Better Regulation
Evidence: Topic
Area 6 - Regulatory strategy
Topic Area 6 – Regulatory strategy

Contents

6. Topic Area 6 – Regulatory strategy ........................................................................................................ 1
   6.1 Regulation and economy ....................................................................................................................... 1
       6.1.1 Economic growth: productivity .................................................................................................... 2
       6.1.2 Competitiveness, trade and employment ....................................................................................... 3
       6.1.3 Employment and investment ........................................................................................................ 4
       6.1.4 Investment .................................................................................................................................. 4
       6.1.5 Innovation .................................................................................................................................. 4
   6.2 What are the current European regulatory frameworks? .................................................................... 5
       6.2.1 The European Union (EU) regulatory framework ........................................................................ 6
       6.2.2 Better regulation in the EU and Member States ........................................................................... 9
   6.3 What are the regulatory frameworks of other Member States? .......................................................... 10
       6.3.1 Denmark ..................................................................................................................................... 10
       6.3.2 France ......................................................................................................................................... 11
       6.3.3 Germany ....................................................................................................................................... 11
       6.3.4 Italy .............................................................................................................................................. 12
       6.3.5 The Netherlands .......................................................................................................................... 12
       6.3.6 Sweden ....................................................................................................................................... 13
   6.4 What is regulatory reform, what drives it, and how can reforms be implemented? ......................... 13
       6.4.1 Current regulatory reform initiatives ........................................................................................... 14
       6.4.2 Principles of regulatory reform .................................................................................................... 15
       6.4.2 Drivers and the need for regulatory reform ....................................................................................... 16
       6.4.3 Implementing regulatory reform .................................................................................................. 17
       6.4.4 Barriers and successful regulatory reform ...................................................................................... 19
       6.4.5 Assessing regulatory reform ......................................................................................................... 19
6. **Topic Area 6 – Regulatory strategy**

Previous sections summarise evidence that governments and regulators may find helpful as they undertake common activities within the policy development cycle such as:

- Understand the regulatory context (see Topic Area 1 summary).
- Choose and design interventions (see Topic Area 2).
- Deliver interventions (see Topic Area 3 summary).
- Promote compliance (see Topic Area 4 summary).
- Evaluate (see Topic Area 5 summary).

The policy development cycle and the governments and regulators using it, operate within the wider world and are influenced by factors such as the economy and political agendas. This means that policy design and development will be influenced by political forces, broader political philosophies of approach, the economic cycle and socio-political trends and expectations, all in addition to technical interpretations of hazard, risk and harm. This section seeks to provide a summary of the latest evidence:

- **Regulation and the economy**, in particular the macro-economic impacts of regulation and other interventions.
- **Regulatory reform**.

The section also considers the position of national governments as part of the European Union by providing information on:

- **The European regulatory frameworks**.
- **The regulatory frameworks of selected Member States**.

### 6.1 Regulation and economy

Regulation represents a government intervention to address ‘market failure’ whereby the costs and benefits of an activity are viewed as unfairly distributed. For environmental regulation this is usually because we wish to protect public goods and services (air and groundwater quality for example) or because the external costs of an activity imposed on third parties have not been accounted for. Over progressive decades, the costs of meeting regulatory requirements have grown considerably both for industry and the public, but so also have the benefits, for example in terms of improved public health and safeguarding of environmental goods and services. Over the last two decades in particular there has been growing use of cost benefit analysis to assess whether the costs of environmental regulation outweigh the benefits it delivers. In the developed world, the cost of meeting environmental regulations can be significant. In the USA the cost of meeting environmental regulation was estimated to be $184 billion in 2000, equivalent to 2.6% of US Gross National Product (GNP)\(^1\). Between 2011 and 2021 UK environmental regulation will have a net cost to UK business of £3.6 billion per year\(^2\). This section reviews the evidence on whether these costs affect the UK

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http://www.socsci.staff.bham.ac.uk/cole/RDE%202005.pdf.  
economy, in particular the macroeconomic impacts. Information on the microeconomic impacts of environmental regulation can be found in the Topic Area 1 summary, Section 1.5.

Although there are obvious costs of compliance, the medium and long term economic effects of environmental regulation could be positive, negative or both. The evidence surrounding these impacts is encompassed by two competing hypotheses. One, the Porter Hypothesis is that increasing the stringency of environmental regulations provides an incentive for firms to innovate cost-saving clean technologies, which increases competitiveness and more than compensates for regulatory costs. The alternative hypothesis, the Pollution Haven Hypothesis (PHH) has arisen from fears that industry location is sensitive to differences in regulatory stringency between countries’ jurisdictions.

Researchers have attempted to detect evidence to test these hypotheses by examining the impact of regulation on macroeconomic indicators, such as productivity, competitiveness, employment and investment. Evidence on each is summarised below.

