

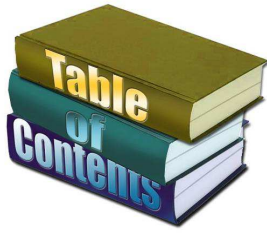
## **Regulatory Policy: the potential of best practice from OECD economies and around the world**

Higher School of Economics  
conference on Smart Regulation, Moscow, 14 March 2014



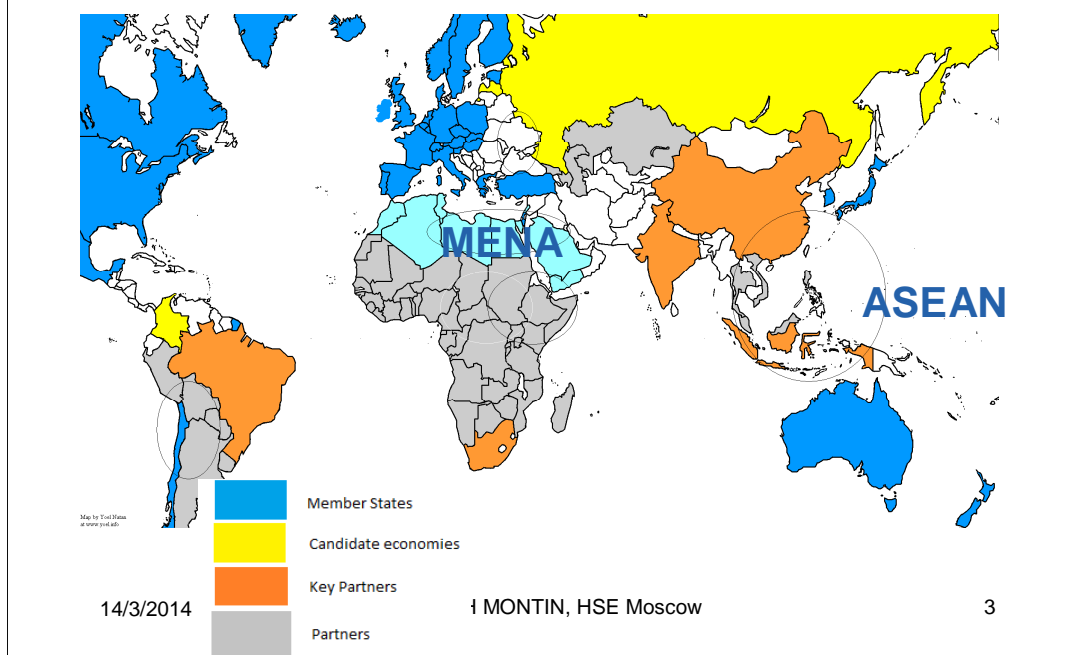
**Charles-Henri Montin,  
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<http://smartregulation.net>

\* These slides are for academic information and discussion and do not present an official French or OECD position. They cannot validly be interpreted without complements given at delivery.



1. [OECD Global relatio](#)
2. **OECD-Russian Federation cooperation**
3. **The development of regulatory policy**
4. **International standards**
  1. OECD: the road to the 2012 Recommendation
  2. other international standards (incl. the development of Smart Regulation in the EU)
5. **National approaches**
6. **Options the development of Smart Regulation in the RF**

## How OECD works with non-members



<http://www.oecd.org/about/membersandpartners/enlargement.htm> :

**How does accession to the OECD work?** In 2007 the OECD Council at Ministerial level opened membership discussions with five candidate countries, as a result of which Chile, Estonia, Israel and Slovenia became members in 2010, while discussions with the Russian Federation are still ongoing. In May 2013, the Council decided to launch a new wave of accession discussions with Colombia and Latvia. It also decided to review the situation in due course with a view to taking a decision to open accession discussions with Costa Rica and Lithuania in 2015.

As a first step, interested countries typically present a request to become OECD members. Once the OECD Council invites the Secretary-General to open discussions for accession with one or several countries, an "[Accession Roadmap](#)" is developed to detail the terms, conditions and process of each accession discussion. This roadmap lists the reviews to be undertaken by Committees in various policy areas in order to assess the country's position with respect to the relevant [OECD instruments](#) and to evaluate its policies and practices as compared to OECD best policies and practices in the relevant area. Each country follows its own process and is assessed independently.

