

8. REGULATORY GOVERNANCE

Governance of regulators

Regulators are bodies that are empowered by law and have regulatory powers to achieve policy outcomes such as the security of food, public health or the provision of electricity or water to consumers. They play a key role in the overall governance of a sector, service or industry through the delivery of government policies and regulations to achieve positive outcomes for society, the environment and the economy. Having the right governance structures, good regulatory practices and institutional arrangements in place is not only important for the performance of the regulator, but it also assists to create and maintain trust in public institutions and more generally in the rule of law. This includes the regulator's legal objectives, powers, accountability requirements and the regulator's independence from undue influence.

Data on regulatory management practices in network sectors was gathered as part of the 2013 update of the OECD's product market regulation (PMR) database and as part of a survey of water regulators (OECD, 2015). The PMR database contains information on regulatory structures and policies across OECD countries. Based on the PMR dataset the *de jure* governance structures (*independence, accountability and scope of action*) for regulators in network sectors vary across the electricity, gas, telecommunications, rail transport, air transport and ports sectors in OECD member countries. Overall Italy, Germany and the United Kingdom appear to have the strongest governance arrangements across OECD member countries. Across the sectors, the governance structures appear to be strongest in telecommunications, gas and electricity, and weakest in the ports sector. There also tends to be a positive association between countries that have a comparatively strong governance structure in one sector and having better governance in the other sectors.

Independent regulators, separate from government ministries, with adjudicatory, rule-making or enforcement powers are more common in the electricity, gas and telecommunications sectors among all OECD member countries. However there are more regulators housed inside a government ministry (ministerial regulator) in these sectors in non-EU OECD member countries (Table 8.9) which is mainly due to mandatory requirements under EU law for having an independent regulator. The description of regulators as "referees" of the market seems to hold well as among the most common actions or powers for regulators is to mediate (84% of all regulators) and take final decisions between market actors (85% of all regulators), such as by the Electricity Authority of New Zealand, and Autorita per le Garanzie Nelle Comunicazioni in Italy (telecommunications). Also among the least common actions or powers of regulators are the issuing of sanctions and penalties (67% of all regulators), and enforcing compliance with industry standards and regulatory commitments (58% of all regulators). Regulators with these powers include the Authority for Consumers and Markets in the Netherlands and the Commission de régulation de l'énergie in France.

Network sector regulators are mostly accountable to the government or the legislature (parliament or congress) and most have requirements to have mechanisms for transparency through the publication of reports on their activities,

regulatory decisions, resolutions and agreements, and through public consultations. Water regulators, for instance, show a strong culture of consultation, both with regulated entities and the public at large before any regulatory determination. Their regulatory decisions are also generally underpinned by an economic assessment of the costs and benefits (Table 8.10).

Methodology and definitions

The data on regulatory governance of network sector regulators in electricity, gas, telecoms, rail transport, air transport and ports was gathered as part of the 2013 update of the OECD's product market regulation (PMR) database. The database is populated through a questionnaire of around 1 400 questions, of which about 300 were about regulatory management practices in the network sectors. The respondents to the survey were central government official co-ordinators and the coverage rate of the dataset is 90% and for many countries 100%. Countries with a rather low coverage rate include Japan (35%), Luxembourg (46%) and Canada (58%), typically because the questions were not answered for the seven sectors. Verification of the answers were through designated country officials, delegates of the Regulatory Policy Committee and Network of Economic Regulators in April 2014.

The data on water regulators was collected as part of a survey carried out in close co-operation with the water regulators of the Network of Economic Regulators between 2013 and 2014. It aimed to complement the information collected on other sectors through the PMR and to provide the first sector application of the Best Practice Principles for the Governance of Regulators. Thirty four regulators responded to the survey in OECD and non OECD member countries.

Figure 8.11. Participants in the OECD survey on the governance of water regulators is available online at <http://dx.doi.org/10.1787/888933249004>.

Further reading

OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD, Paris, <http://dx.doi.org/10.1787/9789264209015-en>.

OECD (2015), *The Governance of Water Regulators*, OECD Studies on Water, OECD, Paris, <http://dx.doi.org/10.1787/9789264231092-en>.

