***NRCoP Webinar 10 March 2022***

***OECD: Agile Regulation and Innovation***

***Additional Q&A***

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| **Florent Gomez, Independent Evaluator** |
| **Question:** How do you implement agile regulation when you are restricted by not-so-agile legislation? |
| Agile approaches applied to regulation are not only restricted to legislation and can be used either to support the development of new regulation or its implementation via regulatory management tools. For instance, In its recommendation for Agile regulatory governance, the OECD suggests the use of mechanisms for public and stakeholder engagement throughout the policy cycle including for the development of new legislation. Other agile approaches to regulation that are beyond traditional legislation include encouraging the complementary use of non-legally binding instruments such as voluntary standards or enabling experimentation within contained areas via mechanisms such as regulatory sandboxes. Finally, the enforcement of existing legislation can also be agile and adapt to evolving needs, in particular via the use of data driven approaches to support risk-based and outcome-focused regulatory mandates. |
| **Question:** If you think you are an innovative and agile regulator how do you know you are on the right track? |
| That would require first determining what your intended outcomes are, for your various target groups, i.e. regulated entities and beneficiaries, e.g. harm reduction for beneficiaries.  You may also have intended outcomes around agility and capacity for innovation for the regulator – probably still with the intent to achieve the identified outcomes for your key target groups. Determining how successful you have been in that require would require to specify what an innovative and agile regulator would look like; how would you know you’ve been innovative and agile. Supporting evidence may then come for instance from case studies where disruption occurred in the regulated area and explore how you as a regulator responded to it – and whether you demonstrated the expected characteristics of an agile and innovative regulator. The use of rubrics as an evaluation tool may be useful in that particular case. Rubrics help developing a rating scale for complex constructs: in this particular case, what a non-agile and non-innovative regulator look like, what would that look like, and similarly at the end of the scale for the ideal agile and innovative regulator. |
| **Question**: Once new regulations have been introduced (particularly if it’s a major re-write) there are often teething problems in their implementation. How can amendments be made more quickly by governments without changing the intent of the law or overreaching what is was required to do? |
| Regulators still have some room to respond to such teething problems in their regulatory instruments toolbox. The implementation of a new legislation for instance generally requires communication with regulated entities, sometimes training and development of new processes and systems, all of which can factor in those teething issues to help smoothen the implementation of a new legislation. Constant feedback look and iterative assessments are particularly critical in that regard to help identify necessary adjustments in the implementation phase. Regulators sometimes can use tools such as “grace periods” or “statements of regulatory intent” to allow regulated entities time to fully embed new requirements before tough enforcement measures are imposed, but it is important to be agile with the use of these so that they don’t become the status quo.  Such potential implications make it even more important to ensure appropriate and sufficient stakeholder engagement earlier and throughout the policy cycle. |
| **Question**: When there are workforce shortages, local governments who are responsible for administering many State laws within their own municipal districts might join with neighbouring Councils to outsource functions to specialist providers in a shared services arrangement. Is this innovation? And would it improve efficiency and consistency of application? |
| Such approaches may be considered innovative if new to the particular regulated area. With regard to the implications of such an outsourced delivery model onto efficiency and consistency of application, that would require an appropriate assessment to reach a conclusion compared to other more common approaches such as in-house delivery. It is a good example of not considering yourself tied to traditional resourcing models where you feel that you have to “own” all your functions. It might make sense to outsource services or delegate powers to achieve the outcomes you want. |