OECD Reviews of Regulatory Reform

Regulatory Reform in the Middle East and North Africa

IMPLEMENTING REGULATORY POLICY PRINCIPLES TO FOSTER INCLUSIVE GROWTH

OECD

Regulatory Reform in the Middle East and North Africa

IMPLEMENTING REGULATORY POLICY PRINCIPLES TO FOSTER INCLUSIVE GROWTH

OECD

BETTER POLICIES FOR BETTER LIVES

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Foreword

The OECD report on *Regulatory Quality in Middle East and North African (MENA) Countries* is the first progress report that assesses the implementation of OECD regulatory policy principles in the MENA region. Regulatory policy in the MENA region is an increasing priority as part of the process of building better governance for encouraging and enabling sustainable development, competitiveness and inclusive growth. The report provides recommendations to MENA countries to improve their regulatory capacities to deliver better policy outcomes.

The report is joint work of the Regulatory Policy Committee and the MENA-OECD policy dialogue on the implementation of regulatory policy within the region (Working Group IV of the MENA-OECD Governance Programme, Public Governance and Territorial Development Directorate (GOV), OECD). The report provides an analysis based on country questionnaires, interviews, MENA-OECD reports and research in addition to comparative analysis given the experience of OECD countries. The countries that participated in this report are Bahrain, Egypt, Jordan, Lebanon, Mauritania, Morocco, the Palestinian Authority and Tunisia.

In 2009, the *Regional Charter for Regulatory Quality* ("the Charter") provided a common framework of principles and good practice for regulatory management in countries of the MENA region. This Charter is based on the OECD 1995 Checklist for Regulatory Decision Making and the OECD 2005 Guiding Principles for Regulatory Quality and Performance. The *2012 OECD Policy Recommendations of the Council on Regulatory Policy and Governance* ("the Recommendation") is the first comprehensive international statement on regulatory policy. The Recommendation provides governments with clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards. The 2009 Charter and 2012 Recommendation constitute a common framework for the design and implementation of an effective and high-quality regulatory reform policy.

This report reflects on regulatory governance in the MENA region which is an important part of the overall governance arrangements that are being enhanced or created to contribute towards sustainable development and inclusive growth. The report provides recommendations for enhancing the regulatory quality within MENA countries and assesses progress in the implementation of good regulatory practice principles.

The report points out that the progress made by countries under review in regulatory reform is considerable. However, it also demonstrates that regulatory policy is still relatively new within the region and therefore implementing core regulatory policy priorities can be more appropriate than implementing a sophisticated regulatory policy agenda.

The report provides recommendations to countries, especially those in transition, to help them build a better regulatory environment to support sustainable development and equitable growth whilst ensuring public participation and accountability. The report also recognises the diversity of contexts across MENA and therefore recommends that more detailed and tailored analysis through individual country reviews be conducted to assist in the specific challenges faced by each country.

The report consists of four chapters. The first chapter serves as a basis for understanding the importance and relevance of regulatory policy for the region. The second chapter sets out the OECD framework for good regulatory practices as outlined in the 2009 Charter and 2012 Recommendation. The third chapter looks at the current status of regulatory practices in certain MENA countries (Bahrain, Egypt, Jordan, Lebanon, Mauritania, Morocco, the Palestinian Authority and Tunisia). It examines progress made with regard to *i)* core policies; *ii)* systems, processes and tools; and *iii)* actors, institutions and capacities highlighting positive aspects as well as limitations and areas that require improvement in relation to the 2009 Charter and 2012 Recommendations. The report concludes with recommendations for sustaining regulatory policy and governance reforms in the region to build on what has already been achieved.

Acknowledgements

Table of contents

Table

Figures

Acronyms and abbreviations

BO	*Bulletin Officiel*
CGEM	National Agency for the Promotion of Small and Medium Enterprises, C*onfédération Générale des Entreprises du Maroc*
EGMB	E-Government Management Board
eOSS	Electronic One-Stop Shop
ERRADA initiative	Egyptian Initiative on Regulatory Reform and Development Activity
ICT	Information and communication technologies
IFC	International financial corporation
LOB	Legislative and Opinion Bureau
MCIT	Ministry of Communication and Information Technology
MENA	Middle East and North Africa
MOT	Ministry of Tourism
MSAD	Ministry of State for Administrative Development
OMSAR	Office of the Ministry for State and Administrative Reform
PA	Palestinian Authority
PPP	Public-private partnerships
RIA	Regulatory Impact Assessment
SCM	Standard Cost Model
SDMP	Services Sector Development Master Plan
SGG	General Secretariat of the Government (*Secrétaire Général du Gouvernement*)
SMEs	Small and medium-sized enterprises
UNCAC	United Nations Convention against Corruption
WTO	World Trade Organization

Executive summary

Efforts at regulatory reform have been made in MENA countries for some years. The relevance of regulatory policy to economic development and social welfare places it as an important tool to support foreign and domestic efforts to create jobs, and to embrace open, inclusive government frameworks. The desire for greater civic engagement and inclusiveness can be seen in many of the countries across the region and ways of better engaging the public are being requested by the public.

The approach toward regulating is of greater importance in many of the countries in the MENA region than before. Regulations[1] are the instruments that are used by governments to implement policies and effect change in society. Regulatory policy is the approach toward regulating that continuously asks important questions before a government acts, such as: Is government regulation necessary? Why is it necessary? How will regulation help to achieve greater inclusive economic growth? How will regulation enhance social welfare? How will regulation protect citizens and the environment? Will regulation impact positively on society, the environment and the economy? The regulatory policy that a government follows will define the quality of the regulatory environment.

The *2009 OECD Charter for Regulatory Quality* and the *2012 OECD Policy Recommendations of the Council on Regulatory Policy and Governance* (2012 OECD Recommendation) provide a framework for programmes to improve the regulatory quality in MENA countries. The framework provides the ability for adjustments according to specific country needs and this report does not advocate for a "one size fits all" approach. Neither does this report recommend that sophisticated regulatory management tools be implemented in countries who have many priorities.

1. Regulations are the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to which governments have delegated regulatory powers (*2012 Recommendation of the Council on Regulatory Policy and Governance*).

However a more basic application of regulatory management tools could have greater impact and support other reform efforts.

This report has analysed current regulatory reform efforts within certain MENA countries (Bahrain, Egypt, Jordan, Lebanon, Mauritania, Morocco, the Palestinian Authority and Tunisia) in respect to the OECD Regulatory Policy framework of: *i)* core policies; *ii)* systems, processes and tools; and *iii)* actors, institutions and capacities.

Key findings, key challenges

MENA countries in this report have started to implement various regulatory reform initiatives and programmes. However regulatory policy is still a new concept and approach within MENA countries (see Box 2.1 on *Regulatory policy and governance in Arabic: Challenging concepts*).

The MENA countries in this report do not have an explicit regulatory policy or whole-of government approach to regulating. While other ***core policies*** such as on open government and individual regulatory reform initiatives are being implemented, the lack of a core regulatory policy has contributed to the absence of a simple whole-of-government approach and programme. A simple regulatory policy would assist in better co-ordination and implementation of regulations.

Many of the regulatory reform programmes implemented have been to simplify the stock of regulations. Regulatory Impact Assessment (RIA) is still a new regulatory ***system, process and tool*** that only some MENA countries have begun to introduce. A sophisticated RIA system and methodology is not appropriate for countries implementing RIA for the first time. Other systems of regulatory management have yet to be implemented such as regular performance assessments of regulations, communication strategies and regulatory delivery reforms focussing on regulatory agencies, inspections and enforcement. These should also be phased in but according to the individual country need, capacity and context.

The institutional mechanism for implementing regulatory reform programmes varies across the MENA countries in this report. The ***actors, institutions and capacities*** employed have been dependant on the political economy of country contexts. OECD experience shows that a central oversight body for co-ordinating, implementing, monitoring and evaluating regulatory policy is a key institutional mechanism for successful reforms, but this type of body does not exist within the MENA region.

Conclusion: Sustaining regulatory policy and governance reforms

The MENA countries in this report are to be recognised for the programmes and initiatives that have been implemented to date. In most OECD countries, regulatory policy was implemented gradually and over a number of years. The important message from OECD country experience is that regulatory policy and governance will yield most results when pursued over a long period of time. It is a long-term endeavour to improve the regulatory environment for the benefit of society, the environment and the economy. Therefore the MENA countries should strategically prioritise their efforts and increase these with time, according to their specific context.

Another important lesson to learn from OECD country experience is that *ad hoc* programmes of regulatory reform have only limited achievements. To maximise the impact of those programmes, a comprehensive and systemic approach to improving the regulatory governance of the regulatory environment will achieve better results.

Finally, regulatory reform initiatives involve openness and stakeholder engagement and as such provide the opportunity to engage and manage the expectations of change. The RIAs provide a system for obtaining comments and inputs into new legislation. Through consultative mechanisms, administrative simplification programmes should identify the regulations that are most burdensome and irritating for stakeholders. Enforcement and inspection reforms seek to raise the standards of inspections and encourage more risk-based compliance methods that are more efficient for both the regulator and the regulated entity. The communication and engagement within such activities helps to address the perception of regulation as well as the actual experience of regulation.

While there are many challenges ahead for countries in the MENA region, regulatory reform initiatives provide the opportunity to address some of these challenges through some internationally recognised practices. While these good regulatory practices may be tailored to cater for the unique situation of MENA countries, their objective remains the same: improving the regulatory environment to have *better polices for better lives*.

Chapter 1

Relevance of regulatory policy for MENA

This chapter serves as the basis to understand the relevance of regulatory policy for the MENA region. It introduces the concept of regulatory policy and its relevance to MENA countries in pursuit of better governance. It then examines how OECD regulatory policy principles – as contextualised and endorsed by MENA countries through the Regional Charter and 2012 OECD Recommendation – can help guide efforts in the region. The chapter concludes that regulatory policy is gaining in importance and therefore this report seeks to investigate its implementation in MENA countries.

Box 1.1. **What is regulatory policy?**

Regulatory policy can be defined as an explicit policy to ensure high-quality regulations. Its objective is to establish regulatory frameworks that serve the public interest.

Regulatory policy is an integral part of effective public governance as it contributes to achieving goals such as transparency, legitimacy, accountability, and trust in government, efficiency and policy coherence.

An effective regulatory policy supports economic, social and environmental developments and the rule of law, helping policy makers to reach the policy objectives and to decide on what to regulate, whom to regulate, and how to regulate.

MENA countries have taken a number of important steps to enhance governance, as documented in OECD (2010). They have achieved considerable results in recent years in reinforcing institutions and modernising legal frameworks; they also introduced policy tools to enhance the quality of the regulatory environment. The regulatory environment can be described as the space and framework within which individuals, institutions, organisations and groups interact for the functioning of society, the economy and the environment in order to achieve growth and development (see Figure 1.1).

