles”. The following Best Practice Principles have been developed so far and each correspond to one of the 12 principles set out in the Recommendation:

- [Best Practice Principles on the governance of regulators](#);
- [Best Practice Principles on enforcement and inspections](#), and its [toolkit](#);
- [Best Practice Principles on regulatory impact assessment](#);
- [Best Practice Principles on ex post reviews of regulatory stock](#);
- [Best Practice Principles on one-stop shops for citizens and business](#).

In addition to this, the RPC has developed indicators of Regulatory Policy and Governance (iREG) which feed into the [OECD Regulatory Policy Outlook which is published every three years](#). The iREG currently cover three principles of the Recommendation in detail (i.e. stakeholder engagement, regulatory impact assessment and ex post evaluation) and provide a baseline against which to track Adherent’s progress over time and identify areas of reform.

*For further information, please consult the OECD webpage on: <https://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm>.*

*Contact information: [GOV.RPC@oecd.org](mailto:GOV.RPC@oecd.org).*

## **Implementation**

### ***2019 Report to Council***

The [2019 Report](#) on the implementation, dissemination and continued relevance of the Recommendation compiles (i) all the data resulting from the Indicators of Regulatory Policy and Governance (iREG), (ii) written comments subsequently submitted from Adherents and (iii) the findings of a survey circulated to gather information on dissemination of the Recommendation by Adherents, providing an overview of the state of implementation of the Recommendation and assessment of its continued relevance.

As the findings of the Report show, the degree to which the Recommendation has been implemented across Adherents varies greatly in both scope and form. The vast majority of Adherents could use the Recommendation far more actively to embed further good regulatory design and delivery in law and practice. Among other things, the Report recommends that stakeholder engagement should be well integrated into each step of the rule-making cycle and that the Recommendation should be levered to promote greater evidence-based policy making. Furthermore, the Report underlines the need for more transparent, responsive, evidence, risk-based and proportional inspections, highlighting that the regulatory implementation and enforcement remain the weakest links in regulatory governance. Lastly, it emphasises that progress in regulatory policy depends on strong political leadership.

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The next reporting to Council is scheduled to take place in 2024.

**THE COUNCIL,**

**HAVING REGARD** to Articles 1, 2a), 3 and 5b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

**HAVING REGARD** to the Recommendation of the Council on Improving the Quality of Government Regulation [C(95)21/FINAL], including the OECD Reference Checklist for Regulatory Decision-Making;

**HAVING REGARD** to the 1997 OECD Report on Regulatory Reform [C/MIN(97)10 (summary) and C/MIN(97)10/ADD], the 2005 Guiding Principles for Regulatory Quality and Performance [C(2005)52 and CORR1], the APEC-OECD Integrated Checklist for Regulatory Reform [SG/SGR(2005)4], and the Recommendation of the Council on Competition Assessment [C(2009)130];

**NOTING** the considerable progress made by Members and non-Members to improve the quality of regulation and of the tools and institutions for evidence-based decision making;

**NOTING** that the challenges facing governments today and in the foreseeable future include issues and problems with a regulatory dimension that have not been addressed systematically in previous OECD decisions, recommendations and principles;

**RECOGNISING** that democracy and the rule of law depend upon and reinforce sound regulatory frameworks;

**RECOGNISING** that regulations are one of the key levers by which governments act to promote economic prosperity, enhance welfare and pursue the public interest;

**RECOGNISING** that well-designed regulations can generate significant social and economic benefits which outweigh the costs of regulation, and contribute to social well-being;

**NOTING** that regulatory policy as a government policy framework for how regulations are made, assessed and revised should be carried out at the highest level by the office of the President or Prime Minister and calls for good governance practice to be implemented across departments and levels of government;

**RECOGNISING** that the financial crises and economic cycles, innovation, social change, environmental challenges and the search for new sources of growth highlight the importance of regulatory frameworks for well-functioning markets and societies and of regulatory policies and institutions to cope with the inter-connectedness of sectors and economies;

**RECOGNISING** that the OECD has played a leading role in the international community to promote regulatory reform and the implementation of sound regulatory practices on a whole-of-government approach; and,

**RECOGNISING** that the Regulatory Policy Committee was created in 2009 to assist Members and non-Members in building and strengthening capacity for regulatory quality and reform;

**On the proposal of the Regulatory Policy Committee:**

**I. RECOMMENDS** that Members:

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.

