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How to improve regulatory transparency

Emerging lessons from an international assessment

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Managing the different and often conflicting interests and expectations of stakeholders—the government, consumers, service providers—is a demanding task for infrastructure regulators. Transparency can be a big help. A core principle of good regulatory governance, transparency creates credibility for regulatory decisions and helps foster sustainable investment in infrastructure. How can policymakers and regulators best improve regulatory transparency? A recent PPIAF-funded review of international experience identifies emerging lessons.

Regulatory systems vary across industries and countries as well as over time. Even so, the characteristics of good regulatory *governance* that really matter are increasingly recognized: clarity, predictability, autonomy, accountability, participation, and open access to information. Each of these aids in making a regulatory system transparent in the eyes of stakeholders, helping attract investment and enhancing the benefits of public policy.

Regulatory transparency evolved over time to fill three primary needs:

- **To reassure investors.** When deciding where to invest, investors seek legal and regulatory frameworks that most clearly and predictably define their rights and obligations.
- **To build legitimacy around sensitive decisions.** Consumers are more likely to accept socially sensitive decisions as legitimate when they can participate in the regulatory process and have open access to regulatory rules and agreements.

- **To reduce corruption.** Requiring regulators to publish and justify their decisions helps ensure that they will reach well-reasoned decisions and reduces corruption as well as suspicion that it is occurring.

Measures to enhance regulatory transparency have been or are being adopted in many countries worldwide. The United Kingdom's move toward regulatory transparency occurred initially under pressure from companies and consumers, then through new laws introduced to improve regulation. But many regulators voluntarily adopted transparent processes to foster investment and competition. That was the case for Peru's telecommunications regulator, for example. It was also the case for Botswana's, which started with a basic but effective package of measures.

Key dimensions of transparency

How can policymakers and regulators best go about enhancing transparency? A PPIAF-funded study in 2005 reviewed international experience to identify a core set of guidelines (PPIAF and World Bank 2005). Endorsed by the African Forum for Utility Regulators, the guidelines include a set of proposed tools as well as tradeoffs that need to be weighed in considering them.

Clarity

The roles and objectives of institutions responsible for regulation need to be clearly set out in primary legislation and in instruments such as contracts. To minimize policy confusion and

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Stakeholders should participate actively in the regulatory process

overlapping or contradictory responsibilities, the economic regulatory function should be kept as separate as possible from policy functions (for example, deciding what should be regulated or determining subsidies for access to lifeline services).

The rights and obligations of the regulated entities also need to be clearly stated, in regulatory instruments such as contracts and licenses—preferably using specific measures and targets for output and quality. When data for that purpose are not readily available, a transition period could be used to confirm or collect data, and targets could be set in terms of annual percentage improvements. Since excessively detailed rules and functions can end up being ignored and can be expensive for the regulator to implement, imposing a few simple regulatory obligations, stated clearly and in as much detail as possible, is generally best.

Predictability

To reassure stakeholders, regulatory decisions must be made according to established rules, methodologies, and processes. That calls for setting out in openly available regulatory documents, in as much detail as possible, the factors feeding into the regulator's decision. These include definitions of parameters (such as the rate base), price adjustment formulas, and timetables of events (timelines for submitting information, a calendar of decisions, and the like).

The tradeoff between a degree of detail that reduces uncertainty and a degree of flexibility in setting out parameters and methodologies may need to be handled carefully. Not all elements of uncertainty can be predicted and documented, so specifications may be needed for emergency measures or conditions for renegotiation (for example, events affecting a certain share of costs or revenue). When regulators need to change regulatory methods, the changes should be introduced gradually where possible and through a process involving stakeholders.

Autonomy and accountability

Regulators need to be shielded from undue interference by policymakers and special interests. Different safeguards have been designed to protect the autonomy of regulators (providing earmarked funding from levies on service providers, adopting clear criteria on the

appointment and tenure of regulators, staggering the appointments of commissioners).

But autonomy needs to be balanced by accountability. Legal and regulatory instruments (laws, contracts, licenses, regulations) should allow stakeholders to challenge regulators' decisions and obtain redress. Accountability can be enhanced by publishing and discussing draft regulatory decisions—which can also reduce the costs of arbitration and appeal procedures down the line—and by providing justifications and explanations once final decisions are made.

Participation

Stakeholders—including regulated entities, nonregulated ones, consumers, policymakers, and other public authorities—should participate actively in the regulatory decisionmaking process, to provide regulators with as much information as possible about their views (and about the impact that a regulatory decision would have on them). Consultations impose costs in both time and money, however, and these need to be weighed against the potential benefits and in considering other options.

Open access to information

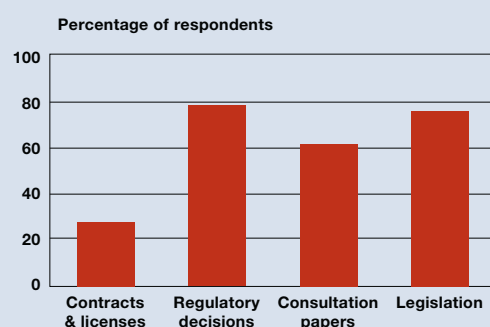
Primary and secondary legislation, regulatory decisions, consultation papers (issues papers, draft decisions, consultant reports for rate reviews, and other documents prepared by regulators to seek feedback from stakeholders), and the like need to be made readily available to stakeholders in a timely, though cost-effective, way. The characteristics of stakeholders (literacy rates, use of technology) need to be taken into account in deciding on the best way to disseminate this information.