Figure 1.1. The regulatory environment
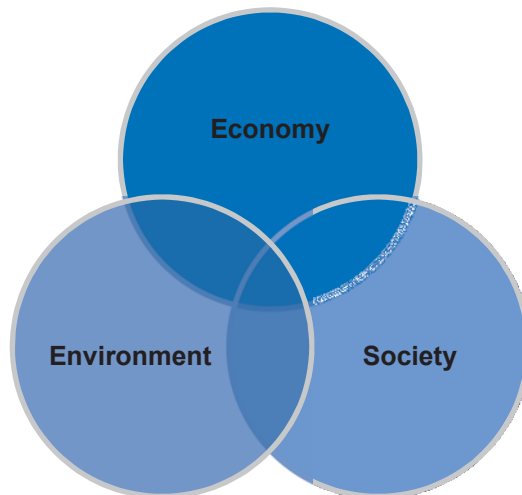
Similarly to OECD country experience (see Figure 1.2), these regulatory reform efforts have largely been driven by the desire to attract foreign investment and enhance their competitiveness, based on a growing recognition that weak public governance discourages foreign investment and holds domestic companies back. However, many governance reforms have fallen short of public aspirations as manifested in the political and social changes that swept through many countries of the region in 2011.

This chapter serves as a basis to understand the relevance of regulatory policy for the MENA region. It is divided into three sections. The first section highlights the new challenges and pressures faced by MENA countries in the light of rising expectations for better governance to ensure more equitable growth, transparency and accountability. The second section examines the 2009 Charter endorsed by MENA countries in pursuit of better governance and how it has helped guide efforts at regulatory reform in the region.

Figure 1.2. Main motives for reform
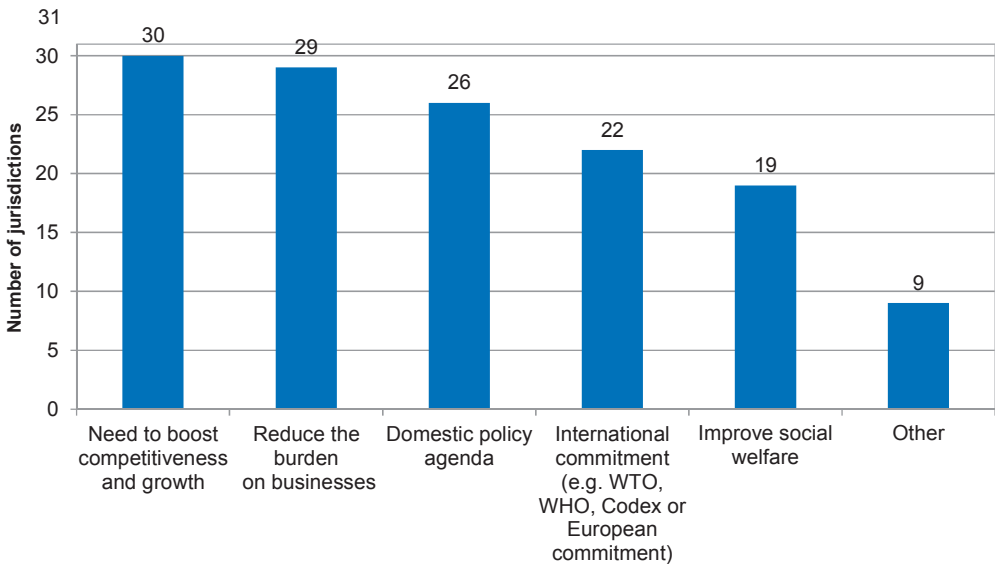
Note: Data presented for the 30 OECD member countries and the European Union.

Source: OECD (2008), "OECD Regulatory Management Systems' Indicators Survey 2008". www.oecd.org/regreform/indicators, accessed 20 May 2013.

MENA region: Finding stability

Most countries of the MENA region have experienced more public engagement over the past two years. The region has witnessed political unrest and changes in some regimes, amid calls for reform to overcome certain common challenges such as unemployment, poverty, corruption and uneven distribution of income.

The public demanded more participation in the political process, accountability and transparency, as well as better public services. Revolutions in Tunisia, Egypt and Libya resulted in regime changes. This was followed by free elections, which enjoyed the largest turnout that these countries have ever had. The three countries have also rewritten their Constitutions.[1] Regimes in other MENA countries, such as Jordan and Morocco, have also been introducing reforms.

The political and social transformations have resulted in a transition period aimed at building more democratic government systems. There are various reform processes that are underway to address the economic, social and political priorities in MENA countries. Regulatory reform can be seen as one important building block for transforming and establishing the state apparatus.

Like many other places, there are a variety of internal and external factors that drive regulatory reforms in MENA countries. The first generation of regulatory reforms were mainly driven by the internal and external desire to develop the economy and reduce barriers to private sector growth. The increasing use of international rankings and greater collaboration with international conventions, in particular, have highlighted areas of governance needing attention, motivating and assisting governments to take action on a broad front (OECD, 2010).

The second generation of regulatory reforms is more related to growing internal pressure to meet the expectations and aspirations of the public for better governance. This includes the call for more political freedom and participation in decision making, tackling corruption and a more equitable distribution of wealth. This new wave of expectation requires a different approach of governance that should concentrate not only on managing these new expectations, but including managing the change process itself. This requires a change in the style of regulatory governance from factory style law-making institutions to institutions that improve the quality of the regulatory environment and define the parameters (and rules) for the functioning of society, the environment and the economy.

1.   Morocco also drafted a new Constitution to meet public demands for better governance, and Jordan introduced constitutional reforms.

The OECD framework for Regulatory Policy and Governance identifies three elements for regulatory reforms: *i)* core policies; *ii)* systems, processes and tools; and *iii)* actors, institutions and capacities. These have been used to assess the progress of countries in this report in implementing regulatory policy. This provides the basis for the normative framework of analysis within this report.

Figure 1.3. Regulatory policy and governance framework

Actors, institutions and capacities: The functions and roles within different bodies and capacities that are responsible for implementing, monitoring and enforcing the delivery of a high quality regulatory environment.

Core Policies: Strategic government statements of orientation that define the underlying principles of regulating and

Core Policies

Actors, Institutions and Capacities

Systems, Processes and Tools

Systems, processes and tools: Practices and procedures that are designed and implemented to ensure regulatory quality.

Commitment to the Regional Charter for Regulatory Quality

OECD promotes better policies for better lives. Two elements form the cornerstones of "better policies", which are: participation and accountability. Enhancing public participation allows governments to meet people's needs and expectations better. Involving stakeholders also helps to manage the expectations and include them as part of the process of change. Ensuring accountability in policy making is equally important in establishing citizens' trust in their institutions and governments. In order to make sure that the principles of good governance are effectively translated into better policies for better lives, these two elements of participation and accountability should be strategically integrated into the reform process.

The 2009 Charter urges MENA countries to recognise that regulatory reform should be embedded in a broad strategy with a whole-of-government perspective. In addition to the importance of sound co-ordination between the different institutions involved in the regulatory processes which is essential to ensure policy coherence and maximise the use of resources in order to achieve policy objectives. To do so, countries are committed to strengthening co-ordination mechanisms inside the administration and to clarify the responsibilities and roles of participating institutions.

Box 1.2. **What should regulatory policy initiatives contain?**

- Political support to sustain regulatory reform initiatives and allocate necessary financial resources.

- Explicit and measurable regulatory quality standards to be achieved in the regulatory management system.

- Provide for continued regulatory management capacity beyond short-term reform initiatives.

- Adequate resources and regular monitoring of progress achieved.

- Being embedded in comprehensive programmes with a whole-of-government approach.

- Clearly stated objectives and the adopted measures and tools to achieve set goals.

- Flexibility to adapt to countries' specific contexts in order to maximise their successful implementation.

- Co-ordination between the various institutions involved in the regulatory processes.

- Efforts to develop a communication strategy with stakeholders using various methods in order to reach a wider audience and ensure a good understanding of the government's actions.

Source: OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, doi: 10.1787/9789264116573-en.

In addition, countries stressed that regulatory reform should be supported at the highest political level to promote consideration of regulatory policy, tools and institutions as a whole, and to communicate strategies and benefits to the public effectively.

However, OECD country experience shows that it is critical to have an institutional champion or home for the promulgation of good regulatory practices. The absence of such an institutional grounding makes it difficult for the political capital invested in reforms to be rooted and gather momentum on a long-term basis. As such any short-term gains from reforms are at risk of being overturned, or worse, regressing from the pre-reform situation.

Box 1.3. The OECD MENA Regional Charter for Regulatory Quality[1]

Countries recognised that a "(…) good regulation should:

i)   serve clearly identified policy goals, and be effective in achieving those goals;

ii)   have a sound legal and empirical basis;

iii)   produce benefits that justify costs, considering the distribution of effects across society, and taking economic, environmental and social effects into account;

iv)   minimise costs and market distortions;

v)   promote innovation through market incentives and goal-based approaches;

vi)   be clear, simple and practical for users;

vii) be consistent with other regulations and policies; and

viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels."

Note: The Regional Charter for Regulatory Quality was submitted for approval during the MENA-OECD Ministerial Conference held on 23 November 2009 in Marrakesh. The endorsement of the Charter means an acceptance of general principles for regulatory quality in a non-binding manner. Each country is responsible for integrating those principles in its regulatory management system.

Source: OECD (2009), "OECD MENA Regional Charter for Regulatory Quality", www.oecd.org/mena/governance/45187832.pdf, accessed 10 November 2012.

Over the past five years, regulatory policy has become an increasing important issue for public sector reform in MENA countries. An increased awareness of the importance of regulatory policy has been nurtured through advocacy efforts and inner evaluations of the state. The increased interest in developing regulatory policy and ensuring good quality regulation in these countries has been observed through attendance at the meetings of the OECD Regulatory Policy Committee and MENA countries' involvement in the activities of the Working Group on Regulatory Reform of the MENA-OECD Governance Programme, for instance the development of policy instruments such as the Regional Charter for Regulatory Quality (Box 1.3).

The principles of the Charter were reflected in the 2012 *Recommendation of the Council of the OECD on Regulatory Policy and Governance*. This document is the first comprehensive international statement on regulatory policy since the global financial and economic crisis. The crisis has uncovered major failings in governance and regulation, which have undermined trust in public and private institutions alike. The Recommendation:

- provides governments with clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards;

- advises governments on the effective use of regulation to achieve better social, environmental and economic outcomes; and

- calls for a "whole-of-government" approach to regulatory reform, with emphasis on the importance of consultation, co-ordination, communication and co-operation to address the challenges posed by the inter-connectedness of sectors and economies.

This report investigates the current level of engagement and progress with the Charter and regulatory policy as a whole, given the changes and current priorities within the MENA region. Regulatory policy may still be a relatively new concept within some MENA countries. However, the current situation of public engagement and the pressure for better governance, together provide an opportunity for countries to embed regulatory policy and governance principles in policy-making. This will help countries to meet the expectations that have been raised across the region by recent events and future needs.

Box 1.4. **OECD 2012 Recommendation of the Council on Regulatory Policy and Governance**

- Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.

- Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis.

- Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.

- Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.

- Integrate regulatory impact assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals.

- Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.

- Conduct systematic programme reviews 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 and consistent, and deliver the intended policy objectives.

- Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as RIA, public consultation practices and reviews of existing regulations are functioning in practice.

Box 1.4. **OECD 2012 Recommendation of the Council on Regulatory Policy and Governance** (*cont.*)

- Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.

- Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions.

- Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.

- As appropriate, apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.

- Where appropriate, promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.

- Foster the development of regulatory management capacity and performance at sub-national levels of government.