There is a vast literature on the macroeconomic impact of environmental regulation. However, there is no firm conclusion on whether this impact is positive or negative and the evidence is heavily contingent on the methodology and data availability. Furthermore, given the vast amount of work on this subject, the evidence from each study is often country, industry and time specific, so requires consideration on a case-by-case basis. Any beneficial impacts of environmental regulation are heavily contingent on reducing production costs (through reduced resource use) and innovation (either in new products, or more efficient production processes).

6.1.1 Economic growth: productivity

Most literature examining the effect of regulation on economic growth and productivity was initially completed in the US, with evidence from the UK and EU only emerging relatively recently.


The literature generally shows regulation to have a negative\textsuperscript{13} or neutral impact on productivity\textsuperscript{14,15,16,17}.

### 6.1.2 Competitiveness, trade and employment

Most literature on the relationship between environmental regulation and competition focuses on whether the costs of environmental regulation will encourage industries to move to countries with relatively lax environmental regulations, beginning a so called ‘race to the bottom’. In a race to the bottom, countries with less stringent environmental regulation consequently become specialised in producing pollution intensive goods\textsuperscript{18}.

The weight of evidence suggests that compliance costs related to environmental policy are generally low as a proportion of a firm’s total costs and are unlikely to significantly restrict profits and competitiveness. Several studies find no evidence to suggest that the stringency of a country’s environmental regulations effects trade and competitiveness and as such is not an important influence of competitive advantage or disadvantage\textsuperscript{19,20,21}. Firms decide upon plant location based on a range of attributes, which includes environmental regulation, but this is rarely a decisive factor\textsuperscript{22,23}.

In some instances environmental regulation appears to have been beneficial for domestic producers\textsuperscript{24} and can encourage increased international environmental performance\textsuperscript{25}. Conversely, other studies have shown that environmental regulation has reduced competitiveness\textsuperscript{26,27,28,29,30}.


6.1.3 Employment and investment

Very few studies have focused specifically on the effect of environmental regulation on employment. The available evidence (which is very limited) suggests that at the economy level, the impact of environmental regulation stringency has a minimal or even slightly positive effect on aggregate employment\textsuperscript{31,32,33,34}. This benign conclusion does not hold in all circumstances, with some studies showing negative impacts on employment\textsuperscript{35,36}.

6.1.4 Investment

Several studies have concluded that less stringent environmental regulations attracts Foreign Direct Investment (FDI) to relatively polluting countries, but only in certain circumstances \textsuperscript{37,38}. Other studies find no evidence of investment moving to countries with relatively lax environmental regulation\textsuperscript{39,40} or find evidence that investment can even follow regulatory stringency\textsuperscript{41,42,43}.

6.1.5 Innovation

A common theme through the evidence is that environmental regulation can be beneficial if it drives innovation. Innovation is important because it allows firms to improve environmental and financial performance simultaneously.

Environmental regulation has been identified as a positive driver of innovation particularly in firms with a track record of adopting more environmental initiatives. The benefits of environmental innovation are demonstrated in other studies. There is evidence that research and development driven by environmental regulation has displaced other research and development; this effect seems more prominent in small firms, whereas it may increase overall innovation in large firms. This displacement effect may only be a short-term phenomenon, with benefits arising over the longer term. Ramanathan et al. (2010) found that UK investments in pollution control expenditure tend to influence innovation in the industrial sectors negatively over the short-term, because these investments displace other innovation activities. However, these investments tend to generate benefits over the long-run.

6.2 What are the current European regulatory frameworks?

The legal basis for all European legislation and the powers and responsibilities as well as the rules and procedures to be followed by the EU institutions and bodies are laid down in the Treaty on European Union and/or the Treaty on the functioning of Europe. Basic knowledge of the functions of the EU institutions and the legal framework is essential to understand the decision making in the EU, the interaction between EU law and national law, and EU means of action such as regulations, directives, decisions, and recommendations. The European Union’s environmental objectives are enshrined in the Environmental Title of the Treaty on the functioning of Europe. The most common legal basis for environmental legislation is Article 192 of the Treaty on the functioning of Europe, which empowers the European Parliament and the Council to decide what action should be taken by the Union to achieve the environmental objectives. Strategies and programmes aimed at integrating environmental considerations in EU policy were launched with the Cardiff process. European environmental law is part of the body of common rights and obligations that bind all the Member States together within the EU (the ‘Community acquis’). The total body of EU law comprises legal instruments including regulations, directives, decisions, and

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recommendations covering environmental protection, polluting and other activities, production processes, procedures and procedural rights as well as products. International agreements concluded by the EU are binding upon the institutions of the EU and on its Member States. The principles of subsidiarity and proportionality apply in the area of environmental legislation where the EU and its Member States can both legislate and adopt legally binding acts.