2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and

to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.

3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.

4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.

5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.

6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice.

7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.

8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.

9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.

10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.

11. Foster the development of regulatory management capacity and performance at sub-national levels of government.

12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

**II. RECOMMENDS** that Members take appropriate steps to implement high standards and to improve regulatory processes, and to use regulations wisely in pursuit of economic, social and environmental policies, and to take into account the principles expressed in this Recommendation, which are recalled and further developed in the Annex to this Recommendation of which it forms an integral part.

**III. INVITES** Members and the Secretary-General to disseminate this Recommendation;

**IV. INVITES** non-Members to take account of and adhere to this Recommendation;

**V. INSTRUCTS** the Regulatory Policy Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter, in consultation with other relevant OECD Committees.

## ANNEX

**ANNEX TO THE RECOMMENDATION OF THE COUNCIL ON REGULATORY POLICY AND GOVERNANCE**

**1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, distributional effects are considered and the net benefits are maximised.**

1.1 Regulatory policy defines the process by which government, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision-making. An explicit policy to ensure that regulations and regulatory frameworks serve the public interest should commit governments to:

- Adopt a continuous policy cycle for regulatory decision-making, from identifying policy objectives to regulatory design to evaluation;
- Use regulation when appropriate to achieve policy objectives, applying the Recommendation of the Council on Improving the Quality of Government Regulation [C(95)21/FINAL];
- Maintain a regulatory management system, including both ex ante impact assessment and ex post evaluation as key parts of evidence-based decision making;
- Articulate regulatory policy goals, strategies and benefits clearly;
- Systematically review the stock of regulations periodically to identify and eliminate or replace those which are obsolete, insufficient or inefficient;
- Develop, implement and evaluate a communications strategy to secure ongoing support for the goals of regulatory quality.

1.2 To achieve results, governments should:

- Adopt an integrated approach, which considers policies, institutions and tools as a whole, at all levels of government and across sectors, including the role of the legislature in ensuring the quality of laws;
- Recognise that specific components such as impact assessment and administrative simplification are important but do not substitute for a comprehensive programme;
- Consider the impacts of regulation on competitiveness and economic growth;
- Commit to apply regulatory policy principles when preparing regulations that implement sectoral policies, and strive to ensure that regulations serve the public interest in promoting and benefitting from trade, competition and innovation while reducing system risk to the extent practicable;
- Monitor the impact of regulations and regulatory processes;
- Develop programmes to reduce the administrative and compliance costs of regulation without compromising legitimate regulatory objectives.

1.3 Governments should develop and maintain a strategic capacity to ensure that regulatory policy remains relevant and effective and can adjust and respond to emerging challenges. It is a core function of government to ensure that existing regulations are delivering the necessary level of public protection including having the strategic capacity to consider and identify if regulatory intervention is necessary and will be effective.

1.4 Governments should issue a formal and binding policy statement underpinning regulatory reform including guidelines for the use of regulatory policy tools and procedures. The design of institutional frameworks and resources necessary to implement regulatory policy including the enforcement of regulation should be assessed to ensure that they are adequate and address regulatory gaps.



1.5 Regulatory policy should include a preference for performance-based regulation, and should facilitate the efficient functioning of the market.

1.6 The regulatory policy should clearly identify the responsibilities of ministers for putting regulatory policy into effect within their respective portfolios. In addition, governments should consider assigning a specific Minister with political responsibility for maintaining and improving the operation of the whole-of-government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process. The role of such Minister could include:

- Monitoring and reporting on the co-ordination of regulatory reform activities across portfolios;
- Reporting on the performance of the regulatory management system against the intended outcomes;
- Identifying opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.