At the end of the technical review, each Committee provides a "formal opinion" to the OECD Council. The timeline for the accession process depends on the pace at which the candidate country provides information to Committees and responds to recommendations for changes to its legislation, policy and practice.

On the basis of the formal opinions and other relevant information, the Council takes a final decision on the basis of unanimity. An Accession Agreement is then signed and the candidate country takes the necessary domestic steps and deposits an instrument of accession to the OECD Convention with the depositary, e.g. the French government. On the date of deposit, the country formally becomes a Member of the OECD.

**What is an "Accession Roadmap"?** The "[Accession Roadmap](#)" describes the terms, conditions and process of accession; lists the policy reviews to be undertaken by technical Committees, the criteria on which the candidate country is evaluated and sets out the various procedural steps.

**What is the role of the Council in the accession process?** As the governing body of the OECD, bringing together representatives of each of the 34 member countries and of the European Commission, the Council ultimately controls all aspects of the accession process and takes the final decision on whether to extend an invitation to a country to become a member.

## How OECD works with non-members

- **Candidate countries: RF, Colombia, Latvia**
  - roadmaps, accession reviews, discussions
  - joint activities, especially capacity-building
- **Key partners: Brasil, India, Indonesia, China, Sth Africa**
  - invitation to committees
  - inclusion in surveys and publications, high level events
  - framework agreement, OECD office agreement (Indonesia)
  - secondments to OECD
- **Other partners**
- **Regional programmes and networks**
- **Global forums**



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For Global Relations, see [http://www.oecd.org/mcm/C-MIN\(2013\)13-ENG.pdf](http://www.oecd.org/mcm/C-MIN(2013)13-ENG.pdf)

This slide presents the range of tools that OECD has developed to engage with non-members. More information on <http://www.oecd.org/about/membersandpartners/enlargement.htm>

Under certain conditions and with approval by the OECD Council, non-members have the possibility to participate as observers or as full members in OECD bodies. Only a small number of OECD bodies is not open to the participation of non-members. This list will be reviewed, and if necessary, adapted in the light of the enlargement and Enhanced Engagement strategy. The Council decides either on its own initiative or on the recommendation of an OECD Committee having heard the advice of the [OECD External Relations Committee](#) (ERC), to invite selected non-member representatives to official sessions of the subsidiary bodies.

Non-members may also express their own interest in participating in the work of a specific subsidiary body. The initiative to launch the procedure leading to an invitation to a non-member lies, however, with the Organisation. Non-member participation in formal OECD bodies is regularly monitored and assessed by the Committees.

There are three levels of participation: **Ad Hoc Invitations** to attend at one or more meetings, and contribute to the discussion. This may concern a country review, or an exploration of the nature of the non-member's expected contribution to the work of the subsidiary body.

**Observership** is based on the understanding that observers will actively participate and fully cooperate in the work of the subsidiary body, including information exchanges. Invitations are generally issued for a period of two years that can be extended. A regular observer is required to make an appropriate financial contribution to the expenses of the Organisation.

**Full Participation** is generally accorded only to a non-member which is willing and able to comply with the relevant disciplines of the Organisation (same responsibilities and the same rights as members in the Committee concerned, including financial obligations, albeit without representation in the Council, where institutional decisions are made).

## Russia and OECD



- **Working together since 1992**
- **1996: official application**
- **1997: OECD acknowledges membership as shared ultimate goal of cooperation**
- **2005: regulatory review of RF and other activities**
- **2007: opening of discussions and accession roadmap involving 22 committees**
- **2009: creation of RPC**
- **Annual accession discussions & accession review reports since 2011; RF provides updates**

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For general procedure for accession, see [C\(2007\)31 FINAL](#) following the OECD Council Resolution on Enlargement and Enhanced Engagement :

<http://www.oecd.org/about/membersandpartners/oecdouncilresolutiononenlargementandenhancedengagement.htm>

2005 regulatory review: <http://www.oecd.org/russia/russiabuildingrulesforthemarket-oecdreviewsofregulatoryreform.htm>

Since the break-up of the command and control system in 1992, regulatory reform in Russia has been both an instrument and a product of change. In the Soviet era, government involvement in economic activity was pervasive. State action substituted for market mechanisms. Regulation as it is practiced in developed market economies did not exist – it was not needed in a centrally-planned economy. In the context of Russia's transition, the freeing of prices, the creation of competitive markets, the privatisation of state assets and the liberalisation of foreign trade are all "regulatory reforms" as understood in this review. The transformation of the Russian economy has redefined the economic role of the Russian state. It has obliged the authorities to create regulatory institutions and procedures to meet the needs of a market economy.