- In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

Bibliography

OECD (2012), "Recommendation of the Council on Regulatory Policy and Governance", OECD, www.oecd.org/gov/regulatory-policy/2012 recommendation.htm, accessed 10 July 2013.

OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, doi: 10.1787/9789264116573-en.

OECD (2010), *Progress in Public Management in the Middle East and North Africa: Case Studies on Policy Reform*, OECD Publishing. doi: 10.1787/9789264082076-en.

OECD (2009), "OECD MENA Regional Charter for Regulatory Quality", www.oecd.org/mena/governance/45187832.pdf, accessed November 2012.

OECD (2008), "OECD Regulatory Management Systems' Indicators Survey 2008", www.oecd.org/regreform/indicators, accessed 20 May 2013.

Chapter 2

The OECD framework
for regulatory policy and MENA

This chapter discusses the concept and practices of regulatory policy according to OECD countries and engages in the contextualization of the notion and term for regulatory policy in the MENA region. Three elements constitute regulatory policy and governance: i) core policies, ii) systems, processes and tools, and iii) actors, institutions and capacities. The chapter presents each element and discusses the importance of an explicit whole-of-government policy as well as transparency in the context of the implementation of regulatory policy principles in the MENA countries.

The focus of regulatory reform, which aims at improving national economies and enhancing their ability to adapt to change, has evolved over the past 15 years. The focus of the first OECD recommendations in 1995 was on providing guidance to member countries to improve regulatory policies and tools, strengthen market openness and competition, and reduce regulatory burdens.

By 2012, it has been acknowledged that reducing the scale of government and/or removing unneeded regulations through single isolated initiatives are not enough to create a regulatory environment conducive to growth and efficient functioning of markets and competition while meeting important social and environmental goals. It was recognised that this requires a "whole-of-government" approach to regulatory reform, with emphasis on the importance of consultation, co-ordination, communication and co-operation to address the challenges posed by the inter-connectedness of sectors and economies.

Figure 2.1. "Whole-of-government" approach to regulatory reform
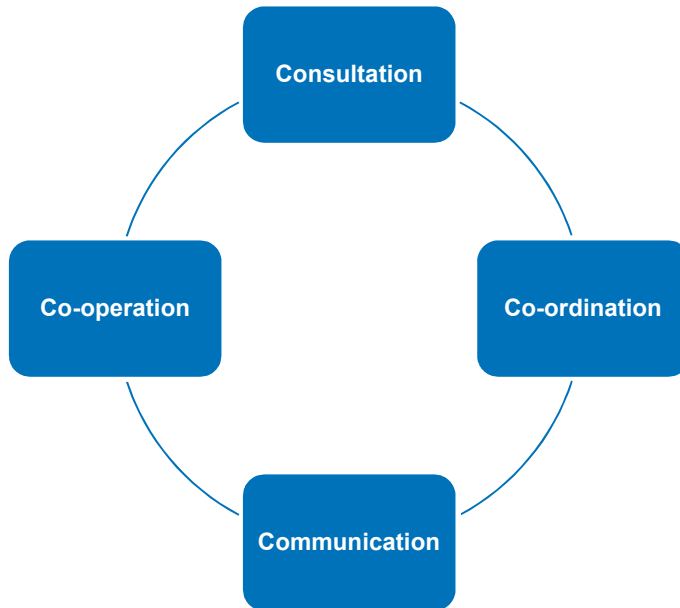
This chapter provides more detailed information about what regulatory policy is according to the OECD and engages in some of the contextualising debates on the notion and term for regulatory policy in Arabic for the MENA region.

Regulatory policy and governance: A new concept for MENA

Many countries have undertaken legislative, economic and public administration reforms. While some of them are similar and overlap with regulatory reform they are not exactly the same. Regulatory policy is a relatively new field of public governance. Therefore even in the Arabic language this can be confusing.

Box 2.1. Regulatory policy and governance in Arabic: Challenging concepts

There has been a step change in OECD countries' concept of regulatory policy over the last ten years, from legal quality as the reference point, to regulatory quality, a much broader and more fundamental concept. Regulatory quality is now recognised as an important part of effective public governance. There is a general consensus on the importance of only supporting regulation that is effective and necessary. In this sense, regulatory policy is an explicit, dynamic, and consistent "whole-of-government" policy to pursue high-quality regulation, which is not necessarily confined to "command and control" regulations but includes all instruments used by governments to influence the behaviour of private or public actors in society (OECD, 2009a).

The translation of "regulatory policy" does not correspond to the same meaning in *Arabic*. Regulations in Arabic refer to different types of "command and control" rules issued by the head of the state, Parliament or government agencies. In this context, regulatory reform is more about the review of regulations from a legal perspective, with regard to their constitutionality and the elimination of legal contradiction or overlap among regulations. This is of particular relevance for the review of the massive stock of regulations, which have accumulated in most countries of the region over time from different historical eras and political and economic systems.

However, this narrow and legalistic conception of regulatory policy and reform overlooks limitations of regulatory policy implementation which are not necessarily related to legal issues such as the utility of some procedures or approvals of authorities. It also ignores the impact of new and existing regulations on those targeted by regulations, with tools that aim at producing quality regulations, like RIA or the Standard Cost Model (SCM). Furthermore, in this context there is no room for consideration of alternatives to regulations.

Box 2.1. **Regulatory policy and governance in Arabic: Challenging concepts** (*cont.*)

Related to this issue is the debate surrounding the concept of governance which is translated in three different ways (*al-hawkamah, al-hukm rachid, al-idarah al-rachidah*). *Hawkamah* is usually criticised for being an imported word whose meaning is not clear and does not have resonance in the Arabic language or culture. *Al-hukm al-rachid* and *al-idarah al-rachidah* are more acceptable though the former is perceived by some as more related to the political system.

Thus, Arab countries face a challenge in contextualising the concepts and tools of regulatory policy and governance to move away from their narrow meaning towards a much broader one internalised by policy makers and society and not imported from another culture or political system.

Source: OECD (2012a), presentation prepared by Faisal Naru, Tareq Touqan, and Rania Filfil, for the *12th Annual Conference on Good Governance and the Establishment of the "Institution-Based State"* organised by the Arab Administrative Development Organisation (ARADO), Cairo, Egypt, 9 September.

The OECD framework identifies three elements that constitute regulatory policy and governance:

1. **Core policies:** strategic government statements of orientation that define the underlying principles of regulating and governing.

2. **Systems, processes and tools:** practices and procedures that are designed and implemented to ensure regulatory quality.

3. **Actors, institutions and capacities:** the functions and roles within different bodies and capacities that are responsible for implementing, monitoring and enforcing the delivery of a high-quality regulatory environment.

The 2012 Recommendation provides detailed guidance on each of the three elements. This is demonstrated in Table 2.1.

The **core policies** of an explicit whole-of-government approach to regulating, provides the political leadership and co-ordination to manage the regulatory environment. It provides the overall body of government with the clear statement of intent to focus on improving the regulatory quality as a *collective*.

Effective and efficient regulatory policy and governance depends on the use of specific **systems, processes and tools** that support the design and implementation of regulation. It includes systematic procedures for making regulations and administrative procedures for the management of rule-making as well as other tools to secure the quality of regulations, such as guidance for legal drafting and use of plain language drafting. There are also various methods that can be introduced to improve the development of new regulations and to simplify and manage the existing stock of regulations.

However, OECD experience has shown that without the appropriate **actors, institutions and capacities** enabled and empowered to manage and implement the systems, processes and tools, then regulatory policy is difficult to implement.

**Table 2.1. 2012 Recommendation of the Council
on Regulatory Policy and Governance**

Core policies	Systems, processes and tools	Actors, institutions and capacity
Explicit policy on regulatory quality	Integrated RIA	Regulatory oversight
Communication, consultation and engagement	Reviews of the regulatory stock – *ex post* regulatory evaluation	Organisation of regulatory agencies
Risk and regulation	Reviewing performance of regulatory reform programmes and regulatory policy	Regulatory management capacity at sub-national level
Regulatory coherence across levels of government	Administrative and judicial review	International regulatory co-operation

Source: OECD (2012), "Recommendation of the Council on Regulatory Policy and Governance", www.oecd.org/gov/regulatory-policy/2012recommendation.htm, accessed 10 July 2013.

Promoting regulatory policy with a whole-of-government approach in MENA

The Charter emphasises the importance of commitment at the highest political level to an explicit whole-of-government policy for regulatory quality. This was further reinforced in the 2012 *Recommendation of the Council on Regulatory Policy and Governance*, which proposed that such a policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, distributional effects are considered and the net benefits are maximised. An explicit policy to ensure that regulations and regulatory frameworks serve the public interest should commit governments to:

- adopt a continuous policy cycle for regulatory decision making, from identifying policy objectives to regulatory design to evaluation;

- use regulation when appropriate to achieve policy objectives, applying the *Recommendation of the Council on Improving the Quality of Government Regulation* [C(95)21/FINAL];

- maintain a regulatory management system, including both *ex ante* impact assessment and *ex post* evaluation as key parts of evidence-based decision making;

- articulate regulatory policy goals, strategies and benefits clearly;

- systematically review the stock of regulations periodically to identify and eliminate or replace those which are obsolete, insufficient or inefficient;

- develop, implement and evaluate a communications strategy to secure on-going support for the goals of regulatory quality.

Many MENA countries will not require such an elaborate or sophisticated whole-of-government regulatory policy. At the initial implementation a policy that captures core good regulatory practice principles will be more appropriate. And having the political buy in from key decision makers such as Ministers and senior officials will be important in making sure the policy is implemented across the public administration.

Improving transparency in the regulatory process

The Charter affirmed the importance of procedures for consideration of new regulations and laws, which must be clearly stated. These procedures should promote transparency, administrative certainty and due process. Consultation, which is a key tool in promoting transparency in the regulatory process, should be broadly based and balanced amongst different interest groups. Consultation processes themselves must be transparent and responsive.

According to the 2012 *Recommendation of the Council on Regulatory Policy and Governance*, government should adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. In many OECD countries, consultation on draft laws is mandatory (Figure 2.2).

In fact, public consultation is an inherent aspect of regulatory policy and Regulatory Impact Analysis (RIA) as it assures that input from stakeholders assists political decision making. Seeing consultation as an integral part also serves to tackle the "general hesitation among policy and decision makers about the use of public consultation" (OECD, 2013).