**2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.**

2.1 Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place.

2.2 Governments should co-operate with stakeholders on reviewing existing and developing new regulations by:

- Actively engaging all relevant stakeholders during the regulation-making process and designing consultation processes to maximise the quality of the information received and its effectiveness.
- Consulting on all aspects of impact assessment analysis and using, for example, impact assessments as part of the consultation process;
- Making available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data;
- Structuring reviews of regulations around the needs of those affected by regulation, co-operating with them through the design and conduct of reviews including prioritisation, assessment of regulations and drafting simplification proposals;
- Evaluating the competitive effects of regulation on various economic players in the market.

2.3 Introduce regular performance assessments of regulations and regulatory systems, taking into account, among other things, the impacts on affected parties and how they are perceived. Communicate the results of these assessments to the public.

2.4 Make sure that policies and practices for inspections and enforcement respect the legitimate rights of those subject to the enforcement, are designed to maximise the net public benefits through compliance and enforcement and avoid unnecessary burdens on those subject to inspections.

2.5 All regulations should be easily accessible by the public. A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.

2.6 Governments should have a policy that requires regulatory texts to be drafted using plain language. They should also provide clear guidance on compliance with regulations, making sure that affected parties understand their rights and obligations.

**3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.**

3.1 A standing body charged with regulatory oversight should be established close to the centre of government, to ensure that regulation serves whole-of-government policy. The specific institutional solution must be adapted to each system of governance.

3.2 The authority of the regulatory oversight body should be set forth in mandate, such as statute or executive order. In the performance of its technical functions of assessing and advising on the quality of impact assessments, the oversight body should be independent from political influence.

3.3 The regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision making. These tasks should include:

- Quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate;
- Examining the potential for regulation to be more effective including promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary;
- Contributing to the systematic improvement of the application of regulatory policy;
- Co-ordinating ex post evaluation for policy revision and for refinement of ex ante methods;
- Providing training and guidance on impact assessment and strategies for improving regulatory performance.

3.4 The performance of the oversight body, including its review of impact assessments should be periodically assessed.

**4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.**

4.1 Adopt *ex ante* impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.

4.2 *Ex ante* assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.

4.3 *Ex ante* assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. *Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.

4.4 When regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. *Ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects.

4.5 Regulatory Impact Analysis should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to

gain input from stakeholders and assist political decision making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process.

4.6. *Ex ante* assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means.

4.7 When carrying out an assessment, officials should:

- Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects;
- Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets;
- Evaluate the impact on small to medium sized enterprises and demonstrate how administrative and compliance costs are minimised.

4.8 RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

**5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent and delivers the intended policy objectives.**

5.1 The methods of Regulatory Impact Analysis should be integrated in programmes for the review and revision of existing regulations. These programmes should include an explicit objective to improve the efficiency and effectiveness of the regulations, including better design of regulatory instruments and to lessen regulatory costs for citizens and businesses as part of a policy to promote economic efficiency.

5.2 Reviews should preferably be scheduled to assess all significant regulation systematically over time, enhance consistency and coherence of the regulatory stock, and reduce unnecessary regulatory burdens and ensure that significant potential unintended consequences of regulation are identified. Priority should be given to identifying ineffective regulation and regulation with significant economic impacts on users and/or impact on risk management. The use of a permanent review mechanism should be considered for inclusion in rules, such as through review clauses in primary laws and sunseting of subordinate legislation.

5.3 Systems for reviews should assess progress toward achieving coherence with economic, social and environmental policies.

5.4 Programmes of administrative simplification should include measurements of the aggregate burdens of regulation where feasible and consider the use of explicit targets as a means to lessen administrative burdens for citizens and businesses. Qualitative methods should complement the quantitative methods to better target efforts.