Regulatory reform in Russia consists not so much in reducing the state's role as in transforming it. On the whole, broad-based regulatory reforms have been pursued vigorously. The liberalisation of prices and the establishment of free trade were accomplished quickly in the early 1990s, albeit with some significant exceptions. Although privatisation was very controversial, it has had a positive impact on business performance. It has proven much more difficult to reform the public administration, to create new regulatory institutions and to implement new, market-oriented forms of regulation. The adoption of effective competition policy and the reform of infrastructure industries have proved even more daunting challenges. Difficulties also surround the creation of a judicial system on which economic agents can rely for timely and effective enforcement of contracts and protection of property rights. The success or failure of reform in such areas will largely determine whether Russia can continue its current robust growth over the long term.

See chapter 2 on regulatory governance

## Clusters of Russia-OECD cooperation



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<http://www.oecd.org/russia/therussianfederationandtheoecd.htm>

The Russian Federation is one of the many non-member economies with which the OECD has working relationships in addition to its [member countries](#). The OECD has been co-operating with the Russian Federation since 1992; in 1996, Russia made an official request for OECD membership. In 1997, [OECD countries](#) formally acknowledged that the accession of the Russian Federation as a full member of the OECD is a shared ultimate goal of their co-operation. The OECD Council at Ministerial level adopted a [resolution](#) on 16 May 2007 to open discussions with the Russian Federation for its membership of the Organisation. On 30 November 2007, the OECD Council approved the '[roadmap to accession](#)' for the Russian Federation.

## “Key areas of good practice (governance)”

- **Structure and coordination of government**
- **Budgeting practices and procedures**
- **Human resource management**
- **Integrity in the public sector**
- **Open and accountable government**
- **E-government readiness**
- **Management of regulatory quality and administrative simplification\***
- **Multi-level governance**

*\*(PGC and RPC reviews separated in 2013)*

This list can be found in the RF Accession Roadmap (C(2007)103 Final) p. 36

## The 2007 roadmap

- **RF accession roadmap approved by Council 30/11/2007 and published on web**
- **Uses a model adopted for 5 countries; contains terms and conditions for accession**
- **Lists values candidates are expected to share (like-mindedness): commitment to pluralist democracy, transparent market economy, etc**
- **Progress towards these values to be monitored including “RF position regarding instruments”**
- **Committees to assess “degree of coherence between RF policies and those in place in OECD members “ ( 21 priority areas)**

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Published as C(2007)103 Final

[http://www.oecd.org/officialdocuments/displaydocument/?doclanguage=en&cote=C\(2007\)103/final](http://www.oecd.org/officialdocuments/displaydocument/?doclanguage=en&cote=C(2007)103/final)

Note the phrase: “degree of coherence between RF policies and those in place in OECD members”



## Core principles for technical review by RPC

- **Commitment to an integrated whole-of-govt regulatory policy, incl. ex ante and ex-post**
- **sound policy development incl. RIA, oversight, and reporting on compliance with regulatory management practices**
- **RIA capacity, non-regulatory options, performance-based regulation, use of market mechanisms**
- **transparency and public participation**
- **efficiency and accountability of regulatory agencies**
- **multi-level coherence thru coordination of levels**

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## Feedback from OECD (overall)

- **progress of priority areas is uneven**
- **need for greater commitment**
- **need for better inter-ministerial coordination to improve responsiveness**
- **areas of concern: role of the State in the economy, rule of law, enforcement of laws at different levels, accountability of enforcement agencies; implementation of on-going reforms**

## Feedback from OECD (letter from RPC 25.2.13)



### Welcomes acceptance of 2012

#### Recommendation and steps taken in RF:

- incorporating RIA in decision-making, including consultations
- capacities created

#### ➤ further effort is needed to establish institutional quality control and strengthen consultation mechanisms

#### ➤ Further integrate regulatory quality into central policy-making including oversight mechanism

- create requirement to do RIA early in the regulatory design, with wider scope and extended to regions

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Following the November 2012 discussion in RPC and PGC, the Committees' Chairs sent an official letter to Mr Oleg Fomichev, Deputy Minister of Economic Development on 25 February 2013, expressing their position on the progress made by Russia in the area of public governance and identified two broad priority areas (integrity of the public sector, and transparency and accountability of state institutions) where further progress needs to be made. The letter also noted the importance of reinforcing mechanisms for public consultation, as one of the priority recommendations.