Figure 2.2 Characteristics of formal consultation processes used by central governments, 2008
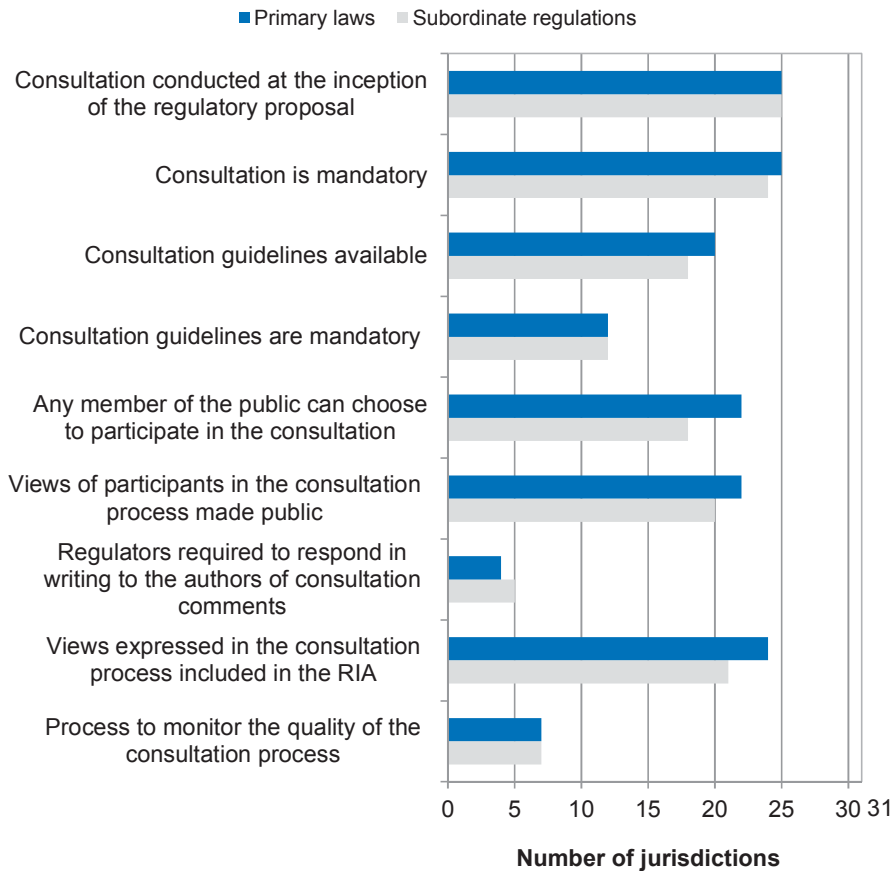
Accordingly, this includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis.

Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place. Governments should co-operate with stakeholders on reviewing existing and developing new regulations by:

- actively engaging all relevant stakeholders during the regulation-making process and designing consultation processes to maximise the quality of the information received and its effectiveness;

- consulting on all aspects of impact assessment analysis and using, for example, impact assessments as part of the consultation process;

- making available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data;

- structuring reviews of regulations around the needs of those affected by regulation, co-operating with them through the design and conduct of reviews including prioritisation, assessment of regulations and drafting simplification proposals;

- evaluating the competitive effects of regulation on various economic players in the market.

Governments may also introduce regular performance assessments of regulations and regulatory systems, taking into account, among other things, the impacts on affected parties and how they are perceived. Furthermore, the results of these assessments should be communicated to the public. In addition countries may also look at whether the policies and practices for inspections and enforcement respect the legitimate rights of those subject to the enforcement. It may investigate the design of inspection regimes to maximise the net public benefits through compliance and enforcement strategies and avoid unnecessary burdens on those subject to inspections.

Bibliography

OECD (2009a), "General Perspectives from the First EU 15 Reviews", OECD, www.oecd.org/regreform/regulatorypolicy/44983092.pdf, accessed 3 January 2013.

OECD (2009b), "Indicators of Regulatory Management Systems", www.oecd.org/gov/regulatory-policy/44294427.pdf, 20 May 2013.

OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing. doi: 10.1787/9789264116573-en.

OECD (2012a), presentation prepared by Faisal Naru, Tareq Touqan, and Rania Filfil, for the *12th Annual Conference on Good Governance and the Establishment of the "Institution-Based State"* organised by the Arab Administrative Development Organisation (ARADO), Cairo, Egypt, 9 September.

OECD (2012b), "Recommendation of the Council on Regulatory Policy and Governance", www.oecd.org/gov/regulatory-policy/2012recommendation.htm, accessed 10 July 2013.

OECD (2013), "Regulatory Consultation: A MENA-OECD Practitioners' Guide for engaging stakeholders in the rule-making process", OECD.

Chapter 3

Regulatory policy and governance in MENA

This chapter analyses the implementation of regulatory reform in the MENA region and its challenges. In particular it looks at the reform process in the region in investigating i) the drivers of reform ii) core policies, iii) systems, processes and tools, and iv) actors, institutions and capacities. It discusses how core policies such as open government and engaging stakeholders through consultation can support regulatory transparency and reform. Tools such as RIA, administrative simplification and e-government have further been harnessed in the MENA region to reduce regulatory burdens. The chapter concludes that, notwithstanding the progress, a whole-of-government approach remains a challenge to implement coherent regulatory policy.

The analysis in this chapter highlights the reform progress made by MENA countries under review in respect to the 2009 Charter and 2012 OECD Recommendation discussed earlier. The report draws conclusions from the individual country reports and further research to draw common themes and challenges that are applicable across the region, while acknowledging the need for further country specific analysis and reviews given the variances across the region.

This chapter analyses the following aspects of regulatory policy within MENA countries in this report:

1) The drivers of reform

2) Core polices;

3) Systems, processes and tools;

4) Actors, institutions and capacities;

Drivers of reform

MENA countries have achieved important progress in developing and launching **regulatory reform programmes** over the past years. Different approaches or solutions have been introduced by MENA countries to enhance regulatory quality, such as specific initiatives created to review the stock of regulations or programmes organised by ministries targeting specific legislation or regulatory issues (mostly business related), such as insurance, access to information or procurement. Several governments in the MENA region have expressed an explicit commitment to regulatory reform and recognised its significant role in economic development.

For instance, the National Agenda for 2007-2017 on political, social and economic reform, introduced by the King Abdullah II of **Jordan** in 2005, has as an objective the creation of a favourable investment environment. The agenda proposes to reach this goal by lowering trade barriers, reducing administrative burdens, increasing the quality of regulations, which will all contribute to the competitiveness, accountability and transparency of regulations. **Mauritania**'s new Investment Code also aims at simplifying and shortening administrative procedures to improve the conditions for the creation of new business. **Egypt** is considering re-establishing its regulatory reform agenda, previously known as the ERRADA initiative – Egyptian Initiative on Regulatory Reform and Development Activity – (see below), which aims at enhancing the business environment through better regulations.

In **Lebanon**, on the other hand, international agreements have had an impact on driving the regulatory reform process. Many initiatives to develop the regulatory framework on matters such as illicit enrichment, public procurement law, access to information, public-private partnership are promoted and guided by agreements with WTO, UNCAC and with other international organisations.

With the advent of the Arab Spring, however, regulatory reform has become more citizen-focused and driven by public demand. For example, **Tunisia** and **Egypt** drafted new Constitutions through a long process of civic engagement and controversy regarding the composition of the constituent assembly and some articles of the constitution pertaining to the nature of the political system, freedom (particularly of the media) and gender equality.

Jordan introduced constitutional amendments that expanded the powers of the Parliament and reduced those of the government by reducing the ability of the government to issue temporary laws during parliamentary holidays and to dissolve Parliament without resigning itself. A constitutional court was set up to monitor the constitutionality of laws and regulations. The members of the constitutional court are appointed by Royal Decree.

Morocco's new Constitution, introduced in 2011, establishes that Morocco is a constitutional monarchy with a democratic and decentralised system of governance and an independent judiciary. It also lays the foundations for laws that guarantee civic engagement and access to information which is currently under elaboration.

During a national colloquium in June 2013 and through the online platform of the General Secretariat of the Government (*Secrétaire Général du Gouvernement* - SGG), the draft law on access to information has been consulted with civil society actors, international experts including the OECD and all relevant Moroccan stakeholders.

In the Governmental Declaration approved on 26 January 2012, the Moroccan government also recognised regulatory reform and administrative simplification as crucial to ensure economic sustainable growth.

In order to improve the efficiency and the performance of the public administration, the government is planning implementing a broad programme of reforms including simplification of administrative procedures for the benefit of citizens and businesses.

The Government Programme 2012-16 makes explicit reference to regulatory reform in Morocco. It identifies 232 new laws or amendments to be made in the above-mentioned period and improve the regulatory policy system to include regulatory impact assessments (RIA) and *ex post* quality

controls. The aim is to increase stakeholder involvement, speed-up the law-drafting process, improve transparency and access to information as well as the capacities of regulators.

Bahrain also made some amendments to the Constitution that require the King to consult with the Speaker of Parliament, the Chief of the Shura Council and the President of the Constitutional Court before dissolving the Parliament. Moreover, these amendments give the Parliament the right, acting alone, to pass a no-confidence vote against the Prime Minister and submit the matter to the King, who is the final authority to decide on whether to dismiss the Prime Minister. However, opinions in Bahrain diverge if these measures are sufficient to improve citizen satisfaction with the governance arrangements.

The regulatory policy and governance field is relatively new not only in the MENA region but also among some OECD countries. Countries that have had greater success at implementing regulatory policy are those that have recognised it as part of the reform process. Of course it supports other reform efforts (e.g. legal and administrative) but it is recognised that managing the regulatory environment is a policy discipline itself that requires political commitment from the highest levels to make a significant impact.

The link has not yet been made between public expectations and the potential gains from good regulatory practices. If this link is established, greater political impetus may follow to invest in regulatory reform targeted towards achieving the newly set priorities for many MENA countries.

Core policies

Many MENA countries are implementing programmes and initiatives to support core policies in the pursuit of greater regulatory transparency. Initiatives on open government and introducing communication processes into law making are most common. Explicit policies on a government-wide approach to regulation, risk and regulatory coherence do not exist. OECD good practices show that having the fundamental commitments toward regulatory policy, risk and coherence will underpin and strengthen programmes on regulatory transparency.

Open government in MENA

Open government can help strengthen trust and build indispensable support for reform. Greater engagement with citizens and civil society is a key part of open and transparent government as equally promoted by the Open Government Partnership of which Jordan is a member and other

MENA countries are aspiring to join.[1] Open government can also lead to more direct and effective engagement with citizens, civil society and businesses. Reaffirming the core values of the public sector will help improve public sector performance.

Among the main mechanisms for increasing openness of government are innovation and public consultation. Promoting and enabling an environment conducive to innovation (through use of ICT tools) is crucial to generating a dynamic public sector focused on performance and greater productivity at no additional cost. The wide sharing of information electronically across sectors and boundaries within the public sector is critical to fostering innovation and reducing administrative burdens (OECD, 2010b).

Public consultation supports an open government that adheres to the right of people to know and participate. However, public consultation is a demanding process that requires both a change in the organisational structure and in the administrative culture towards a participatory governance system (OECD, 2011a, 2013).

Part of efforts to manage the stock is the maintenance of inventories for valid legislation, which is also considered to be a form of passive consultation through provision of information to the public. All countries under review at least publish primary legislation in the official gazette in print form and some of them (Jordan, Morocco and Egypt – though in the latter it is on subscription basis) have the official gazette available online as well. Many of them moved to making primary and secondary legislation available online through websites of individual ministries as well as through databases designed for this purpose.

The **Palestinian legal database, called Al-Muqtafi** (http://muqtafi.birzeit.edu), is one of the most developed in the region. It contains all legislation since the Ottoman period and it is continuously updated. Users are able to consult legislation enacted since the establishment of the Palestinian Authority and all legislation enacted over the past 150 years, including status and relations among pieces of legislation, full text of all laws in force and full text of regional and international legal documents relating to Palestinians. The *Court of Judgments Database* has been added to the database. It contains 23 000 judicial judgements issued by Palestinian high courts since 1994, the creation of the Palestinian Authority. According to the OECD study, more than 6 500 users from the Palestinian Authority are consulting the databases on a regular basis. As for the draft laws, they are distributed to agencies and ministries but in most cases not made available to the public.

