REGULATORY ENFORCEMENT AND INSPECTIONS: OECD BEST PRACTICE PRINCIPLES

Nick Malyshev
Head of the Regulatory Policy Division, OECD

Improving Risk Regulation: From Crisis Response to Learning and Innovation

13-14 October 2014
OECD, Paris
Why these principles? What are we trying to improve?

- Regulatory policy in many countries focus on improving the design of regulation
- Increased attention to the enforcement phase in the regulatory governance cycle and to proportionality in enforcement
- “Enforcement” in broad meaning, covering all activities of state structures (or structures delegated by the state) aimed at promoting compliance and reaching regulations’ outcomes
- Inspections: most visible/widespread enforcement tool
- Reduce burdens on business and citizens and release public resources – while in fact improving the desired outcomes
- Some experiences of reform, but still not very widespread – insufficiently consolidated knowledge and lessons
• Principles cover the whole set of issues that allow to sustainably improve regulatory enforcement and inspections – making them more effective, efficient and transparent

• Based on experience from OECD and non-OECD countries, including from World Bank Group work – and on research conducted over 30+ years

• Over-arching aims: maximize positive outcomes through promotion of compliance, minimize costs and burdens by limiting a sanctions mentality
Improving policies, institutions and practices

• Policies:
  • Evidence- and measurement-based enforcement/inspections
  • Selectivity - use enforcement/inspections only where strictly necessary
  • Risk-based and proportionate enforcement
  • “Responsive Regulation” approach

• Institutions:
  • Long-term vision & stable institutional mechanism for improvements
  • Consolidation/coordination of inspection functions
  • Transparent governance + HR policies geared towards professionalism, outcomes

• Tools:
  • Information integration, ICTs to ensure risk focus, coordination
  • Clear and fair process, rules
  • Compliance promotion through toolkits, check-lists etc.
  • Professionalism, inspectors’ training
For many countries, existing institutions and resource allocations have evolved over many years.

Allocate resources and efforts proportionally to potential outcomes.

Do not inspect and actively enforce “everything that is regulated.”

Rather, evaluate the risk level posed by different types of regulations and regulated areas.

Evaluate and adjust based on results.
Whenever possible, use “alternatives to enforcement”

Market forces, insurance, civil litigation, social media etc. all have considerable power to prevent negative outcomes or enforce rules

State-driven inspections and enforcement should only be used when these alternatives are demonstrably absent or insufficient

In any case, stakeholders need to be involved – compliance and outcomes cannot be obtained purely “by force”
3 – Risk focus and proportionality

• Frequency of inspections should be proportionate to risk level
• Severity of sanctions and burden of enforcement should be proportionate to actual hazard/damage
• Risk = probability x magnitude (scope x severity) of hazard
• Enforcement modulated based on behaviour of regulated entities
• “Honest mistakes” and one-off violations treated differently from systematic, criminal misconduct
• Aim: promote compliance and positive outcomes
5 – Long term vision, clear objectives and stable institutional mechanism

• Official policy, clear objectives for continued improvements in enforcement – long-term perspective

• Institutional set-up gathering all relevant ministries, institutions, stakeholders

• Strong policy leadership
6 – Co-ordination and consolidation of inspection functions

• Less duplication and overlaps – reduced costs and burden

• Greater coherence, better information flow – more effectiveness

• Core list of inspection/enforcement functions to match rational analysis of types of risks – not “historical” list of institutions
Professionalism should be cornerstone of regulatory enforcement institutions

- inspections/enforcement “at arm’s length” from political decisions for day-to-day operations –
- Appointment of senior management based on professional qualifications
- Stability to institutions through collective governance

Performance management policies

- Performance in terms of reaching regulatory outcomes and regulatory compliance should be assessed across team and units
11 – Professionalism and training

- The whole training, management, incentives need to be aligned with objectives and principles of “better enforcement”
- Inspectors’ training needs to incorporate risk-management, compliance-promotion, and a whole set of “competencies” related specifically to enforcement
- Aim to increase consistency, quality – reach better outcomes
• Interconnect databases and systems used by different inspectorates / whenever possible set up single/joint systems

• Data sharing and shared planning mean less duplication, more efficiency – but also better outcomes because key information is shared effectively, risks are better identified

• Initial investment can deliver considerable benefits and efficiencies
• Framework legislation/regulations to ensure that inspections/enforcement process are clear and consistent

• Rights and obligations of all parties and stakeholders to be clarified – and abuses prevented
10 – Compliance promotion and transparency

• Ensure that regulated subjects know what is expected from them
• Enforcement to be consistent and predictable
• Compliance promotion achieves better outcomes at lower costs
• Tools adapted to different types and profiles of establishments (checklists, guidance, etc.)
Risk focus can allow to inspect far less in quantity – but not necessarily less in quality…

- Georgia 2003-2005 went from 75% of SMEs inspected each year, to 30% - no noticeable negative impact from the decrease
- Lithuania 2011-2012: latest data suggests reduction by around 40% of inspections burden – again no noticeable negative impact
- Some countries inspect much more than others – generally not with better outcomes (e.g. 75% of SMEs inspected each year in Ukraine, vs. around 35% in Italy, maybe 20-25% in UK etc.)
- Gradual decrease of occupational safety inspections in UK in the 2000s (-50% at least overall) – no increase in accidents, fatalities etc. (on the contrary, in fact) – similar trend with England/Wales Environment Agency (reduced low-risk controls by 60-70%, improved outcomes)
- Evidence suggests that having “no inspections at all” or “too few” (less than 1% or so) may perform less well for safety than having “some, well targeted and professional inspections” – but there is no evidence that inspecting many is useful
THANK YOU FOR YOUR ATTENTION!

daniel.trnka@oecd.org
www.oecd.org/regreform