In response to the letter from the Chairs, Russian authorities provided four letters (24 April, 1 August, 25 September 2013 and 7 October 2013), in which they reaffirmed the commitment to OECD principles of public governance and provided an update on the key steps taken to address the recommendations in priority areas, identified by the Committees.

#### **Progress reported by RF and personal assessment:**

Consultation: the OECD letter lists "a government-wide policy on mandatory public consultation on all new laws and regulations" among the priority recommendations for the Russian Federation.

Measures have been taken: Government Resolution of 25 August 2012 No. 851 requires that all federal executive authorities are obliged to publish information on the preparation of draft laws and regulations on the official website [www.regulation.gov.ru](http://www.regulation.gov.ru) and to undertake public consultation. A minimum consultation period on the website of 15 days is instituted. But these rules are complex and sometimes unclear.

RIA: Government Resolution No.1318 adopts unified rules for undertaking RIA for draft legal acts and extending the RIA scope (17 December, 2012) and Decree No. 290 of 27 May 2013 provides a methodology basis for the implementation of this Resolution. Thus, among others, the draft laws and regulations in the area of tax control and customs procedures and draft laws and draft amendments to draft federal laws submitted by the Government to the State Duma for a second reading have to be submitted for RIA. There is also an effort to standardise the development of legal acts.

Good progress is made since November 2012 on RIA. Further broadening of the areas of competence and of the range of legislative initiatives which are submitted for RIA, including legislative drafts initiated by the Duma and Presidential Decrees would be appropriate. The implementation of the plans on the establishment of a central body for regulation in Russia would be another important step towards a more efficient RIA process and regulatory reform as a whole.

Simplification and Doing Business: many measures have been taken but RF ranking is still lower than OECD average.



- **Next assessment and discussion Spring 2014 RPC, taking into account RF compliance with 2012 Recommendation and letters from RF**
- **Separation of accession reviews by PGC and RPC to allow members and RF to focus on key outstanding issues where further progress is needed (this is now current procedure for accession)**
- **Next step: formal opinion of committee**



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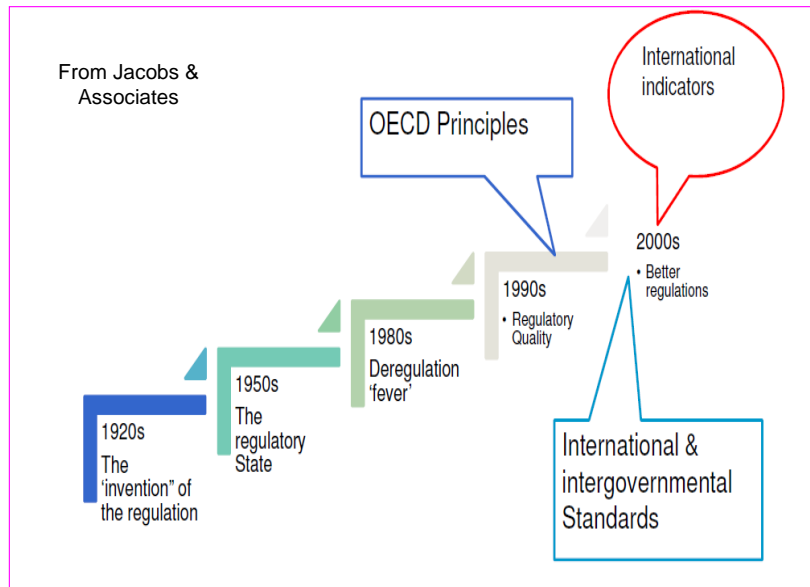
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## Part 2 The development of regulatory policy

- **“Coherence” with OECD standards is not an end in itself**
- **National authorities must develop regulation which optimally fits its policies and implementing conditions**
- **There has been a gradual progress of guiding principles and techniques of regulatory policy**
- **Better/Smart Regulation is “principle-based”**



## From regulation to better regulation



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## Why do you need a regulatory policy?

- **Increase social welfare through more effective social and economic policies**
- **Boost economic development by encouraging market entry and competitiveness**
- **Control regulatory costs and improve productive efficiency, particularly for small to medium sized enterprises**
- **Improve the rule of law, transparency and participative democracy**



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This list of issues is a checklist for what regulatory policy should do in support of general government policies.