In **Egypt**, the *Official Gazette* legislation is available electronically but it is based on subscription (for a fee). However, the draft primary and secondary legislation are not published prior to approval as according to the regulatory tradition in Egypt, legislation is considered confidential at the preparatory stage. In some cases, unofficial copies can be circulated and some stakeholders consulted (including concerned authorities) indirectly and informally, without consideration to representation of various points of view. Free online access to regulations was provided to the public by ERRADA in July 2011. The ERRADA e-Registry contains more than 34 000 regulations, comprising international agreements, laws, presidential decrees, prime ministerial decrees, ministerial decrees, governors' decrees, decisions of subordinate authorities and circulars.[2]

In **Jordan**, all texts related to the legislation issues, since the establishment of the country, are available on an online database available, maintained by the Legislation and Opinion Bureau Registry, and the Palace of Justice (www.lob.gov.jo/ui/main.html). Information on legislation can be accessed in several ways and at more than one level; the database is updated whenever a new legislation is issued.

This database was established by the National Information Centre (NIC), in co-operation with concerned parties. It includes the Constitution, laws and regulations, legal principles, explanatory laws, and agreements issued by virtue of this law. All legislations and amendments are continuously kept up-to-date, while keeping original texts, be they enacted or cancelled legislations, as of 1921 and until 2001. The system has been designed in a way to provide easy access to any legislation by using the number, year or subject of legislation to retrieve original texts and amendments leading to comprehensive amended texts including explanations, if any, and related legal principles. In addition, the *Official Gazette* is also available at the Prime Ministry's website (www.pm.gov.jo/arabic/index.php?page_type=gov_paper&part=1).

The **Tunisian** government makes primary and secondary legislation available to the public on the website: www.iort.gov.tn/. All regulations are posted on this website within three days from issue of a new regulation. In addition, the website of the National University Centre for scientific research and technique (*Centre national universitaire de documentation scientifique et technique*) allows for advanced search options for national regulations (www.cnudst.rnrt.tn). In **Lebanon**, several websites (public and private sector) publish the *Official Gazette* electronically such as: www.pcm.gov.lb/Cultures/ar-LB/Menu/ or www.legallaw.ul.edu.lb/luonline/security/index.aspx?culture=ar.

In **Morocco**, the *Bulletin Officiel* (BO) issues are available online at the General Secretariat of the Government website (www.sgg.gov.ma/historique_bo.aspx?id=982 and www.bocl.gov.ma/). The BO celebrated its 100th anniversary in 2012. The new piece of legislation is published in the BO two weeks after its approval.

In **Bahrain**, legislation is available electronically on the website of the Legislation and Legal Opinion Commission (www.legalaffairs.gov.bh/).

The *Official Gazetta* is accessible via subscription or purchase as well as workshops and the media are the main means of making legislation known to the public in **Mauritania**. An e-government portal is under construction while some legislation is already published on the website of the Prime Ministry (www.primature.gov.mr). However, draft regulation is not published online or widely but only circulated among the concerned stakeholders.

However, relying on the Gazette or online databases as the sole means to communicate with the public on new legislation is not enough. Effective communication needs to go hand in hand with raising awareness about the issues at stake in the enacted legislation. Many challenges remain with regards to reaching out to stakeholders in the surveyed countries.

Some countries started the practice of posting draft legislation on websites before being issued. For example, in certain cases in **Lebanon**, legislations are posted on websites or published in newspapers prior to being sent to the Parliament. In **Jordan**, regulation No. 5/2013, Article 9 of the Legislative and Opinion Bureau (LOB) was amended to oblige the LOB to publish any draft legislation for no less than 10 days to enable citizens and businesses to comment on it. The comments will be included in the file to be reviewed by the competent staff at LOB.[3] It is worth mentioning that the regulation was amended as part of the Jordanian national action plan for membership of the Open Government Partnership.

In **Morocco**, Edict No. 2.08.229 was issued in May 2009[4] in line with the Free Trade Agreement (FTA) signed with the United States. The edict stipulated that draft laws proposed by the government must be published electronically for consultation before submission to the Parliament. The government thus posts draft law proposals on the General Secretariat of the Government website (www.sgg.gov.ma/commentaire_fr.aspx?id=1102).

Engaging stakeholders: Consultation

MENA countries have also started to introduce consultation initiatives and mechanisms for regulatory policy. They are mainly addressed to civil servants, civil society organisations, and business associations. In the **Palestinian Authority**, communication takes place through open and specific meetings and surveys at the discretion of regulators.

In **Egypt**, a few communication mechanisms are being used, such as periodic publications, conferences, workshops and seminars. ERRADA also used its website and *ad hoc* publications on certain issues such as consultation and cost of regulations to communicate accomplishments of regulatory reform effort. In **Mauritania,** dissemination workshops are used to communicate regulation to the most concerned stakeholders.

Public consultation helps to improve the regulatory quality and governments' responsiveness to citizens and businesses. The use of consultation mechanisms is pivotal for collecting empirical information, measuring expectations, assessing costs and benefits, and identifying alternative policy options.

Moreover, stakeholders' involvement enables a transparent policy-making process and increases the level of social acceptance of decisions made by policy makers and, therefore, compliance.

Public consultation supports an open government and transparent rule-making process which can promote public confidence in government and increase the legal security for businesses and citizens, therefore strengthening the rule of law. It is, however, a demanding process and requires an organisational structure and an administrative culture towards a participatory governance system. It also requires human capacities and financial resources (OECD, 2011a; 2013).

In addition, information and communication technologies (ICT) have opened up new communication channels allowing the public at large to be engaged in democratic processes. Electronic consultation is defined as the use of ICT for the institutionalised submission of comments, observations, proposals and amendments on a subject or proposal for a regulation. E-consultation provides an opportunity to reach out to a broader audience. If properly applied, e-consultation and the use of ICT can reduce the burdens of consultation and encourage further participation (OECD, 2011a).

MENA countries recognised in the Regional Charter the importance of transparency in the regulatory and rule-making process. Countries agreed that consultation processes should involve different interest groups and be transparent and responsive. In addition, they committed themselves to have rule-making information accessible to the public by publishing all laws and developing electronically accessible websites to receive public comments on regulatory matters.

Figure 3.1. Forms of public consultation routinely used at the central government level for primary laws
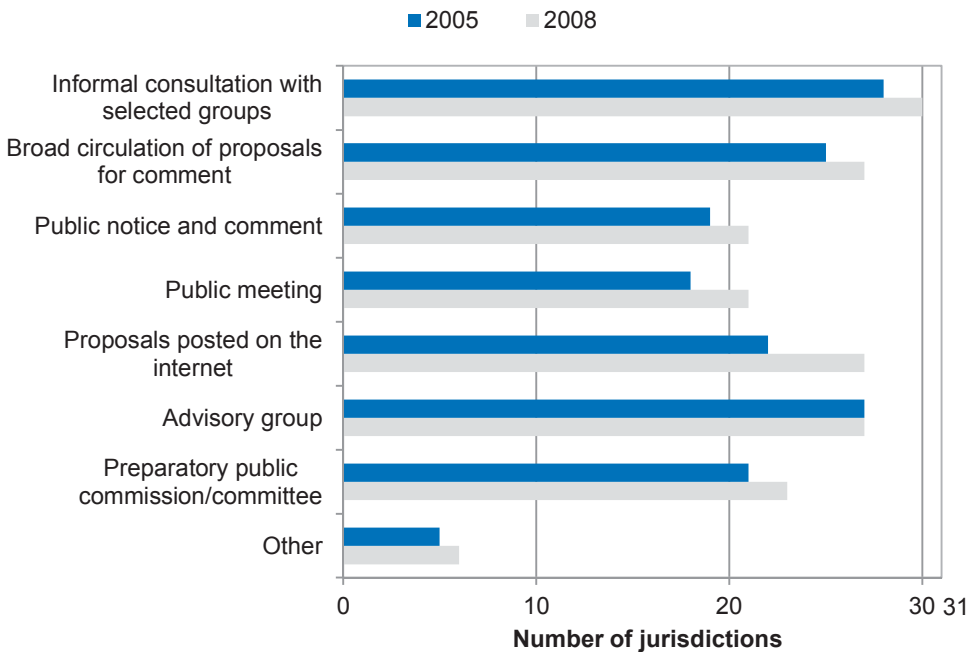
Source: OECD (2009), "Indicators of Regulatory Management Systems", www.oecd.org/gov/regulatory-policy/44294427.pdf, accessed 20 May 2013.

In this regard, there is indeed an important development in enhancing consultation mechanisms throughout the region. Most of the countries started to introduce consultations to give opportunities to the public to participate actively in the preparation of regulatory proposals and therefore to enhance the government's responsiveness and implement policies that will answer citizens' needs. In many countries, however, there are no explicit procedures or legal bases for the consultation processes. They usually take place informally and on an *ad hoc* basis. An important lesson to learn from

OECD country experience is that consultation should be systematic to ensure that affected parties have been properly consulted. In addition, governments should use a flexible and multi-channel approach that combines a range of consultation tools and forms to reach out to stakeholders. Figure 3.1 shows the most common forms of public consultation used in OECD countries at the central government level.

In **Lebanon**, there is no explicit requirement for consultations but they are conducted in practice. Relevant stakeholders are consulted during the development of draft laws or they take part in the committees drafting the law. Likewise, the government in **Bahrain** conducts consultation with stakeholders on legislation in preparation and their opinion is generally taken into consideration. However, this is not a legal requirement and is not done in a systematic way for all legislation according to set guidelines.

In **Morocco**, regulatory consultation is anchored in Decree No. 02-08-229 of 21 May 2009; however, consultation is not conducted in a systematic manner and is often limited to specific projects such as trade, e-commerce, public procurement and intellectual property rights. Consultation can take from 15 days to 2-6 months for large-scale projects. The new Constitution of Morocco empowers the public in the law drafting process by giving civil society the right to propose regulations (see also www.mcrp.gov.ma/formsc/defaultsc.aspx).

In **Egypt**, from time to time the government conducts limited *ad hoc* consultation on issues that have a significant impact on business or society. Consultations cover all regulations and no distinction is made between informal and formal consultations. However, because of its *ad hoc* nature, sometimes even relevant authorities and agencies are not consulted by the responsible ministry which contributes to weak enforcement after regulation has been implemented.

In fact, and in most MENA countries, policy deliberation is mainly limited to consultation within and among public agencies. For example in **Lebanon**, the draft law, prepared by the respective ministry is sent – after internal consultation with ministries that may be affected by the proposed legislation – to the Parliamentary Committee of Administration and Justice. This committee is in charge of reviewing the draft law and policy paper on its objectives. The parliamentary committee can ask for amendments if the proposed legislation does not meet the quality criteria. The committee may also call on the public to submit comments on the draft law. Consultation with stakeholders outside the government takes place through public hearings, as was the case for the consultation on the draft 2009 electoral law.

Equally, in **Mauritania,** consultation mainly involves the ministers and directors concerned, inter-governmental consultation is only systematically conducted on major reforms.

