

## PROPOSED GUIDELINES FOR GOOD REGULATORY PRACTICE

### Context

These guidelines for good regulatory practice focus on the process of making informed and well reasoned regulatory decisions, which are the hallmark of regulatory stability and quality. The starting point for the guidelines is the process for making decisions that fall within the legal power and discretion of Member State regulators. The legal jurisdiction of the independent regulator, its governance structure and the degree of political oversight are all matters for Member State legislation and are beyond the scope of these guidelines.

### Objectives of Sound Regulatory Practice

When performing their statutory powers, regulators have the ability to exercise significant discretion in the manner in which matters are handled and decided. Many parties, including consumers and investors, have a significant interest in the outcome of regulatory proceedings. Parties with an interest in the outcome of such procedures must be confident that decisions have been made fairly, promptly, consistently and have been made based on a reasonable interpretation of relevant facts and applicable law.

At the end of the day, parties with a significant interest in the outcome of a regulatory proceeding must be satisfied that they had an opportunity to be heard and that the decision was fair and well reasoned, regardless of the outcome of the proceeding.

Another objective of good regulatory practice is the avoidance of unnecessary and burdensome regulations. Regulation is not an end in itself; it is a means to an end. Therefore, regulators should exercise restraint before deciding to intervene in a matter that may be adequately resolved by non-interventionist means.

### Principles of Good Regulation <sup>1</sup> and Guidelines

In order to improve the quality and stability of the regulatory framework, Member State regulators should adhere to five basic principles of regulatory best practice:

- 1. Transparency** – Regulators should be open and keep regulations simple and user friendly. The general activities of the regulator, the process of decision making and its decisions must be conducted in public to the maximum extent possible.
- 2. Consistency** – Regulation should be predictable in order to give stability and certainty to those impacted by regulation. Stability of the regulatory framework and equitable treatment require decisions that do not deviate substantially from prior treatment of similar matters unless there is a compelling reason for such deviation.
- 3. Proportionality** – Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- 4. Targeting** – Regulation should be focused on the problem, and minimise side effects.

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<sup>1</sup> *The Principles of Good Regulation proposed here have been taken from work performed by the Better Regulation Committee in the United Kingdom and have been expanded by input from members of the Eurogas System Users Committee. Information about the Better Regulation Committee can be found on their web site at: [www.brc.gov.uk](http://www.brc.gov.uk).*

**5. Accountability** – Regulators must be able to justify decisions, and be subject to public scrutiny. The decisions and activities of regulators must be scrutinised by independent parties. Parties with a significant interest in a regulatory decision must have a reasonable opportunity to seek independent review of such a decision.

### **Transparency Guidelines**

Open and transparent regulatory processes have the greatest impact on the quality and stability of the regulatory framework. The following measures to improve transparency should be considered:

- The regulator should prepare and publish its priorities, forward plans, management structure and its rules of operation (a Management Statement or Plan). The Management Plan shall describe and disclose the regulators' interactions with other Government officials and independent regulators.
- The regulator should have an easily accessible website containing relevant contact information, notices of proceedings and a data base of public documents.
- Regulators should prepare a list of outside consultants hired to act on a particular matter and should publish the list on its web site.
- Regulators should establish, publish and strictly follow rules for consultation and adjudication of matters requiring regulatory intervention.
- Regulators should provide public notice of consultations and other issues it is evaluating and provide parties with significant interest in such matters ample time to respond and submit views.
- The public notice should be clear in articulating the issues to be examined, the legal basis for proceeding and the legal standard by which a decision will be made.
- Parties that have a significant interest in a matter must have a reasonable opportunity to submit evidence and views. A regulator should not act unless it is persuaded that it has provided a reasonable opportunity for interested parties to submit views.
- Unless it is confidential, as predefined by regulations, evidence and views of parties participating in a proceeding or consultation must be made publicly available and subject to scrutiny by other parties.
- Parties shall have the ability to submit confidential data to the regulator, but shall have the burden of demonstrating to the regulator that the information cannot be disclosed, and confidentiality will be maintained when agreed between them.
- The Regulator shall take all necessary means to maintain the confidentiality of information provided.
- The regulator shall indicate whether its decision or action is dependent on confidential information and shall indicate why the information was relevant and could not be publicly disclosed.
- Regulator decisions must be in writing, publicly available, and retained on its web site for a sufficient period of time to allow for public examination. The decision of a regulator must also be clearly explained, including its reliance on fact, the basis in law, and the consistency with relevant policy.

- A regulators decision in a matter should be based on the evidence presented and address only the issues initially raised in consultation. New issues arising need to be examined separately.
- Regulators shall keep a log of its meetings with companies and individuals, including members of Government. The log shall be made publicly available.
- Regulators should seek communicate with the wider public as much as possible in order to inform the public of its work and the outcome of activities.

#### **Guidelines on Consistency**

- Regulators should publish and retain decisions and rules on its web site for a period of at least 5 years.
- Regulators should apply similar rules of procedure to all matters requiring its consideration. In making decisions, it should be mindful of previous decisions on similar matters as well as applicable precedent established by regulators in other sectors.
- Regulators can deviate from previous decisions if a compelling reason exists but must clearly articulate why they are doing so.

#### **Guidelines on Proportionality**

- Regulators should evaluate the costs and benefits of a particular action, including the option not to act. For significant and difficult issues, regulators may consider using "Regulatory Impact Assessments".
- Solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed.
- All the options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply.
- Enforcement regimes should be proportionate to the risk posed.
- Enforcers should consider an educational, rather than punitive approach where possible.
- Regulators should provide ample notice and time for all affected parties to implement regulatory decisions and changes. There should be no retrospective regulation.

#### **Guidelines on Targeting**

- Regulations should focus on the problem, and avoid a scattergun approach.
- Where appropriate, regulators should adopt a "goals-based" approach, with enforcers and those being regulated being given flexibility in deciding how to meet clear, unambiguous targets.
- Guidance and support should be adapted to the needs of different groups.
- Enforcers should focus primarily on those whose activities give rise to the most serious risks.
- Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.

- The cost of regulatory actions should be targeted in a fair and equitable manner such that one party or group pays a disproportionate share of the cost.

#### **Guidelines on Accountability**

- Regulators have a duty to explain actions and decisions. The reasons for regulatory decision must be clearly explained in writing articulating the factual, legal and policy basis for the decision.
- Regulators should strive to set standards and criteria by which their actions can be judged. It actions and activities should be periodically scrutinised by independent audit with results publish on its website.
- Regulators should establish accessible and effective procedures for complaints and appeals.
- Parties with a significant interest in a proceeding should have a meaningful opportunity to appeal the decisions of regulators to an independent body. Appeals should be based on procedural grounds that result in a failure to get a fair hearing of the issues. Parties appealing on the merits of a case should carry a significant burden of proof to demonstrate that a decision is legally insufficient or grossly unfair. The appeals process should discourage vexatious or dilatory behaviour.