There are several EU strategic policy frameworks that promote environmental protection. The most important strategies include the EU Sustainable Development Strategy, the Lisbon Strategy, and the Europe 2020 Strategy.

One of the key objectives in the renewed Lisbon Strategy is to focus exclusively on ensuring a simple and high quality regulatory environment. This led to the development of EU’s Better Regulation Strategy. Following the focus on better regulation, both for the implementation of EU legislation and its transposition in national legal frameworks, a number of case studies have been collected to identify best practices in implementing EU legislation for the development of recommendations and checklists for good implementation. For example the better regulation check list developed by NEPA and IMPEL. In relation to environmental legislation, attention is given to streamlining and simplifying environment related regulatory requirements in order to improve environmental outcomes and reduced burdens for business.

6.2.1 The European Union (EU) regulatory framework


The powers and responsibilities as well as the rules and procedures to be followed by the EU institutions are laid down in the Treaties. The European Parliament, the Council of the European Union, the European Commission, the Court of Justice, and the European Court of Auditors are the five institutions of the European Communities. Important bodies of the European Union include the European Council and the European Central Bank. There are three main institutions involved in EU legislation, the so-called tripartite structure:

- The European Parliament, which represents the EU’s citizens and is directly elected by them. The European Parliament shares the legislative and budgetary authority of the Union with the Council.
- The Council of the European Union, which represents the governments of the individual member countries. The Council of the European Union is a body holding legislative and some limited executive powers and is thus the main decision making body of the Union.
- The European Commission (EC), which represents the interests of the Union as a whole, it is the executive arm of the Union. The EC is responsible for drafting all law of the European Union. It deals with the day-to-day running of the Union and has a duty to uphold the law and treaties.

Together, these institutions produce through the ‘Ordinary Legislative Procedure’ the policies and laws that apply throughout the EU. In principle, the Commission proposes new laws, and the Parliament and Council adopt them. The Commission and the member countries then implement

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them, and the Commission ensures that the laws are properly applied and implemented. Additionally, the Court of Justice upholds the rule of European law and the Court of Auditors checks the financing of the EU’s activities.

The European Council (different from the Council of the EU) is the group of heads of state or government of the EU member states. The European Council sets the EU’s overall political direction – but has no powers to pass laws.

The powers and responsibilities of all of these institutions are laid down in the Treaties, which are the foundation of everything the EU does. An overview of the EU regulatory framework is given in ABC OF EUROPEAN UNION LAW.57

Regulations and Directives

Regulations and directives are binding and apply to all or specific Member States. Regulations are directly applicable (to all Member States and persons) and binding in their entirety while directives addresses national authorities who must take action to make them part of national law. It is up to national authorities to transpose directives into their national legal framework.

Member States are obliged to comply with EC law according to Article 10 of the EC Treaty. States must adopt necessary legislative and regulatory measures, apply or execute them, and supervise and enforce their application in their respective territories. Article 10 imposes mandatory duties on Member States, which do have, however, some discretion in the carrying out of such actions. Each directive specifies the date by which the national laws must be adopted - giving national authorities the room for manoeuvre within the deadlines necessary to take account of differing national situations. An example of the degree of interpretation and possible conflicts with national law is provided by an analysis of the Environmental Impact Assessment Directive on environmental impacts of projects58.

Environmental legislation and related strategic policy framework

The European Union’s environmental acquis (the body of common rights and obligations that bind all Member States together within the European Union) comprises approximately 300 legal instruments including regulations, directives, decisions, and recommendations. They are joined by numerous communications and policy guidelines drawn up by the Commission. The acquis covers environmental protection, polluting and other activities, production processes, procedures and procedural rights as well as products. Apart from laws that treat cross-cutting issues (environmental impact assessments, access to information on the environment, combating climate change), quality and related emissions standards are set for air, waste management, water, nature protection, industrial pollution control, chemicals and genetically modified organisms, noise and nuclear safety and radiation protection.

The European Union’s environmental objectives are enshrined in the Environmental Title (Articles 191 to 193) of the Treaty on the Functioning of the European Union (TFEU). The Lisbon Treaty strengthened the emphasis on climate action by making combating climate change an explicit part of the environmental objectives.


GHK-ICF and Angus, A., 30 April 2013
There are also several EU strategic policy frameworks that act to promote environmental protection. The main environmental related strategic framework is built up by the EU Sustainable Development Strategy (SDS), the Lisbon Strategy and the Europe 2020 Strategy. The EU SDS consisted of two main approaches. The first was to tackle key unsustainable trends, while the second attempted to ensure EU economic, social and environmental policies are mutually reinforcing. The SDS stresses the importance of education, research and public awareness for facilitating the transition to more sustainable production and consumption patterns. To meet its overarching goals, the SDS identifies and develops actions, setting down overall objectives and concrete actions across seven key, priority challenges:

- Climate change and clean energy;
- Sustainable transport;
- Sustainable consumption and production;
- Conservation and management of natural resources;
- Public health;
- Social inclusion, demography and migration; and
- Global poverty and sustainable development challenges.