The consultation practice in MENA countries can range from phone calls to letters to informal meetings, and occurs at all stages of the regulatory process. Certainly, informal consultation can be less cumbersome and more flexible than formal consultation. The disadvantage of informal procedures is their limited transparency and accountability because the access by interest groups to informal consultations is entirely at the regulator's discretion. Informal consultation may therefore resemble "lobbying" with a high risk of regulatory capture by powerful interest groups (OECD, 2013).

Regulatory policy and transparent frameworks are of great importance in the transition processes to ensure open and accountable government. Public consultation may increase government legitimacy and can be a means to fill the democratic deficit and can help build the consensus needed to move forward whilst ensuring that the majority does not dominate the political process overlooking the interests of minority groups in society.

For example, in the **Palestinian Authority**, public consultation in the law-drafting process has contributed to filling the vacuum created by the absence of the Palestinian Legislative Council (OECD, 2011a).

In **Tunisia** and **Egypt**, two countries that have embarked on democratic transition, the elections were prepared by a Higher Authority that gains its legitimacy through consensus-building and including a broad range of civil society representatives in the decision-making process. Both countries need to strengthen their consultation practices in the coming period when preparing legislation in interpretation of their recently drafted constitutions.

Regulatory consultation is one of the priority areas in the **Palestinian Authority** (PA) and the government is increasingly engaging stakeholders in the rule-making process. This can be explained by the necessity to improve the legal environment which is one of the most complex due to the heavy historical legacy of various political regimes. Public consultation can therefore support the review of the existing stock of legislation, the quality of regulations and government's responsiveness to citizens and businesses.

A study on public consultation in the PA was completed in 2011 by the OECD and a publication on "Regulatory Consultation in the Palestinian Authority: A Practitioners' Guide for Engaging Stakeholders in Democratic Deliberation" was produced. The assessment shows that regulatory consultation is becoming an integral part of the legislative drafting process in the PA. There is a growing trend to engage the public in developing laws

on a more systematic basis since the adoption of the Government's Legislative Plan ("the Plan") for 2008-2012.

The Plan states that public consultations are necessary to assess needs and set priorities for legislative policy. In practice, consultation takes place through hearings and workshops in the specialised committees in charge of reviewing the draft laws and policy papers on its objectives. They are generally by "invitation only". As the Bureau of Legal Counsel and Legislation stressed, the public may submit comments in writing to the relevant institutions but feedback on comments received is not mandatory.

The process of making new legislation in **Jordan** is implemented through a sequence of steps that includes conducting several informal meetings or consultation roundtable meetings between government officials and various stakeholders, these meetings take place upon invitation from the government to selected individuals and are not open to the public. However, the recently adopted practice in Jordan requires legislation to be published and communicated with the public prior to approval, as a form of consultation practice, although there is no formal requirement for consultation with stakeholders. Draft legislation is posted on the LOB website for not less than 10 days (www.lob.jo/List_LawsLegislations_Public.aspx) for the public to provide their feedback online.

According to the 2012 Recommendation, governments should apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. MENA countries do not conduct risk assessments, hence regulations are often ineffective due to the absence of enforcement strategies. The use of risk-based approaches in the design and enforcement of regulatory compliance strategies will increase the likelihood of achieving compliance goals and minimise the imposition of costs on citizens and businesses through compliance and enforcement procedures. Enforcement strategies should be regularly reviewed against risk-based criteria to ensure that they incorporate lessons from past events.

Many MENA countries are focusing on core policies for greater regulatory transparency and accountability. This is rightly the current priority and responds to the demands of constituents. However encompassing these policies within a simple overarching regulatory policy would be beneficial and enhance the co-ordination and implementation of these policies.

Systems, processes and tools

Systems, processes and tools of regulatory governance facilitate co-ordination inside the administration to foster coherence across policy objectives. The most common tools that have been employed or considered by MENA countries are those to reduce the administrative stock of regulation and those to manage the creation of new legislation – Regulatory Impact Assessment (RIA).

Administrative simplification has mainly achieved a clean-up of many out-of-date laws and regulations. But the process of implementing such programmes has provided further benefits making institutions aware of good regulatory practices and principles in general.

These have often led to discussions about implementing RIA; however, this is still a very new tool in MENA. Indeed the understanding of RIA as a system that requires integration into the rule-making process has not been fully appreciated and as such is yet to gain traction politically. This is essential to ensure the current initiatives are not one-off projects whose positive impacts are eroded over time and hence the lack of the continuation of regulatory reform efforts.

There have been a number of E-government initiatives in the MENA region. Aligned to OECD standards, e-government programmes are generally well developed; however, the connection between the e-government systems and the regulatory systems, tools and processes has much untapped potential to deliver greater results to citizens and businesses.

RIA: A tool for quality check

One of the most important tools to assist policy makers in developing efficient regulation is the *ex-ante* impact assessment - RIA. RIA is a key policy instrument for collecting information about the potential effects of regulatory measures at the beginning of the policy cycle. It helps governments to assess the impacts of regulations, measure the likely benefits and costs, and effects before the adoption of a new regulation. As Figure 3.2 illustrates, the introduction of RIA has extended to most OECD countries in the last decade. By 2012, 33 OECD member countries have introduced RIA systems.

Ex ante impact assessment practices should be "proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear the costs."[5]

Moreover, RIA should also be conducted at the final stage of the policy process, once the regulation is enacted, to evaluate whether a regulation fulfils (can achieve) its intended objective. This contributes not only to justifying the regulatory action but also to strengthening transparency of the regulatory process, and therefore its credibility and public trust in the regulatory institutions and policy makers.[6]

Figure 3.2. Trend in RIA adoption across OECD countries
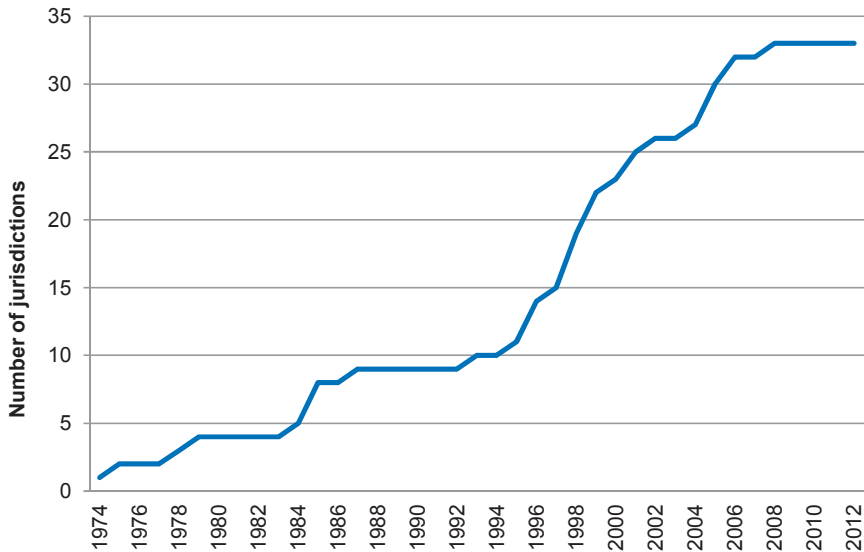
Note: This represents the trend in the number of countries with a formal requirement for regulatory impact analysis (beyond a simple budget or fiscal impact).

Source: Updated figure from OECD (2009), "Indicators of Regulatory Management Systems", www.oecd.org/gov/regulatory-policy/44294427.pdf, accessed 20 May 2013.

Evaluation of the policy problem and of the methods to solve it should also lead to consideration of alternative options to regulations. Governments need to ensure that the adopted regulation and mechanisms address the problem correctly and will achieve the objective efficiently. In this regard, the 2012 OECD Recommendation says: "*Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards."

Consultation processes to develop new regulations should be part of the RIA. Collecting stakeholders' views of those affected by a regulation contributes to enhancing the quality of information received for the RIA. As the 2012 OECD Recommendation stresses, RIA and consultation are

inherently connected. It can therefore constitute an important input for decision making whether to adopt a particular regulation or choose an alternative.

In addition, RIA should be supported at the highest level. This can be the responsibility of centralised institutional frameworks such as an oversight body or various regulatory institutions and line ministries. It is essential to ensure support of all institutions involved in the elaboration of legislation and rules.

Almost all surveyed MENA countries have launched programmes for better rule making and regulatory quality. RIA is one of the tools being developed, in many surveyed countries, but it is not systematically recognised and used. However, there are several limitations in this practice in MENA countries, as evident from questionnaires, with different perspectives and capacities arising in countries between stakeholders for the use and implementation of RIA.

In **Egypt**, the Constitution provides general guidelines for making new primary legislation explaining who has the right to present proposals to Parliament, who votes on it, who issues executive regulations. The detailed steps for developing a regulation are, however, not established and it is conducted according to norms and tradition. There are also no requirements for intra-governmental consultation but it is done in practice on laws as the proposing minister presents the proposal to the Cabinet before referring it to the Parliament. Regulators do not have to consider whether government action is justified. There are also no mechanisms that require impacts to be assessed. An effort to measure impacts was started by the government through ERRADA with much groundwork completed for implementing RIA, but this has not been implemented, although there are discussions ongoing.

Jordan introduced RIA to enhance the quality of legislation. This has been assigned to the Economic and Social Council established in 2009 with the aim of acting as an advisory body to the government on economic and social issues and policies. The council is mandated to assess the impact of existing and proposed economic and social legislation and consult relevant stakeholders in the process. In October 2012, Jordan established the Evaluation and Impact Assessment Unit to evaluate the formulation, programming, implementation and assessment of the national development plans. This Unit has provided specific evaluations of policies and programmes for the Government of Jordan.

In **Tunisia**, Circular No. 10 of 28 January 1988 states the process for the elaboration and presentation of drafts of primary and secondary legislations. Circular No. 14 of the Prime Ministry, published on 27 May 2011, includes

provisions about the procedures for making new regulations, aiming at improving the quality of regulations; this circular has now been superseded by a decree published on 14 August 2012.

The services of the advisor of the government for law and legislation in the Cabinet (*présidence du gouvernement*) are responsible for enforcing the procedures. When drafting a regulation or law, some kind of consultations are conducted, for instance consultation with the constitutional bodies such as the administrative court, consultation with the ministries concerned, consultation with the Competition Council on texts related to competition.

All drafts of regulations and laws are studied by the services of the advisor of the government for law and legislation in the presidency of the government to supervise their conformity with the law. Any draft law or regulation must have an explanatory memorandum (*un exposé de motifs*) which explains the reasons for drawing up the new text of a law or regulation.

For some drafts of laws or regulations, it is necessary to make a study of the environmental impact. However, Circular No. 14 requires that, for new laws or regulations, an assessment is made of the regulatory impacts. In practice, this requirement is made for a small number of laws and regulations and especially for an environmental impact study. Circular No. 14 requires the a study to be made with options that could be adopted before drafting a new law or regulation. Different kinds of impacts are considered depending on the laws or regulations, but most of them assess:

- social effects and especially employment;

- environmental impacts;

- financial impacts;

- impacts of the next law or regulation on reducing administrative burdens.

The decree issued on 14 August 2012 includes a training cycle, organised by the General Directorate of Administrative Reform within the Prime Minister's Office on RIA.

There are a few mechanisms in place to ensure the quality of legislation in **Morocco**. Legal texts that might have direct or potential financial implications are sent to the Ministry of Finance for approval while laws that deal with cross-cutting issues are sent to concerned departments for comments.