5.5 Employ the opportunities of information technology and one-stop shops for licences, permits, and other procedural requirements to make service delivery more streamlined and user-focused.

5.6 Review the means by which citizens and businesses are required to interact with government to satisfy regulatory requirements and reduce transaction costs.

**6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice.**

6.1 Review the effectiveness of programmes to improve the delivery of regulation inside government to ensure that they are effective and efficient and meet clearly identified objectives for public service delivery.

6.2 Design and assess data collection and information management strategies to ensure that the necessary high-quality information is available for the preparation of reports while avoiding the imposition of unnecessary administrative burdens.

6.3 Promote an external review function, including input by stakeholders and civil society. The assessment of RIA by the regulatory oversight body should be periodically evaluated by an independent third party, such as, for example, the National Audit Authority.

6.4 Simplification and reform programmes should be evaluated for the public value they deliver based on the resources required. Evaluation should focus primarily on the outcomes and effects for society ahead of the quantification of administrative burdens reduced.

**7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.**

7.1 The legislation that grants regulatory authority to a specific body, should clearly state the objectives of the legislation and the powers of the authority.

7.2 To ensure that regulatory agencies are integrated in the regulatory system, governments should compile and maintain a public register of all entities in government with authority to exercise regulatory functions. The register should include the details of the statutory objectives of each regulatory authority and a listing of the regulatory instruments that it administers.

7.3 Independent regulatory agencies should be considered in situations where:

- There is a need for the regulatory agency to be independent in order to maintain public confidence;
- Both the government and private entities are regulated under the same framework and competitive neutrality is therefore required; and
- The decisions of regulatory agencies can have significant economic impacts on regulated parties and there is a need to protect the agency's impartiality.

7.4 Mechanisms of public accountability are required that clearly define how a regulatory agency is to discharge its responsibility with the necessary expertise as well as integrity, honesty and objectivity.

7.5 Regulatory agencies should be required to follow regulatory policy including engaging with stakeholders and undertaking RIA when developing draft laws or guidelines and other forms of soft law.

7.6 Agency performance should be subject to regular external evaluation.

**8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations, and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.**

8.1 Citizens and businesses that are subject to the decisions of public authorities should have ready access to systems for challenging the exercise of that authority. This is particularly important in relation to regulatory sanctions, i.e. sanctions issued by an authority in virtue of a regulation.

8.2 This access should include the right to appeal the decisions of regulators on legal grounds, including on the grounds of procedural fairness and due process. This should also include the possibility to challenge in court the legality of any statutory provision, on which decisions of regulators are based, vis-à-vis higher hierarchical legal norms, including constitutional norms.

8.3 In principle, appeals should be heard by a separate authority than the body responsible for making the original regulatory decision.

8.4 Governments should, where appropriate, establish standard time periods within which applicants can expect an administrative decision to be made.

**9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.**

9.1 Governments should include their strategy on risk and regulation in their public statement underpinning regulatory reform. They should develop and regularly update guidance on the methodologies for risk assessment, management and communication concerning the use of regulation to achieve public and environmental protection.

9.2 Regulators should build an accountable system for review of risk assessments accompanying major regulatory proposals that present significant or novel scientific issues, for example through expert peer review.

9.3 Evaluate the likely effectiveness of risk strategies against their capacity to identify and inform regulatory actions that will help to avoid or mitigate catastrophic or systemic risks and minimise unintended consequences and “risk-risk” tradeoffs. Ensure that risk systems incorporate lessons from past events, including failures and close calls.

9.4 Governments should consider the use of risk-based approaches in the design and enforcement of regulatory compliance strategies to increase the likelihood of achieving compliance goals and to minimise the imposition of costs on citizens and businesses through compliance and enforcement procedures.

9.5 Regulators should be required to develop, implement and review regulatory compliance strategies against risk-based criteria.

9.6 Where the principle of precaution is applied, regulatory agencies must build an accountable system for review as scientific information becomes available.