The Lisbon strategy rests on three main pillars. The environment is a pillar in its own right, alongside economic and social considerations. Further information of the impact of the Lisbon Treaty on climate and energy policy is available in ClientEarth legal briefing.

The EU 2020 Strategy replaced the Lisbon Strategy when it was adopted in June 2010 as Europe’s new strategy for sustainable growth and jobs. The strategy also includes nine EU flagship initiatives proposed by the Commission. Of these, two are particularly relevant to environmental policy: a ‘low-carbon, resource efficient Europe’, and ‘clean and efficient energy’. The strategy recognises the importance of market-based instruments (e.g. emissions trading in the fight against climate change) and proposes to prioritise the revision of energy taxation and public procurement rules at EU level.

The Treaty on the Functioning of the European Union According to the Treaty on the Functioning of the European Union Article 191, the EU’s policy on the environment shall contribute to the pursuit of the following objectives:

- Preserving, protecting and improving the quality of the environment;
- Protecting human health;
- Utilising natural resources prudently and rationally; and
- Promoting measures at an international level to deal with regional or worldwide environmental problems, particularly combating climate change.

The Sourcebook on EU Environmental Law gives a summary of EU environmental legislation, principles and standards. A more exhaustive list can be found at the Eurolex website.

6.2.2 Better regulation in the EU and Member States

The EU’s strategy on better regulation is described in ‘Better Regulation for Growth and Jobs in the European Union’\(^{61}\). The EU’s Better Regulation Strategy is based on three key action lines:

- Promoting the design and application of better regulation tools at the EU level, notably simplification, reduction of administrative burdens and impact assessment;
- Working more closely with Member States to ensure that better regulation principles are applied consistently throughout the EU by all regulators; and
- Reinforcing the constructive dialogue between stakeholders and all regulators at the EU and national levels.

With the \textit{inter-institutional agreement on better law-making}, the main law-making institutions in the EU agreed to improve the quality of law making through:

- Better coordination of the legislative process.
- Improving the quality of legislation through the use of pre-legislative consultations, impact analyses, and clear and consistent texts.
- Greater transparency and accessibility.
- Better transposition and application.
- Choice of legislative instrument and legal basis.
- Use of alternative methods of regulation. When applying the principle of subsidiarity, proportionality and the Community’s obligation legislation will be introduced only where necessary. It is important to recognise the need to use alternative regulation mechanisms where the Treaty does not specifically require the use of a legal instrument.
- Simplifying and reducing the volume of legislation.

The assessment ‘\textit{Europe can do better}', strongly promotes the use of eGovernment and digital solutions, as well as risk-based approaches and supports the development of good governance\(^{62}\).

A checklist for good implementation of EU legislation has been developed for (public) authorities responsible for the implementation of EU legislation:

- The objective of the legislation;
- Exchange of best practice implementation (i.e. looking beyond borders);
- The use of impact assessments and evaluations;
- The extent of leeway for implementation;
- The use of derogations or lighter regimes;
- Active and passive gold-plating;
- Risk-based approaches;

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• The end-user focus; and
• Digital solutions and re-use of data.

Relevant documentation and resources from the EU on better environmental regulation include:

• Better Regulation website (sets out the actions taken by EU institutions as well as those taken by Member States);
• Minimising the burden for SMEs;
• Smart Regulation in the EU;
• Strategy for simplifying the regulatory environment (annual progress reports); and
• Communication on Smart Regulation 2010.63

6.3 What are the regulatory frameworks of other Member States?

It is sometimes useful to cross-compare and evaluate the policy development and regulatory approaches employed by other Member States. Sources providing useful information on regulatory frameworks include:

• The Europa website provides a summary of the legal requirements, administrative procedures, resources and programmes for environmental regulation in many member states.
• OECD performance reviews assess the progress individual countries have made in achieve their environmental policy objectives and make recommendations for improvement.
• The Handbook of Environmental Protection and Enforcement provides over 100 examples of regulatory frameworks and regulatory approaches.64

Summary information for Denmark, France, Germany, Italy, the Netherlands and Sweden is given below to provide an indication of the variety of frameworks across the European Union.