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD, Paris, www.oecd.org/gov/regulatory-policy/2012-recommendation.htm.

Table note

Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>.

8.9. How is the status of regulatory agencies best described in network sectors? 2013

	Regulator is an independent body with adjudicatory, rule-making or enforcement powers	Regulator is a ministerial department or agency	Regulator is an independent body with a purely advisory role
Electricity	AUS, AUT, BEL, CHL, CZE, DNK, EST, FIN, FRA, DEU, GRC, HUN, IRL, ITA, LUX, MEX, NLD, NZL, NOR, POL, PRT, SVK, SVN, ESP, SWE, CHE, TUR, GBR, ZAF, BGR, HRV, LVA, LTU, MLT, ROM	ISL, JPN, KOR, RUS	ISR
Gas	AUS, AUT, BEL, CZE, DNK, EST, FIN, FRA, DEU, GRC, IRL, ISR, ITA, LUX, MEX, NLD, NZL, POL, PRT, SVK, SVN, ESP, SWE, TUR, GBR, IND, ZAF, BGR, HRV, LVA, LTU, MLT, ROM	CHL, HUN, JPN, KOR, NOR, BRA, RUS	
Telecommunications	AUS, AUT, BEL, CAN, CZE, DNK, EST, FIN, FRA, DEU, GRC, HUN, ISL, IRL, ITA, NLD, NZL, NOR, POL, PRT, SVK, SVN, ESP, SWE, CHE, TUR, GBR, BRA, IND, RUS, ZAF, BGR, HRV, LVA, LTU, MLT, ROM	CHL, ISR, KOR, MEX, NOR	
Rail	AUS, AUT, DNK, EST, FIN, FRA, DEU, GRC, HUN, LUX, NDL, NOR, POL, PRT, SVK, ESP, SWE, GBR, LVA, ROM	CAN, CZE, ISR, ITA, KOR, MEX, SVN, TUR, BRA, RUS, LTU	BEL, CHE, BGR, HRV
Air transport	AUS, BEL, IRL, ITA, NLD, NZL, NOR, POL, PRT, SWE, GBR, HRV, MLT	AUT, CAN, CHL, DNK, EST, FIN, FRA, GRC, HUN, ISR, KOR, MEX, SVN, CHE, BRA, RUS, ZAF, BGR	ESP
Ports	AUS, CAN, ITA, KOR, NDL, ZAF, LTU	AUT, CHL, DNK, EST, GRC, ISR, MEX, PRT, SVN, ESP, CHE, TUR, BRA, RUS, BGR, MLT	IND, HRV

Source: OECD Product Market Regulation (PMR) dataset.

StatLink  <http://dx.doi.org/10.1787/888933248986>

8.10. Use of tools of regulatory quality by water regulators, 2014

	Requirement to consult with regulated entities before making a regulatory determination			Requirement to conduct public consultation before making a regulatory determination			Economic assessment of the costs and benefits is required to justify a regulatory decision			Obligation to conduct <i>ex post</i> evaluation of existing regulations		
	Systematically	Done on an ad hoc basis	No	Always	Done on an ad hoc basis	No	Systematically	In some cases	No	For all regulations	For certain regulations	Not required
Australia												
Capital territory	●			●				●				●
New South Wales	●			●				●				●
Victoria	●			●			●					●
Western Australia	●			●			●					●
Belgium												
Flanders		●			●			●				●
Chile		●				●		●				●
Estonia		●				●		●			●	
Hungary		●				●		●				●
Ireland	●			●					●			●
Italy	●				●			●				●
Portugal	●			●				●				●
United Kingdom												
England and Wales		●		●			●					●
Northern Ireland	●			●			●					●
Scotland	●			●			●					●
United States												
Hawai			●		●		●					●
Maine	●			●					●			●
Ohio		●			●		●					●
Pennsylvania		●			●		●					●
Tennessee		●		●			●			●		
West Virginia			●		●				●			●
Colombia	●			●					●	●		
Latvia		●			●		●			●		

Source: OECD (2014), Survey on the Governance of Water regulators.

StatLink  <http://dx.doi.org/10.1787/888933248997>



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