**10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supra national, the national and sub-national levels of government. Identify cross cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.**

10.1 Design appropriate co-ordination mechanisms to develop regulatory policies and practices for all levels of government, including where appropriate through the use of measures to achieve harmonisation, or through the use of mutual recognition agreements;

10.2 Develop tools to diagnose regulatory issues that cut across levels of government (including supra-national organisations) to identify and reform overlapping regulations;

10.3 Capitalise on the proximity of sub-national governments to local firms and citizens to develop effective consultation procedures in the design of regulation and better reflect local needs in overall regulatory policy, at all levels of government;

10.4 Promote information sharing and transparency mechanisms between levels of government to overcome asymmetries of information and promote complementarities across regulations;

10.5 Disseminate innovative regulatory practices that take place at the local level, including making effective use of benchmarks among different jurisdictions;

10.6 Facilitate local variations and experimentation in regulatory approaches when it is nationally beneficial;

10.7 Supranational bodies with rule making powers should be encouraged to consider and apply all relevant aspects of this Recommendation.

**11. Foster the development of regulatory management capacity and performance at sub national levels of government.**

11.1 Governments should support the implementation of regulatory policy and programmes at the sub-national level to reduce regulatory costs and barriers at the local or regional level which limit competition and impede investment, business growth and job creation.

11.2 Promote the implementation of programmes to assess and reduce the cost of the compliance with regulation at the sub-national level;

11.3 Promote procedures at the sub-national level to assess areas for which regulatory reform and simplification is most urgent to avoid legal vacuum, inconsistencies, duplication and overlap;

11.4 Promote efficient administration, regulatory charges should be set according to cost recovery principles, not to yield additional revenue;

11.5 Support capacity-building for regulatory management at sub-national level through the promotion of e government and administrative simplification when appropriate, and relevant human resources management policies;

11.6 Use appropriate incentives to foster the use by sub-national governments of Regulatory Impact Assessments to consider the impacts of new and amending regulations, including identifying and avoiding barriers to the seamless operation of new and emerging national markets;

11.7 Develop incentives to foster horizontal co-ordination across jurisdictions to eliminate barriers to the seamless operation of internal markets and limit the risk of race-to-the bottom practices, develop adequate mechanisms for resolving disputes across local jurisdictions;

11.8 Prevent conflict of interest through clear separation of the roles of sub-national governments as regulators and service providers.

**12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.**

12.1 In an increasingly globalised economy, international regulatory co-operation must become integral to systemic risk management and long-term policy planning.

12.2 Governments should take into account relevant international regulatory settings when formulating regulatory proposals to foster global coherence.

12.3 Governments should act in accordance with their international treaty obligations (for example under the ILO, UN and WTO/GATT Agreements which require that regulations accord foreign products and services treatment no less favorable than like products and services of national origin, or those originating in any other country).

12.4 Governments should co-operate with other countries to promote the development and diffusion of good practices and innovations in regulatory policy and governance.

12.5 Governments should contribute to international fora, including private or semi-private, which support greater International Regulatory Co-operation (IRC).

12.6 Governments should avoid the duplication of efforts in regulatory activity in cases where recognition of existing regulations and standards would achieve the same public interest objective at lower costs.

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12.7 Processes of consultation on regulatory proposals should be open to receiving submissions from foreign and domestic interests.



## 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, Colombia, Costa Rica, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, 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 460 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** are adopted by Council and are legally binding on all Members except those which abstain at the time of adoption. They set out specific rights and obligations and may contain monitoring mechanisms.
- **Recommendations** are adopted by Council and are not legally binding. They represent a political commitment to the principles they contain and entail an expectation that Adherents will do their best to implement them.
- **Substantive Outcome Documents** are adopted by the individual listed Adherents rather than by an OECD body, as the outcome of a ministerial, high-level or other meeting within the framework of the Organisation. They usually set general principles or long-term goals and have a solemn character.
- **International Agreements** are negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several other types of 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.