6.3.1 Denmark

The Danish Ministry of Environment is the superior authority administering environmental policy in Denmark and is responsible for the drafting of environmental law. The Danish Environmental Protection Agency (under the administration of the Ministry) administers a large number of acts and regulations. The Agency administers the Environmental Protection Act, which sets the fundamental objectives, the means with which to meet these objectives, and the administrative principles by which the Agency works. This framework Act is to be supplemented with guidelines and regulations issued by the Ministry to the Agency under the authority of the Act. The Agency does not deliver regulation itself, but it supports the municipalities who do. The Agency provides a service to promote good environmental practices in business, for example, the environmental competency scheme which provides direct subsidies to firms to help them adopt environmental management systems.65

65 Ibid.
The **Danish Nature Agency** produces the government’s policies concerning nature and environment. Denmark also has a **Ministry of Climate, Energy and Building**. This Ministry is responsible for national and international efforts to prevent climate change, primarily focusing on promoting and developing technologies for renewable energy. The **Danish Energy Agency** (under the Ministry of Climate and Energy) administers the responsibilities in relation to the production, supply, transport and consumption of energy.

### 6.3.2 France

France has an Environmental Charter that provides:

- The right for each citizen to public health and to live in a balanced environment and his/her duty to preserve the environment and to contribute to the compensation for damages caused to the environment:
- That public authorities shall comply with the principle of precaution:
- The adoption of main principles like the precautionary principle, the principle of preventive and corrective actions, the ‘polluter pays’ principle, and the principle of participation.

The implementation of environmental policy is distributed between national and local levels. At national level, this is entrusted to the Ministry of Ecology, Sustainable Development, Transports and Housing. This Ministry is vested with wide powers, mainly on the integration of sustainable development into government policies, the control of global warming (including negotiations on climate change), the prevention of risks and pollution and transport and renewable energy policies. Several national agencies, linked to the Ministry are in charge of certain specific environmental fields. The **Environment Agency (ADEME)**, contributes to the implementation of environmental policies and acts as an expert and adviser for companies, authorities and individuals. The local representatives of the State, who are based in over 200 offices throughout France, issue environmental permits and administrative sanctions. Administrative courts assess the legality of administrative decisions about environmental issues, such as environmental permits.

### 6.3.3 Germany

German environmental policies and the implementation of environmental laws are based on the precautionary principle, the polluter pays principle, and the co-operation principle. The protection of the environment constitutes a guiding principle for all state organs, including the enforcement of laws by public authorities.

The legislation and enforcement is shared but with a clear distinctions between the Federal and state level. Federal Acts regulate key areas of the German regulation leaving the 16 states (Bundesländer) with the power to complete the framework of environmental legislation. The Bundesländer are also responsible for administering and enforcing environmental law. The Federal Ministry of Environment defines the political agenda while the Federal Environmental Agency is in charge of environmental research, planning and the administrative tasks assigned to it by the Federal Ministry.

The administrative levels differ among the states, but in general it feature a three-tiered administration: the ministries as the highest environmental authorities: followed by government districts with monitoring powers at the intermediate tier: followed by counties or independent cities at the lowest administrative tier. Most environmental tasks are delegated to the counties or

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independent cities in charge of all local environmental tasks. However, in some states, for example in Bavaria and North Rhine Westafalia, environmental tasks have been transferred from district governments to special State environmental agencies. In addition, local municipalities exercise significant influence on the development of commerce and industry with their planning and zoning decisions\textsuperscript{67}.

6.3.4 Italy

The Ministry of the Environment is entrusted with the responsibility to ensure the promotion, maintenance and restoration of the environment and the protection of natural resources from pollution. However, other Ministries such as the Ministry of Cultural Goods, the Ministry Health and the Ministry of Public Works are also entrusted with powers that involve environmental issues. Additionally, a high number of public agencies and bodies are involved in the enforcement and administration of environmental law, while regions, provinces and municipalities have a significant role in enforcement.

Regions are entrusted with many legislative and planning powers in relation to environmental issues, such as for instance with regards to waste management and disposal and water protection, and the power to grant some types of environmental permits. Regions exercise these powers in coordination with the provinces and municipalities involved. Municipalities and provinces are entrusted with local planning powers and are entitled to grant some environmental permits.

Other agencies are entrusted with powers in relation to environmental issues. At a national level, the Institute for Environmental Protection and Research (ISPRA) and, at a regional level, the Regional Agency for Environmental Protection (ARPA), are vested with monitoring powers and provide statements as to compliance with environmental regulation\textsuperscript{68}.

6.3.5 The Netherlands

The \textit{Environmental Management Act} 1993 constitutes the centrepiece of environmental legislation and determines the legal tools that can be deployed to protect the environment.\textsuperscript{69} The main instruments are environmental plans and programmes as well as requirements on environmental quality, licensing, general rules and enforcement. The same Act also contains rules on levies, contributions and compensation. In addition, the Environmental Licensing Act 2010 combines the national regulation for building law, housing law and environmental law.