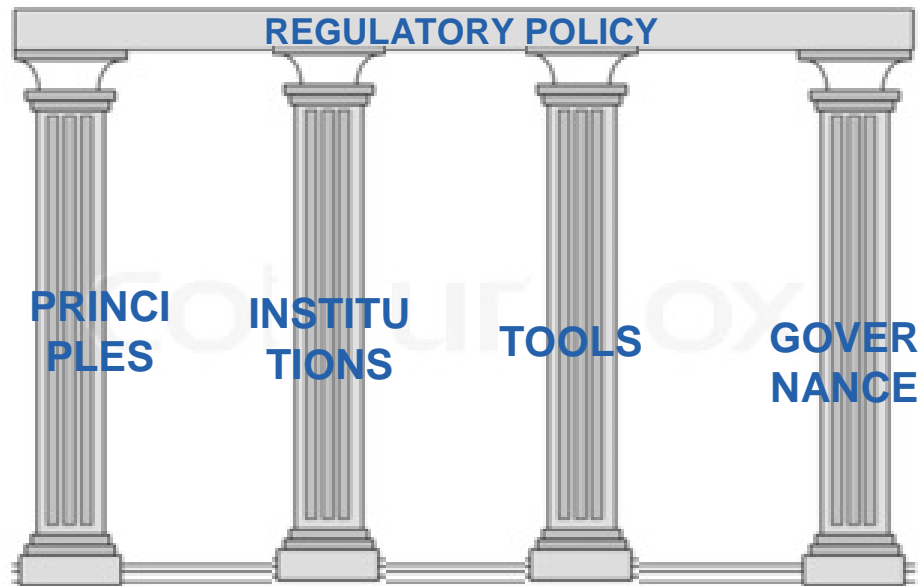
## Challenges to Delivering High Quality Regulation

- **Lack of coordination and planning capacities**
- **Vested interests may block reform particularly where decision processes are not transparent and accountable; political incentives favour short term interests over long term societal policy goals**
- **Rapidly changing environments (obsolescence)**
- **Too many levels of government: duplicative or excessive reg. (e.g. gold-plating of EU law)**
- **Over-reliance on regulation, regardless of cost and alternatives**
- **Risk aversion, poor risk management in regulation**





## The pillars of regulatory policy



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## The search for “principles” of regulatory quality

- > Early sets of principles
  - OECD 1995-97: 7 recommendations to governments
  - UK 1998: 5 principles transparency, accountability, targeting, consistency, proportionality
- > Maturity
  - Mandelkern report (EU) (2001): six dimensions
  - OECD “performance” 2005 : Broad programmes, impacts, transparency, competitiveness test, liberalisation, policy linkages
- > Current trends
  - National sets: Australia (2007) “best practice regulation,” Ireland, Finland...
  - New OECD principles (2012): post-crisis adaptations, new emphasis on governance



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Principles are variable and reflect the goals of the policy.

OECD: overview on

[http://www.oecd.org/document/38/0,3746,en\\_2649\\_34141\\_2753254\\_1\\_1\\_1\\_1\\_00.html](http://www.oecd.org/document/38/0,3746,en_2649_34141_2753254_1_1_1_1_00.html)

### 1995 recommendation:

<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=128&InstrumentPID=124&Lang=en&Book=False>

It includes a Reference Checklist for Regulatory Decision-making which includes 10 questions such as « is the problem correctly defined », « is government intervention justified », etc

1997 report: <http://www.oecd.org/dataoecd/17/25/2391768.pdf>

Includes a package of 7 recommendations to governments, starting with “*Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.*” “

*Review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively.*”

*“Ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied.”*

**Etc**

## The three ages of regulatory quality

### Regulatory management

Due process  
Consistent legally  
Accessible  
Inform stakeholders

GOOD

### Regulatory Reform (1995)

Effective  
Efficient  
Competitive

Consult stakeholders

BETTER

### Regulatory governance(2010)

Integrated objectives  
Cycle approach  
Incl. M&E

Involve stakeholders

SMART

BR ≠ Deregulation

BR = dynamic LT process acting on policies, institutions and tools

RG: integrated approach = coordination of regulatory actions from design and development of regulations to their implementation and enforcement, closing the loop with monitoring and evaluation which informs the development of new regulations and the adjustment of existing regulations