At this stage the initiating ministry conducts formal and informal consultations with various relevant stakeholders. Consulting the "High Council of Civil Service" is legally required for legislation related to civil servants. When compiling all comments and incorporating them into the draft, the initiating ministry sends the updated draft to the General Secretariat of the Government to examine conformity of the draft with the Constitution and consistency with the overall existing legislation.

The draft is then forwarded to all line ministries for comment. The more recent practice of engaging stakeholders in online consultation on government initiated law proposals (by posting the draft legislation and an explanatory note outlining the main additions or amendments) serves as a check on the quality of the proposed legislation. Stakeholders give their opinion on what impact they expect from the changes. However, this is limited only to the areas identified in Edict No. 2.08.229, which are:

- trade in goods including agricultural products and textiles;

- trade in services including financial and transport services;

- commercial procedures including those related to health and safety, rules of origin, customs, protective measures, technical barriers to trade, standards and specifications; and

- public transactions, investment, electronic trade, intellectual property rights, environment and labour law.

There is no requirement to conduct a cost-benefit analysis to assess the impacts of the proposed legislation on stakeholders or the economy and society at large. However, the government often commissions consultancies to conduct impact assessment studies in some sectors, such as renewable energy and energy efficiency.

In **Jordan**, the Legislative Opinion Bureau (LOB) issued a *Manual of Legislative Data Memorandum* which determines the rules that should be taken into consideration by the proposing party for the purpose of drafting laws and regulations. The LOB also issued *Guidelines for Studying Draft Laws and Regulations* which clearly identifies the steps for drafting laws and regulation, and the *Legal Basis Guidelines for Issuing Laws and Regulations*.

The **Palestinian Authority** has recently completed the first drafting manual for primary and secondary legislation in MENA countries. The manual promotes coherent and consistent legislative drafting techniques across legal departments that adhere to international standards. While the drafting instructions include RIA, impact assessments however are not yet conducted systemically in the PA (OECD, 2011b).

Mauritania is not yet using RIA systematically. For high impact regulations, ministries are requested to provide a summary on the social, economic, health, political and environmental effects of the regulation.

Managing the stock and administrative simplification

Reviews of the existing regulations should be systematic and reduce unnecessary regulatory burdens. They should include methods of regulatory impact analysis (e*x post* RIA) to help in identifying outdated laws and regulations. The reduction of administrative burdens also refers to cutting red tape created by excessive administrative procedures and requirements that involve unnecessary paperwork. Administrative burdens can be defined as "regulatory costs in the form of asking for permits, filling out forms, and reporting and notification requirements for the government."[7] Hence, they might cause an obstacle for citizens and businesses (especially SMEs) limiting investment, innovation and trade.

Administrative simplification is one of the most effective tools to reduce regulatory complexity and update the stock of regulations by identifying and weeding out outdated and inefficient laws and regulations. Its final objective is to provide good quality public services and to promote the rule of law and efficient economic environments. Various approaches are being implemented across the surveyed countries, such as consolidation, codification, reviews and revisions of the regulations, streamlining and process re-engineering. Administrative simplification policies can include *ad hoc* measures or can be embedded in comprehensive and long-term strategies and a whole-of-government perspective with clear objectives and measures and allocated resources.

The use of ICT tools supports administrative simplification. It simplifies government operations and reduces the costs of transactions. It also has benefits for citizens and businesses providing them direct and easy access to information on administrative services/obligations and in some cases the possibility of complying with the formalities required for a business activity. In this way, the use of ICT tools contributes to re-engineering existing traditional administrative processes and promoting efficient administrative systems.

Creation of one-stop shops, business portals and enterprise service counters, is certainly one of the key tools for facilitating access to information and making service delivery user-focused. One-stop shops provide a variety of services, ranging from the provision of information about the business environment and its requirements, to permit and license completion to start a business activity. It is important to stress the need to closely co-ordinate the efforts to introduce ICTs in administration and

administrative simplification. It is absolutely necessary to streamline and simplify administrative procedures *before* they are digitalised to make the reforms efficient and effective.

Regulatory burdens are also felt greater by SMEs who are disproportionately impacted by bad regulations. With unemployment high, particularly among the young in some MENA countries, SMEs are an important factor in the development of the economy and society. The regulatory framework in the MENA countries under review creates challenges to investment promotion, and SME growth. Faced with complex regulatory regimes, many SMEs prefer to stay informal in MENA. In the absence of sound regulatory systems, public officials do not have the tools or the capacities to develop good quality legislation for SMEs.

Box 3.1. **Reducing regulatory burdens for small and medium-sized enterprises (SMEs)**

Some initiatives have been taken to improve the regulatory framework, in particular the regulatory environment for business, but their results still need to materialise. For instance, to comply with the requirement of the new Constitution adopted in July 2011, the Government Programme 2012-16 in **Morocco** foresees a whole-of-government reform of the regulatory system with particular focus on the modernisation of the administration and improvement of the investment climate, also for SMEs. To this end, Morocco has launched a pilot project at the Ministry for Public Sector Modernisation to simplify 100 administrative procedures out of which 30 are directly concerned with making life easier for businesses.

Similarly, **Jordan** is undergoing a major reform of its public procurement legal framework in order to promote transparency and reduce the administrative burden and costs when engaging in government procurement. Part of these modernisation efforts is the intention to develop a new unified procurement system in order to meet international standards and best practices. These measures aim at facilitating SMEs' access to public procurement.

As part of this reform, the government of Jordan is consulting SMEs to understand their expectations and needs, notably through the involvement of SMEs' representatives in the revision of tender documents. The on-going reform is also tackling the organisation of procurement, in particular by setting up a control authority over procurement.

Egypt launched an electronic portal (http://etenders.gov.eg) at the national level to foster a level playing field for business (including SMEs). This portal currently allows registered bidders and interested citizens to download posted tenders free of charge. More than 70% of the government entities have so far received hands-on field training visits, completed online registration and currently using the e-Tender Portal. The portal will provide an opportunity for SMEs to access to government tenders easily as they would be posted online.

Box 3.1. Reducing regulatory burdens for small and medium-sized enterprises (SMEs) (*cont.*)

Recognising that public procurement and public-private partnerships can be used as policy instruments to promote the development of SMEs, the government of **Tunisia** has been facilitating access to public procurement. Several amendments were introduced to Decree No. 2002 3158 issued in 2002 as the legal reference for public procurement in 2008 and 2011.

The legal framework requests that 20% of the total value of public procurement should be set aside for SMEs. Furthermore, favourable financial conditions are provided to SMEs to facilitate their participation in tenders such as the exemption of provisional bonds for SMEs (during the five first years of their establishment), and the granting of a mandatory advance of 20% of the contract.

In addition, the Government of **Mauritania** has focused on the development of SMEs in adopting a Code on public procurement and a Code on investments. The Code on public procurement which was set up in 2010 aims at promoting transparency and developing good governance instruments which will facilitate SMEs' access to public procurement. A Regulation Authority composed of representatives from the state, the private sector and civil society shall ensure that procurement regulations meet the needs of the private sector while a National Control Commission shall assure the legality of the procurement sector.

Source: Action plans for SMEs, prepared in co-operation with the OECD, for the G-8 Deauville Partnership meeting, September 2012.

Countries in the MENA region have started to introduce tools to improve the quality of the development of new regulations and to rationalise the stock of legislation. The importance of managing the stock is also being given greater considering in the MENA countries. The management of the existing regulations is a high priority for many countries in the MENA region, as over time they have accumulated a large stock of regulations and which, in some cases, were issued by various political regimes (such as regulations of the Palestinian Authorities which were issued under the Ottoman, British, Jordanian, Egyptian, and Israeli authority). It is, however, a difficult exercise as most of MENA countries do not review the stock of regulations regularly.

Regulations are generally reviewed and updated based on the government's priorities; in other words, there is no policy in place for a conducting systematic review and update of existing regulations. In this respect, MENA countries could benefit from successful experiences of OECD countries with similar challenges.

Important achievements have been made so far in the region in the area of managing stock and administrative simplification. For instance, **Egypt** has taken major steps to rationalise its stock of regulations. The government has managed to simplify procedures for establishing companies by extending the one-stop shop idea for companies acting under investment law. ERRADA has set up an inventory of more than 34 000 business-related regulations (including published and unpublished primary and secondary legislation) in 2008, and between 2009 and 2012 reviewed 162 topics, including 21 645 regulations resulting in 13 519 recommendations based on which 2 000 regulations were repealed while 1 603 regulations were identified as implicit repeals.

Mauritania is still in the infancy of a strategic management of its stock of regulation, however, due to being a fairly young country it does not have excessive regulation yet. Regulations are however overhauled or, repealed based on the initiatives of regulators. A special directorate was formed to ensure the visibility and follow-up of existing texts of regulations.

In the **Palestinian Authority**, regulatory reform is at the stage of implementation through the development of strategic plans and operations plans in order to improve the quality of regulations in different sectors; however, the process of managing the regulatory stock remains an important challenge for the reform efforts, as the Legislative Agenda Team works on prioritising the legislative plans of ministries and produces legislations (primary and secondary) accordingly.

Following the revolution in **Tunisia** Circular No. 14 of the Prime Ministry, issued in May 2011, aimed at improving the quality of both the stock and flow of regulations. The circular, which has been superseded by a decree published on 14 August 2012, covers all sectors and is organised at the central level. Reduction of administrative burdens for businesses is one of the priorities and the government planned to introduce the regulatory guillotine approach.

A pilot administrative simplification project was implemented in **Tunisia** by the Ministry of Finance (covering all tax and customs formalities required by the regulations in force). This experience will be generalised and replicated in ten other business-related sectors. To communicate the programme to civil servants, a training workshop was organised in March 2012 for civil servants who will supervise the implementation of the guillotine in ministries and the Prime Ministry.

The legal framework for this project was laid out in a decree published 14 August 2012. Preliminary findings of the mid-term evaluation of the administrative simplification project highlight the necessity to ensure the exhaustiveness of the inventory, as the ministries involved in the project had

a different understanding of the scope of the project. Furthermore, consultation with the private sector should be carefully designed, as many procedures, for example, are partially provided by different ministries and it is unacceptable to ask the private sector about the same procedure several times.

Jordan undertook the regulatory guillotine approach to simplifying the stock whereby the project's findings evolved into an RIA highlighting the short and long-term socio-economic impacts of the proposed reforms. The government also adopted a series of measures of successful administrative simplification. For example, the government discarded the second step within the list of procedures to obtain construction permits in a number of areas in Amman which led to the improvement of Jordan's ranking in *Doing Business Report 2012* by one rank under the construction permit indicator. In January 2012 the Customs Department implemented an automated system for releasing order and exit notes.

However, many administrative simplification initiatives have focused on process re-engineering rather than legal reviews. It is probably due to greater political support that legal reviews require *vis-à-vis* process re-engineering; furthermore, ICT technological advancement has made the latter an easier option.

Examples of administrative simplification initiatives in **Lebanon** include the circular from the Prime Minister requesting ministries to establish committees to work on simplification of procedures. The circular includes guidelines and methodology for the simplification. One of the most important is the establishment of one-stop shops in the Ministry of Tourism (MOT). The design phase has been completed and the Office of the Ministry for State and Administrative Reform (OMSAR) and the MOT are supervising the implementation phase. The mapping of procedures at the MOT and the recommendations for their simplification are currently being conducted in co-operation with the IFC.