Dutch environmental policy is mostly formulated at the national level. Regional and local authorities are then placed in charge of implementing the policy in their jurisdictions. The regional and local authorities in charge of environmental policy are comprised of provinces, municipalities, and water boards. Municipalities are primarily responsible for licensing of industrial plants, soil clean-up, sewage services, collection and recycling. Monitoring of environmental policy in the Netherlands is primarily the responsibility of the National Institute for Public Health and Environmental Protection. The entity primarily responsible for enforcement is Ministry of Housing, Spatial Planning and Environment, with the Inspectorate for the Environment in charge. In addition, the National

\begin{footnotesize}
\textsuperscript{67} \textit{ibid}
\end{footnotesize}
Coordinating Committee for the Enforcement of Environmental Legislation sets duties for the provinces and municipalities regarding enforcement.

6.3.6 Sweden

The main Swedish environmental legislation is the Environmental Code. The code consists of 33 chapters divided in almost 500 sections. These include a large number of ordinances and regulations and can be seen as a guiding document for sustainable development covering all areas related to environment.

Ordinances are decided upon by the government, which in turn can authorise agencies to decide on regulations in each of their areas of responsibility. Apart from these binding rules, agencies can also issue non-binding general advice. This includes general recommendations on the application of laws and regulations. Integrated permits for environmentally hazardous activities are a basis of Swedish environmental legislation. This means that all the possible adverse effects of, for example, an industry on the environment, and the corresponding necessary protective measures, are considered in one context and in relation to each other. Thus the impact of the activity on air, soil and water or waste management or other countermeasures is considered as a whole. There are no separate laws or permits for different media.

While the agencies are responsible for the legislation and guidance documents, the regional authorities are usually responsible for the control and authorisations where permits are required. The Swedish Ministry of Environment has a list of areas of responsibilities and reporting agencies including the National Chemicals Agency and the Swedish Environmental Protection Agency. The Environmental Protection Agency monitors the conditions in the environment and progress in environmental policy. They also have the task of coordinating, monitoring and evaluating efforts, involving many agencies, to meet Sweden’s environmental objectives.

6.4 What is regulatory reform, what drives it, and how can reforms be implemented?

A principal feature of modern policy development and regulatory design is the need for effective environmental protection at a proportionate cost to the regulated and the regulator. The regulatory reform agenda that has been in place for 20 years has been concerned with how environmental outcomes can be secured through the efficient use of public funds and the investments required of industry in their attempts to comply with legislation. The reform of regulatory frameworks can help reduce burdens for business and ensure that authorities and regulators are working efficiently and effectively. Drivers for regulatory reform include the perceived inflexibility, uncertainty and unpredictability, lack of focus and complexity of certain current regulations or of a top down style towards regulating the statute that constrains options on how compliance might be best achieved.

Regulatory reform can range from small scale improvements of a single regulation or process to larger overhauls of regulatory systems. Interventions may include:

- Economic instruments - an approach to modify behaviour by adjusting the economic incentives facing businesses and citizens, drawing on principles of welfare and behavioural economics.

- Voluntary approaches - approaches initiated and undertaken by those whose behaviour is to be regulated, but also includes co-regulation - similar to self-regulation but involves some degree of explicit government involvement.

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- Information and communication based interventions- the aim of which is to empower consumers to take their own informed decisions.

Examples of interventions in each of the above categories and evaluations (where available) on their effectiveness are included in the Topic Area 2 summary.

Implementation of regulatory reform may take an integrated or a sector-based approach, a principles-based or prescriptive-based approach, or a regulatory or voluntary approach. It is important to assess the process involved in regulatory reform. This process is composed of five steps:

- Identification of objectives and frameworks for implementations;
- Identification of suitable reform options, including associated costs and benefits;
- Consultation with stakeholders;
- Identification of past attempts at regulatory reform and reasons for their success/failure; and
- Awareness of potential barriers and success factors which will aid regulatory reforms.

Assessment of regulatory reform has also been identified by the OECD as important in ensuring that regulations remain up to date, cost-justified, cost-effective, consistent and deliver intended policy objectives. Reviews of the need for regulatory reform have been undertaken by several departments, regulators and oversight bodies in the UK such as the National Audit Office and Better Regulation Task Force. In the future a more systematic assessment of regulatory reform across government may become an important prerequisite for guiding and obtaining broad support for continued reforms.

6.4.1 Current regulatory reform initiatives

Regulatory reform is a process that can help to improve the cost-effectiveness of public policy, addressing policy needs in the context of reduced public budgets\(^{71}\). The UK Coalition Government has promoted better regulation as a key priority and better regulation measures exist in Budget 2011 and 2012 which are set in the context of the Government’s strategy for growth\(^{72}\). In addition the recent Red Tape Challenge aims to enable regulatory reform by highlighting regulations that are ineffective and identifying areas where regulations can be either scrapped or simplified. The Government’s new approach to regulation consists of four key elements\(^{73}\):

- A different approach to thinking about regulation, including European legislation.
- A new decision-making structure to bring greater discipline and transparency to the way in which decisions on regulatory issues are taken.
- Opening up existing regulation to tougher, more meaningful, scrutiny.
- Streamlining and improving the way regulation is enforced – departing from ‘tick-box’ systems of inspection and audit.