## Part 3: International standards

- **OECD**
- **European Union**
- **World Bank**



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## OECD Recommendations on Regulatory Policy

- 1995 *Recommendation of the Council on improving the quality of Government regulation* - Commitment to core regulatory principles.
- 1997 *Report to Ministers on Regulatory Reform* – incorporates market openness, competition policy, regulatory policy and micro economic reform principles.
- 2005 *Guiding Principles for Regulatory Quality and Performance* – basis for Regulatory Reform Reviews of 25 OECD countries and Russia, China, Brazil, Indonesia e.a.
- 2005 *APEC/OECD Integrated Checklist for Regulatory Reform* - used for Self Assessment (US, Australia)
- 2009 *Establishment of the Regulatory Policy Committee (RPC)*
- 2012 *Recommendation of the Council on Regulatory Policy and Governance* – 12 principles addressing the policy cycle of regulatory design, enforcement, review and evaluation.

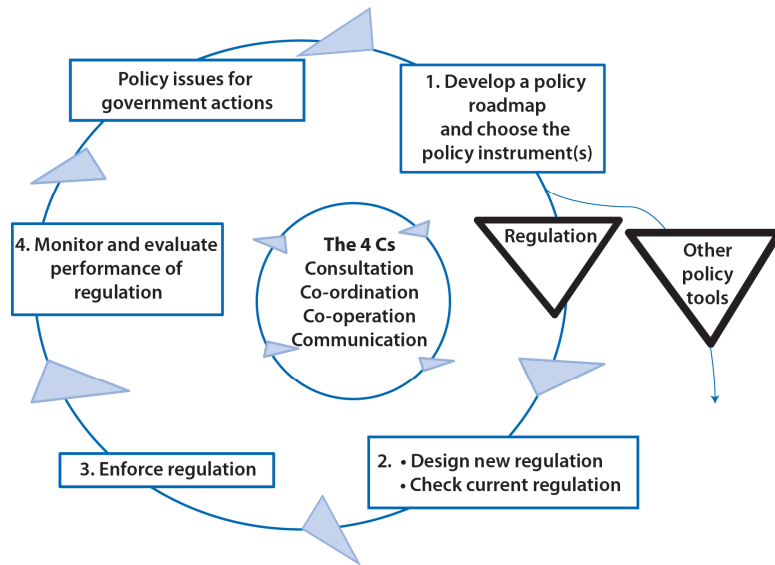
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This slide shows how the regulatory quality principles have evolved over the past two decades

# The Regulatory Governance Cycle



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## Recommendation of the Council on Regulatory Policy and Governance (2012).

1. Apply an Explicit Policy for Regulatory Quality
2. Develop Regulations through Communication, Consultation and Engagement
3. Empower Institutions for Regulatory Oversight
4. Integrate Regulatory Impact Assessment
5. Review and Reform the Regulatory Stock
6. Assess Regulatory Reform Programmes
7. Co-ordinate the activities of Regulatory Agencies
8. Establish effective Review Processes
9. Apply Risk Regulation
10. Promote Regulatory Coherence across levels of government
11. Foster regulatory management capacity at sub-national government
12. Pursue International Regulatory Cooperation



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## The 2012 Recommendation



### Policies

- Explicit, whole-of-government policy doct
- Consultation and engagement policy
- Risk-based regulation

### Institutions

- Establish Oversight function
- Coordinate reg activity of agencies

### Tools

- Measurement including integrated RIA
- Reviews of regulatory Stock

### Governance

- Consistency across levels of government
- Assess regulatory reform programs
- International regulatory cooperation



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## One concept, three approaches



Regulatory policy  
Think tank  
Best practice  
forum  
  
Market orientation  
  
Public  
management

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**Better/Smart  
Regulation**  
  
Manage stock of  
regulation  
Subsidiarity  
Transposition  
Process-oriented  
  
Inter-institutional

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**Business climate  
Doing Business  
(outcomes)**  
  
Development  
technical  
assistance  
One stop shops  
Licensing  
Reg. guillotine

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<http://regplus.eu/documents/history.pdf> for the development of regulatory quality

The approaches reflect the mandate of each organisation

-OECD: think tank

-EU: supranational regulator

-WBG: lender + developer

- **Institutions for regulatory oversight**
- **Building capacities and introducing tools**
- **Preventing regulatory capture**
- **Ensuring policy sustainability**
- **Contributing to green growth**
- **Addressing risk in regulation making**
- **Coordinating multi-level regulation**
- **Trade and International regulatory co-operation**