What a survey of regulators found

As part of the PPIAF-funded study, a survey of regulators was conducted to analyze the types of tools regulators use to improve transparency, their views on how effective the tools are, and the barriers they face to improving regulatory transparency. A questionnaire sent to 167 regulators worldwide generated 39 responses across regions, mostly from regulators established in the past decade.

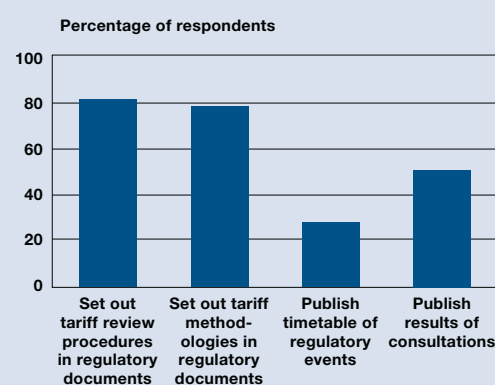
Findings from the survey are not a definitive assessment of practices in regulatory transparency (because of the small size of the sample, for one thing). Still, they highlight

FIGURE 1
How many regulators provide open access to information?



Source: PPIAF and World Bank 2005.

FIGURE 2
How many regulators take steps to make decisionmaking processes predictable?



Source: PPIAF and World Bank 2005.

some approaches regulators use, and provide an initial framework for evaluating regulatory transparency.

The survey shows that regulatory functions are usually defined in primary legislation (which is generally published) and that changes to regulatory functions are often implemented through such legislation. Many regulators place regulatory documents and decisions in the public domain—including through Web-based access (figure 1). Regulatory documents are fairly comprehensive: they usually set out procedures for tariff reviews, the intended methodology, and requirements for the consultation process—the elements that can be considered the bare minimum that should be publicly available (figure 2). Yet less than 30 percent of the regulators reported publishing a timetable of regulatory events.

Almost all regulators maintain Web sites and publish annual reports with information about the regulator, the regulated entities, and the regulatory decisions made in that year. The content of annual reports varies substantially, reflecting the wide range of requirements for information disclosure. Most regulators (80 percent) publish the reasons for their regulatory decisions, but the majority (54 percent) do so voluntarily.¹ How satisfactory such explanations are to stakeholders is difficult to judge.

There is evidence of stakeholder participation, but its focus is too narrow, with views solicited on the details of regulation rather than on the regulatory regime as a whole. The majority of respondents indicated that they disclose consultation comments and take them into account in their decisions. Companies are the stakeholders most often involved in regulatory decisions, followed by consumers and such bodies as governmental organizations, special consumer groups, and nongovernmental organizations.

A third of the regulators had received complaints about transparency. Many reported severe financial and other resource constraints that limit their ability to regulate transparently. Most regulators are new, small organizations, lacking the staff and experience to organize adequate consultation throughout the regulatory process. Regulators also face the challenge of building the demand, awareness, and capacity of consumers and other stakeholders to participate effectively. Strategies to meaningfully involve consumers need to be calibrated to the general education level and to the awareness of and involvement in public policy decisionmaking. Achieving transparency is particularly difficult if a large share of the population is illiterate. Situations like these call for developing specific tools aimed at increasing participation, such as customer surveys, but these are seldom used.

Tailoring tools of transparency to the country

Tools for introducing regulatory transparency need to be tailored to three aspects of the country setting: the regulatory governance model and broader institutional context, the strength of government institutions and the legal framework, and the cost and benefit tradeoffs in increasing transparency.

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Transparency across regulatory governance models

Models of regulatory governance vary in institutional setup, decisionmaking processes, responsibilities, and level of discretion granted to regulators. These features determine the level of transparency required to reassure stakeholders and build legitimacy around regulatory decisions. Greater regulatory discretion, for example, generally calls for greater transparency in decisionmaking.

In the “regulation by contract” regime, used by France in its water sector since the late 19th century, transparency with general stakeholders has traditionally received little emphasis. The reason is that the regulatory regime is largely set out in a contract, with general administrative rules protecting the interests of the two parties to the contract and the public party representing the public interest. Still, in the 1990s the French government adopted a series of measures to enhance transparency (such as requiring mayors to publish an annual report about their municipality’s water and wastewater service).

The traditional U.S.-type regulatory regime, where utility rates (tariffs) are set through a process known as a rate review, puts much more emphasis on broad transparency. In the quasi-judicial process leading up to the review, any information can be requested as evidence and all parties can be asked to testify. These reviews greatly enhance transparency, but they can be costly and cumbersome.

The “regulation by agency” regime, as developed in the United Kingdom, strikes a balance between the French and U.S. regimes. But transparency has generally increased over time, and countries following this regime now set a benchmark for transparency in utility regulation.

Transparency in weak institutional environments

Where institutional environments are weak or transparency in government has traditionally been limited (for political, economic, or

cultural reasons), transparency in utility regulation is particularly important because of lack of confidence in the public service and fears of “regulatory capture” by politicians or private companies. But there may be a need to foster the development of consumer groups to contribute meaningfully to the regulatory process. National legislation or regional agreements to harmonize policies on regulatory transparency can also encourage good practices.

Tradeoffs between costs and benefits

If implemented blindly, regulatory transparency can prove ineffective and impose costs on the stakeholders least able to afford them. In Australia and the United Kingdom—where regulators publish consultation papers, comments to those papers, and their responses to those comments—regulatory costs have risen significantly in recent years, in parallel with improvements in transparency. This intensity of effort may not be required everywhere. In some countries consultations through public hearings may be a good first step if the hearings are well organized and held periodically.

Note

- 1 A World Bank survey of telecommunications regulators in 2001 found that only 54 percent were required to provide written explanations of their decisions (see World Bank 2001).

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