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The success of this approach depends on the way in which all participants in the system interact and will require changes in how ministers, policy makers, economists and lawyers within central government work together.\(^74\)

### 6.4.2 Principles of regulatory reform

**Principles of regulation**

The UK Better Regulation Task Force set out principles for assessing existing regulation and proposing reform initiatives:

- **Proportionality**: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- **Accountability**: Regulators must be able to justify decisions, and be subject to public scrutiny.
- **Consistency**: Government rules and standards must be joined up and implemented fairly.
- **Transparency**: Regulators should be open, and keep regulations simple and user friendly.
- **Targeting**: Regulation should be focused on the problem, and minimise side effects.

The OECD also emphasise the importance of these principles and state that Governments should ensure regulations are comprehensible and clear, and that parties can easily understand their rights and obligations.\(^75,76\)

The OECD advocates other methods of achieving successful regulation.\(^77\) Consolidating regulations into a single database in order to enhance communication on regulatory stock and flow is also proposed by the OECD in order to achieve successful regulatory reform.

**Examples of reforming current regulation**

The reform of the water abstraction regime in the UK is designed to provide communities with a bigger say on water issues, promote competition in the water sector and promote a consistent message and raise awareness of water resource availability pressures.\(^78\)

An example of broader regulatory reform of environmental policy integration is taking place in the Netherlands. Several ministries were merged into the ‘Ministry of Infrastructure and Environment’ in late 2011 which covers road rail and water transport infrastructures as well as the environment. It is responsible for a Regulatory Reform Programme ‘Simpler and Better’. This has encouraged consistent approaches across different regulatory regimes including several outside of the environmental sphere and includes joining up inspections.\(^79\)

In addition, reform can address the process for choosing and designing regulations (see Topic Area 2 summary).

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\(^74\) Ibid.


6.4.2 Drivers and the need for regulatory reform

A number of studies have highlighted the need for regulatory reform. Problems associated with regulation include the following:

- The **inflexibility** of regulation, which can hinder a risk based approach and increase the burden of compliance, particularly for smaller businesses.

- The **uncertainty and unpredictability** of regulation, which can reduce the clarity of requirements and lead to under-compliance.

- The **lack of focus** of some regulations, which may imply a lack of awareness by regulating authorities of businesses’ intentions and behaviours.

- The **complexity** of some regulations, and the frequency with which they are updated, can increase the burden on businesses.

The case for improving regulations is also about addressing persistent environmental issues and enabling the measurement of changes in environmental quality related to these issues, for example, the need to address the emission of greenhouse gases, or reduce the consumption of natural resources, requires that new solutions are identified.

In both the UK and other countries, these experiences have led to pressures and incentives to reform the regulatory framework. Business surveys have also identified regulation as a cost and a barrier to economic growth leading to pressure for regulatory reform. Some of these studies include:

- A **Forum of Private Business survey in 2009** which concluded that only 5% of businesses felt that the existing regulatory framework was beneficial to their business.

- A **National Audit Office survey in 2009** which found that the second greatest challenge to business was ‘complying with regulation’ with 62% stating it was an obstacle to success.

- A survey for **BERR in 2008** found that half of the sample considered that regulation provided some benefit to their business. However, two thirds of businesses also stated that regulation led to costs to their business.

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6.4.3 Implementing regulatory reform

There are a number of specific ways that regulatory reform can be implemented. For example:

- **An integrated or a sectoral implementation**: Reform may be based on an integrated rulemaking approach that seeks to synthesise a former set of distinct regulations or a sectoral approach.\(^9^0\).

- **Principles based or prescriptive-based implementation**: Micro businesses and SMEs tend to prefer face-to-face advice and prescriptive guidance.\(^9^1\). Larger businesses may prefer additional flexibility, and wish to adopt a more principles-based approach.

- **Regulatory or voluntary implementation**: Governance arrangements exist whereby businesses opt in to regulatory reform largely because they view potential benefits from doing so. This has coincided with a greater emphasis on self-regulation and BIS have emphasised that direct regulation should be used only as a last resort.\(^9^2\). However, voluntary approaches may limit overall take-up of regulatory reform as businesses are not required by law to carry out requirements.

- **Implementation of information-based or inspection-based approach to enforcement**: Approaches to ensuring compliance vary and may rely on the use of information and reporting requirements to assess compliance or may involve inspections based on the level of risk a business may pose.\(^9^3\).

**Steps for regulatory reform**

When designing and implementing regulatory reform there are several factors and different steps that authorities may wish to consider, for example:

- Identification of objectives and frameworks for implementations – this will involve an initial analysis of the problem and an assessment of whether government is required to intervene.

- Identification of suitable reform options – if action is necessary it will be important to assess all the available options, in particular the costs, benefits and likely impacts of each option.