## European Better Regulation



### Mandelkern

Predominantly legal  
Simplification  
Consultation  
standards 2002

### Barroso I (2005)

VP Verheugen  
Competitiveness  
test

Admin Burden  
Reduction Progr.  
2007-12

SME test

Stoiber Group

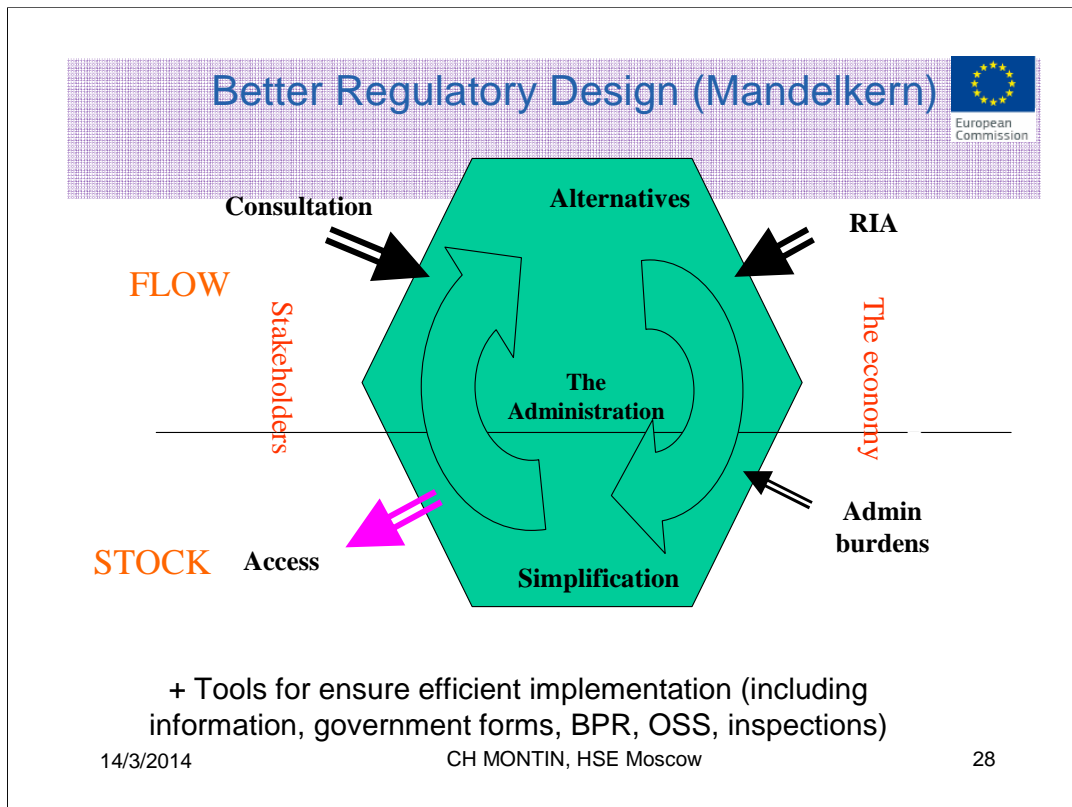
### Barroso II (2010)

Smart Regulation

Fitness checks

Cycle approach

Integration of  
evaluation,  
infringements,  
complaints



- Regulatory Impact Analysis (RIA) to improve the evidence basis for regulatory decisions
- Public consultation strategies to promote transparency, accountability and improve regulatory design
- The evaluation of alternatives to regulation to best address the policy problem
- Red tape reduction programs to reduce administrative and compliance costs

- **Increase social welfare through more effective social and economic policies**
- **Boost economic development by encouraging market entry and competitiveness**
- **Control regulatory costs and improve productive efficiency, particularly for SMEs**
- **Improve the rule of law , transparency and participative democracy**



## Dimensions of the business environment

Administrative	<b>“One stop shop”, single window, inspections, licensing, standardized forms and corporate documents</b>
Legal	<b>Commercial code, company law, collateral law, bankruptcy, labor law, infrastructure laws, PPP</b>
Judicial	<b>Court procedure, case management, performance of judges</b>
Electronic services (eGov)	<b>Company/collateral registry, Credit bureau, Electronic signature, single ID, Paying taxes, Legal portal</b>
Tax and Subsidies	<b>Corporate tax, VAT, social contribution, registration duties, selective interventions</b>



