

Chapter 7

Performance evaluation

It is important that regulators are aware of the impacts of their regulatory actions and decisions. This helps drive improvements and enhance systems and processes internally. It also demonstrates the effectiveness of the regulator to whom it is accountable and helps to build confidence in the regulatory system. This chapter lays out some of the key considerations in measuring and evaluating the performance of regulators.

Principles for performance evaluation

Identifying the scope

1. Regular independent external reviews of regulators should be arranged by the government, legislature or the regulator itself, in addition to any internal reviews.
2. Regulators should clearly define and agree the scope of their mandate that will be assessed with key stakeholders. This may already be contained within legislation.
3. Regulators should determine which regulatory decisions, actions and interventions will be evaluated in the performance assessment.
4. Regulators should conduct a periodic review of regulations that are put into effect after a number of years of implementation (post-implementation reviews). More broadly; regulators should evaluate their activities and decisions on a continuing basis in the light of their legislative mandate and taking into account the views of outside interested parties.

Developing indicators

5. Regulators should consider which operational indicators can be used to demonstrate the systems, processes and procedures that are applied within the organisation to complete the tasks of the regulator e.g. following published procedures are satisfactory and appropriate.
6. Regulators should consider which outcome indicators can be linked to the actions of the regulator to demonstrate the overall strategic results of regulatory interventions in relation to operations e.g. investment in infrastructure.
7. Comparisons and peer expertise and evaluation should be utilised.

Use of performance evaluation

8. The main purpose of the performance evaluation should be to maintain and drive improvements in the performance of the regulator.
9. The performance evaluation criteria and results should be published.
10. The performance evaluation criteria should be reflected in performance assessments of staff in the regulator, where possible.

Measuring performance

A key underlying reason for implementing good governance arrangements in regulators is to provide the regulator with incentives to improve its performance (Meloni, 2010). Good regulatory performance may include adopting innovative regulatory approaches, making proactive efforts to reduce the regulatory burden and effective use of risk-based regulation.

Measuring performance also communicates and demonstrates to stakeholders and regulated entities the added value of the regulator. The process of defining the performance indicators also helps to manage the expectations of the key stakeholders.

Performance indicators

The regulator should report against a comprehensive set of meaningful performance indicators, set with reference to the goals it is expected to achieve. The regulator's goals should also be linked to the broader policy goals it is expected to achieve. Key performance measures should also be incorporated into planning systems and investigated and acted upon when practice is diverging significantly from established targets. Public reporting improves public confidence in the regulatory system by demonstrating how well regulatory objectives are being met, allows regulators to be assessed and held to account, and provides an incentive for regulators to improve their performance (OECD, 2004).

A regulator's performance measures should incorporate quantifiable aspects of the regulator's activities that provide metrics to assess their performance, as well as the costs they impose. For example, a key metric for many regulators may be processing times for regulatory approvals or other decisions. Undue delays in regulatory processes impose additional costs on business and the community, and so regulators should measure their processing times for key decisions against specified benchmarks (Victorian Competition and Efficiency Commission, 2012).

Investment outcomes are often a key measure for regulators of infrastructure industries. Regulators face the challenge that limiting investment could impede growth, however not managing investments properly could also lead to issues. Therefore the system-wide performance should be part of the assessment framework.

Box 7.1. Examples of performance measurement

The Netherlands Competition Authority calculated that in 2011 its enforcement led to a benefit of EUR 36 per household in the Netherlands.

The UK National Audit Office showed that the UK Office for Fair Trade saves consumers GBP 8.60 in financial harm for each GBP 1 it spends on enforcing regulations (December 2012).

Performance evaluations

Regulators should conduct internal performance evaluations as part of good internal governance practices. It is also important to have external performance evaluations that can complement and support the internal reviews. In some jurisdictions these are conducted by audit offices on a regular basis. In the case of the EU this could be the Court of Auditors.