- Consultation with stakeholders – if regulatory reform is proposed all stakeholders potentially affected must be consulted, including business bodies and enforcement agencies and a process for monitoring and reviewing the regulatory reform should be agreed.

- Identification of past attempts at regulatory reform and reasons for their success/failure – it is good practice to identify necessary conditions for sustaining regulatory reform by learning from previous experiences to enhance potential success.

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Responsibilities for effective reform

The UK Government has outlined particular roles for different actors in ensuring the success of regulatory reform:\textsuperscript{94}:

- **Parliament:**
  - Scrutinise both new regulatory proposals and old regulatory frameworks.
  - Challenge the impact of the regulatory framework and recommend actions to reduce burdens.

- **Ministers:**
  - Ensure that the government is only intervening when necessary and justified.
  - Focus on identifying the most effective way to achieve desired outcomes.
  - Resist the temptation for hasty regulation and consider new regulatory measures carefully.
  - Look at the cumulative impact of new EU measures.
  - Explore creative, non-regulatory solutions to achieve desired policy outcomes, including in the EU.
  - Encourage building alliances across Europe to help achieve good regulatory results.

- **Civil Servants and policy-makers (including lawyers and economists):**
  - Explore and implement innovative, non-regulatory solutions.
  - Develop policies that work with businesses’ and citizens’ needs and circumstances.
  - Enable businesses, individuals and other organisations to get involved in delivering outcomes.
  - Review more frequently whether policies are delivering outcomes, whether regulations can be simplified or removed to reduce regulatory burdens.
  - Work effectively across boundaries – international/EU level/ devolved administrations.

- **Enforcers of regulation:**
  - Work with the businesses’ own incentives and processes.
  - Reduce oversight and inspection of organisations where effective self-regulatory systems and controls exist.
  - Focus efforts on high-risk businesses.

- **Businesses, civil society groups and citizens:**
  - Experience less intrusive, costly and prescriptive regulation.
  - Take greater responsibility for the way they deal with their obligations.
  - Have more of a say in the way regulation is made and enforced.

\textsuperscript{94} BIS (2010). Reducing Regulation Made Simple: Less regulation, better regulation and regulation as a last resort, HM Government. \url{http://www.bis.gov.uk/assets/bscore/better-regulation/docs/r/10-1155-reducing-regulation-made-simple.pdf}. 
6.4.4 Barriers and successful regulatory reform

Barriers to reform

Reforms are difficult to implement and sustain. Successful reform requires overcoming vested interests in the public and private sectors, fear of change, and the complexities and uncertainties of change in dynamic economic and social environments. Barriers to reform include a possible lack of capacity, a lack of political and public support, or a lack of communication and stakeholder engagement. Particular issues may relate to the relationship between EU and Member State responsibilities. In previous years at the EU level, ambitious efforts of the better regulation agenda have been compounded by the fact that Member States have been faced with the challenge of implementing a growing number of environmental directives into national legislation. This has led to regulations being consolidated using framework directives and ‘daughter’ directives to simplify the process.

Successful regulatory reform in practice

As an example of successful regulatory reform, the Scottish Government and SEPA have consulted on proposals for an Integrated Framework of Environmental Regulation. The Scottish Environment Protection Agency (SEPA) and the Scottish Government, stress that the right regulatory framework requires funding arrangements that support a more flexible, targeted approach. In particular they have advocated:

- A single, proportionate and risk-based permitting structure;
- A single consistent regulatory procedure;
- A flexible approach to permitting; and
- A flexible and proportionate approach to enforcement.

The European Commission has looked at best practice in Member States in implementing EU legislation in the least burdensome way. They highlight good examples for successful regulatory reform which include the UKs new transposition framework that offers specific guidance on how to implement EU directives effectively and the German EU SME monitor which provides SMEs with a traffic light system applied to initiatives signalling their relevance for SMEs.

6.4.5 Assessing regulatory reform

Developing a coherent framework to manage and evaluate regulatory reform is important. Information and coordination are essential for the effective management of resources.

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The potential economic benefits of pursuing a better regulation agenda have been assessed as significant. UK government estimates that further efforts to reduce administrative burdens could lead to direct savings for business and consumers of around £4 billion (0.3% of GDP)\(^9\).

The OECD recommends criteria to determine if regulatory reform has been successful. Their approach involves a systematic programme review 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, consistent and delivers the intended policy objectives. The OECD also suggested that regular reports should be published on the performance of regulatory policy and reform programmes\(^1\)\(^0\).


\(^1\) Ibid.
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Sniffer is a charity delivering knowledge-based solutions to resilience and sustainability issues. We create and use breakthrough ideas and collaborative approaches across sectors, to make Scotland a more resilient place to live, work and play. Through innovative partnership approaches we share good practice, synthesise and translate evidence, commission new studies and target communications, guidance and training.

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