## National approaches

### Contents

- Why and how to use foreign examples
- Choosing a designation for the policy
- Finding best practice
- Overview of best national experiences



## Why research national best practice?

- **Regulatory Policy must correspond to national values and realities (specifics) but be inspired by the “principles”**
- **Among developed economies, there is a world-wide consensus on the principle that regulation must not impede the smooth functioning of the market**
- **International standards were built from national success stories**
- **Hence the notion of best practice, which must be considered when formulating national reg. policy**



## National designations for regulatory policy

### Deregulation, Reducing regulation

- Korea, Taiwan, UK (2011), NZ

### Improving business climate, reducing administrative burdens

- Australia, Netherlands, Belgium, Singapore

### Better Regulation

- UK, European Union, Ireland

### Fighting bureaucracy

- Germany

### Administrative simplification

- France, Italy, Portugal, Viet Nam

### Regulatory reform

- OECD, World Bank, US, PR China, Poland, Netherlands, Thailand

### Smart Regulation

- Canada (2002), European Union (2010), Russia ?

## Sources of national best practices

### Transparency and open government

- Denmark, Finland, Norway, US

### Quantifying regulatory costs

- Australia, NL, UK, US

### Multilevel governance

- Canada, Italy, Mexico

### Simplification, one-stop-shop

- Austria, Belgium, Mexico

### Independent advisory bodies

- Germany, NL, UK, Sweden

Country	Most original objective or content	Notable Institutions or tools
US Regulatory Reform	*Regulatory review, CBA, *challenge function	<a href="#">OIRA</a> <a href="#">Executive Order</a>
UK <a href="#">Reducing Regulation</a>	* <a href="#">Principles</a> ; <a href="#">Policy statement</a> , *RIA, * <a href="#">one-in one-out</a> *local delivery; consultation	BRE <a href="#">BRDO</a>
Canada <a href="#">Smart Regulation</a>	*Multi-level coordination, international dialogue	<a href="#">Treasury Board</a>
France <a href="#">Qualité du droit</a>	* <a href="#">Quality legal drafting</a> ; curbing overproduction of norms, SME policy;	<a href="#">Conseil d'Etat</a> <a href="#">Legifrance</a>
Germany <a href="#">Reducing bureaucracy</a>	Reduction of * <a href="#">regulatory costs</a>	<a href="#">Normenkontrollrat</a>
Netherlands Regulatory reform	* <a href="#">Reduction of administrative burdens</a> , e-company	<a href="#">ACTAL</a>
Belgium <a href="#">Human Rules</a>	*Small scale solutions to practical problems	

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Australia	Best practice regulation	* <a href="#">Deregulation Policy</a>	<a href="#">Productivity Commission</a>
Russian Federation	Regulatory Reform	<a href="#">RIA</a>	BR Council (tbc)
Mexico	Regulatory Reform	Red Tape, <a href="#">sub-national BR</a>	<a href="#">COFEMER</a>
Taiwan, China	<a href="#">Regulatory Reform</a>	National competitiveness, *Doing Business ranking	
EU	Better Regulation (2002) <a href="#">Smart Regulation</a> (2010)	*RIA, Streamlining acquis communautaire, <a href="#">cutting red tape</a> , * <a href="#">consultation</a> , *ex post evaluation (2010)	<a href="#">IAB</a> , <a href="#">Stoiber Group</a>
OECD	Regulatory Governance	Reviews of national capacities	<a href="#">Recommendation for regulatory policy</a>
World Bank	Regulatory Reform	Improving business and <a href="#">investment climate</a>	<a href="#">Doing Business report</a>



## Options for development of RP in RF

- **Secure high-level political backing**
- **Define explicit regulatory policy on the basis of the international principles**
- **Create oversight body (« BR council »)**
- **Identify poor quality regulation and its causes**
- **Develop capacities in regulatory agencies**
- **Implement tools on international standards**
- **Multi-level dialogue where needed, international regulatory cooperation**

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The most important point to make is that this is a list of possible steps that would raise the priority level and effectiveness of a regulatory policy, in the interest of the RF. The international benchmarks and best practices are to be considered only as a source of lessons learnt, not as an indication of what Russia should do. The OECD “standards” are principles adopted by consensus by the member states and proposed as an inspiration for national policies, institutions and tools that fit the country’s needs.

## To continue the study...

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