Internal performance evaluations often focus on the systems, processes and procedures and assess the overall operations of the regulator, which are vital for an effective regulator. External reviews should focus on whether the strategic goals of the regulator are being met such as protecting public health or improving reliability in the sector. External reviews can examine particular decisions of the regulator in cases where they have a strategic significance. These should be arranged by the government, legislature or the regulator itself.

As part of the performance assessment, regulators should also conduct periodic post-implementation reviews of new regulations or changes that have been made to the existing regulatory framework. This is especially important during times of major reforms in sectors or changes such as the financial services sector following the international banking crisis.

Regulators often have a number of audiences for their performance evaluation. The bodies that they are accountable to include the legislature or government. Also the regulated entities and citizens or consumers are another audience for their evaluation. It is important that the regulator maintains the main purpose of its evaluation towards self-improvement and accountability.

The approach toward performance evaluation of regulators should be complimented with clear objectives for regulatory officers within the regulator. These personal performance objectives should enable performance towards outcomes rather than outputs. For instance objectives for regulatory officers that relate to the numbers of prosecutions achieved or the number of inspections carried out are, not likely to drive the overall outcome of the regulator.

Box 7.2. Performance evaluation in the Australian Energy Regulator (AER)

In July 2013, the AER Strategic priorities and work programme 2013-14 (www.aer.gov.au/node/21203) was released. Outlined in the document were four strategic priorities and five distinct areas of the work programme for the AER over the forthcoming financial year. The AER listed target deliverables and performance indicators for each strategic priority and programme area. This was the first time the AER had published performance indicators in this annual document.

In September 2013, the AER released its inaugural annual report (www.aer.gov.au/publications/aer-annual-report-2012-13). The AER dedicated a chapter of this document to reporting on its performance against similar indicators to those outlined in AER Strategic priorities and work programme 2013-14. The AER has established indicators that cover the breadth of its work. Some of these indicators are objectively quantifiable, while others are quite subjective. Similarly, some indicators are specific deliverables with no measure of quality, while others rely on perceptions of the AER.

In future, the Standing Council on Energy and Resources (SCER), which is comprised of Commonwealth, state and territory ministers with responsibility for energy and resource matters, will issue a Statement of Expectations for the AER. It is currently unknown how regularly the Statement of Expectations will be prepared. This document will sit above a Statement of Intent produced by the AER. The Statement of Intent will be a forward-looking document, which will outline objectives, priorities and performance indicators for the AER. The AER's Statement of Intent is likely to be integrated into the regulator's current performance reporting cycle and processes, with the annual report providing a vehicle to report on the AER's progress against the performance indicators outlined in this document.

Source: Australian Energy Regulator (2013).

Applying the principles – Performance evaluation

Identifying the scope

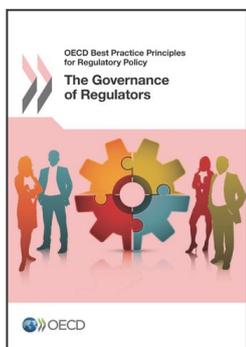
- What is the mandate of the regulator within legislation?
- What goals or objectives have been set for the regulator in strategic and business plans?
- Which activities of the regulator will be assessed?
- What are new or recent changes in the regulatory framework that should be assessed?
- When and which body should conduct an external evaluation of the regulator?

Developing indicators

- Does the regulatory agency collect the following performance information:
 - a) industry and market performance (e.g. number of network faults);
 - b) operational/service delivery (e.g. number of inspections);
 - c) organisational/corporate governance performance (e.g. number of staff trainings);
 - d) quality of regulatory process (e.g. compliance with regulation and industry standards);
 - e) compliance with legal obligations (e.g. number of successful appeals);
 - f) economic performance (e.g. level of competition);
 - g) financial performance (e.g. direct or indirect cost).

Use of performance evaluation

- Is the performance evaluation published?
- Is the performance evaluation presented to stakeholders or accountable authorities?
- Is the performance evaluation used to plan future strategies, work programme and activities?
- Is the performance evaluation used to determine personal performance assessments of staff in the regulator? Are these outcome-focused rather than output focused?



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