The one-stop shops at the MOT is a pilot project that will be rolled out to cover government entities. Another initiative is related to the standardisation of 180 government forms and developing them in electronic format. This project includes the review and assessment of the required supporting documents for the execution of government transactions in order to reduce as far as possible the number of paper obligations (formalities). For the moment, 100 forms have been completed and 80 are under review.

In addition, an e-government portal is being established and an interoperability framework is being developed to facilitate electronic transactions with the government of Lebanon and to enable inter-government exchange of data and information. Moreover, through an EU

grant, the Office of the Ministry for State and Administrative Reform is launching the process for a twinning arrangement for simplification of procedures in four ministries (Ministries of Tourism, Industry, Social Affairs and Public Health). Following OECD recommendations, OMSAR has also created a unit that co-ordinates both the administrative simplification and e-government strategy.

Morocco achieved remarkable success in reviewing licensing procedures and starting a business takes only 6 procedures in 12 days (which is lower than the average in the region). Furthermore, between 2010 and 2012, Morocco has made improvements in mainly three areas: construction permits, protecting investors and paying taxes. Construction permits were made easier by opening a one-stop shop, while investor protection was strengthened by allowing minority shareholders to obtain any non-confidential corporate document during trial. The administrative burden in paying taxes was reduced by enhancing electronic filing and payment of corporate income tax and value added tax.

 Among the main initiatives introduced by Morocco in this area was the use of ICT in simplification. In 2005, the Ministry for Public Administration Modernisation launched a portal (www.service-public.ma/) dedicated to the online distribution of more than 700 procedures and transcribed by the Commission of Administrative Procedures Simplification. In 2011, the ministry also established, a technical platform (extranet) for collaboration between government bodies involved in administrative simplification. This effort, however, had two major limitations: insufficient co-ordination among government bodies and the procedures set up by the ministry were not always the ones operational on the ground.

The Ministry for Public Administration Modernisation has recently launched a tender for the simplification of administrative procedures and forms. It will introduce a new generation of forms, based on a pilot sample of 100 procedures that have the highest priority for end users, including SMEs.

Quantification of regulatory burdens should be included in programmes for administrative simplification. In the ideal case, existing regulations should be evaluated using *ex post* RIA but this can be costly and is not always feasible. There are other techniques that measure the burdens *per se*.

The Standard Cost Model (SCM), originally developed in the Netherlands, is the most popular method to assess the cost of red tape, and the benefits of cutting it. Countries benefit from the use of the SCM to measure the administrative costs imposed on business by their central government regulations. The SCM calculates the cost of administrative compliance with legislations into information obligations, data requirements

and administrative activities imposed on businesses. The SCM estimates the costs of completing each activity considering its price, time for completing the activity and the number of businesses affected. This method has been introduced as such or adapted by many other countries. However, the SCM measures only a small portion of the overall regulatory burdens – the administrative costs.

Some countries have therefore developed programmes and techniques quantifying regulatory burdens. Measuring administrative/regulatory burdens stemming from all existing regulations can also be quite costly and time-consuming. The OECD experience shows that less than 20% of all regulations are responsible for more than 80% of total regulatory burdens. It is therefore important to prioritise and target such efforts so as not to waste time and money.

Egypt's ERRADA has attempted to measure the administrative burden, using SCM, and made recommendations to reduce the burden in some sectors. This involved actual annual savings to business of EGP 9 million (USD 1.5 million) in some activities in the sectors of tourism and agriculture, and potential annual savings of EGP 68 million (USD 11.1 million) in industry and trade sectors if recommendations are implemented. However, countries in the region could benefit more from tools for measuring burdens when reviewing their stock of legislation to eliminate unnecessary burden to business and society.

E-government

Many Arab countries are modernising their public administrations in order to deliver better services. To this end, they have developed e-government strategies and implemented e-government initiatives across different sectors. Although these efforts have not been equally successful in all Arab countries, they generally helped improve knowledge about the public administration; enable better access to public services; reduce the digital divide; enhance skills of public sector; offer a higher number of services allowing various kinds of online interaction (OECD, 2010).

The use of ICTs can be a lever for the simplification of administrative procedures, and several countries are digitising their national registers, such as civil registries or birth registries, to ensure that citizens and businesses provide the information and data required only once. Some countries created systems for sharing information electronically among agencies. The development of specific e-procurement systems is also contributing to enhancing integrity in public procurement. As trust in government and protection of privacy is an important concern, progress has also been made in drafting supporting legislation on electronic transactions and the protection and exchange of personal information online. Most of these

countries also engage in e-government measurement and evaluation of activities' results, however identifying the actual value added in the majority of these initiatives remains a challenge.

Moreover, countries in the region vary in their maturity and experience with e-government. Countries like **Egypt, Jordan** and **Morocco** have established the basic infrastructures and are now primarily concerned with the implementation of online services – largely in the context of improved administration – while countries like **Bahrain** are already applying e-government good practices quite extensively in order to expand services to citizens and to foster investment and growth.

Box 3.2. **Examples of e-government in MENA countries**

E-government in Egypt: Citizens as a new driver for public sector reform

Egypt has achieved significant progress in the field of e-government and is increasingly using ICTs to support policy making and online service delivery thanks to the proactive role played by the Ministry of State for Administrative Development (MSAD) and the Ministry of Communication and Information Technology (MCIT). Following the Arab Spring and the 25 January Revolution, a new impetus has emerged for the use of ICTs and e-government to foster participation and engagement as well as to increase transparency and restore trust in government.

High-level decision makers in Egypt understand that e-government is not only about putting public services online, but rather about rethinking public service provision and its underlying administrative processes and the interaction with users. However, changing the culture and long-time established administrative processes of the Egyptian public sector is a challenging endeavour. The *OECD e-Government Studies: Egypt* highlighted that in order to achieve the full potential benefits of e-government, Egypt needs to overcome a number of issues, such as uncoordinated decision making, a high level of informal co-ordination, and little institutional incentives for collaboration. Furthermore, it remains a key challenge across OECD as well as non-OECD member countries to pay sufficient attention to achieving the concrete benefits of using ICTs such as greater efficiency across the whole public administration (see also the section on RIAs above).

Several initiatives are now trying to transform these challenges into opportunities to improve the public sector use of ICTs. Examples include an emerging engagement with the citizens on policy making and service delivery, new civil society initiatives to improve transparency and accountability, and government programmes to consolidate databases and promote the reuse of government data and information. Increasing the ICT skills through education is also one important area of investment in the future. The successful use of ICTs to support the latest parliamentary elections in 2011-2012 marked an important milestone and showed that Egypt is going in the right direction.

Source: OECD (2013), *OECD e-Government Studies: Egypt 2013*, OECD Publishing, doi: 10.1787/9789264178786-en.

<div style="border:1px solid;padding:1em;">

Box 3.2. **Examples of e-government in MENA countries** (*cont.*)

E-government Policy Document and Implementation Plan in the Palestinian Authority

The Ministry of Information Technology and Communications of the Palestinian Authority (PA) has focused its efforts in the past three years on updating its e-government policy strategy and developing a medium-term implementation plan. Both documents were drafted incorporating international principles and selected good practices from OECD and MENA countries. The result is a full-fledged strategy that identifies priorities areas in the field of information and communication technologies (ICTs) applied to the public sector, and in particular the Internet, and the outcomes to be expected by the implementation of these reforms.

In particular, in drafting both documents the PA has taken a "whole-of-government approach" that emphasises the cross-cutting nature of e-government policy and practices and their horizontal co-ordination needed to exploit the potential of ICT-enabled reforms to the full. This was concretely expressed by the creation of the following thematic working groups, whose activities are led by the *ad hoc* designated PA e-government co-ordinator:

- National Core Team: strategic team;
- E-Government Management Board (EGMB);
- Policy Team;
- Legal Framework Team;
- Interoperability Framework Team;
- National Interoperability Committee;
- Security Framework Team;
- Infrastructure Team.

The result of this unprecedented effort was the identification of four policy principles that aims at reaching four policy outcomes, as summarised below:

Policy principles	Policy outcomes
Better citizen services	Simplification and accessibility
Better governance	Efficiency and accountability-transparency
A secure nation	Data quality and privacy
Prosperous economy and quality of life	Effectiveness and Inclusion

</div>

Box 3.2. Examples of e-government in MENA countries (*cont.*)

Implementation is currently undergoing and will prioritise the piloting of a project aimed at creating the first Palestinian Electronic One-Stop Shop (eOSS) that will provide citizens and businesses with a simplified and centralised access to information and services.

Source: MTIT/OECD (2011), "The Palestinian Authority: E-government Policy Document"; MTIT/OECD (2012), "The Palestinian Authority: PA Implementation Roadmap".

Actors, institutions and capacities

In most of the MENA countries, awareness about the need to build institutional frameworks for regulatory management is already present. Some of the countries in the region have already started to set up arrangements but there is no one standardised kind of institution and several institutions are often involved in the legislative process.

The institutional framework for implementing regulatory policy is often organised at national or central level. In some cases, such that of the **Palestinian Authority** regulatory initiatives take place at the central level as well as in municipalities and civil society institutions. Several instruments are available to provide support to achieve these initiatives. Most of them are related to the adoption of legislative drafting standards and tools for policy making, such as consultation processes, RIA or easy and free access to regulations for the public.

For example, in **Lebanon**, there are several entities involved in the legislative development process to either guarantee consistency with current laws and regulations or to ensure co-ordination between the various initiatives related to regulatory reform. The Legislation and Consultation Department at the Ministry of Justice is consulted on primary legislations before they are proposed to the Parliament and, on a selective basis, this department is consulted on proposals for secondary legislations. The Court of Auditors is consulted on decrees and legislations of a financial nature to ensure consistency with existing laws and regulations, while the Council of State (administrative court) must be consulted on all draft legislative decrees and on draft organisational texts.

In other countries, specific units were established in the ministries to manage regulatory reform, but usually without co-ordination mechanisms between them. They are mainly responsible for the supervision of the regulatory processes. In some cases, countries launched specific initiatives at national level to promote, review and monitor the legislation. As a rule, they also serve as a co-ordination mechanism for regulatory activities.

In **Egypt,** for instance, most of the government reform programmes are set up separately within each ministry and, to support efforts in building a regulatory management system to review and streamline business-related regulations, in 2008 the government founded ERRADA, which, according to Prime Ministerial Decision No. 436/2011, was operating under the Sub-Cabinet Committee for Monitoring Economic Performance, chaired by the Minister of Finance.

The institutional framework of the initiative was composed of a central oversight body (the GRU – General Review Unit), ministerial units (GMU – government ministerial units) and governorate units (GUs). The GRU was the independent central oversight body and led the implementation of the ERRADA initiative. The GMUs were set up in each participating ministry (total 11) to support the inventory of all regulations that affect the business climate in Egypt. The GRU had a monitoring and evaluation system in place to monitor and evaluate performance and output of ERRADA at large, suggesting corrective measures where needed to enhance processes and output.

The regulatory reform can also be managed at the central level of the government. For example, in **Tunisia**, regulatory reform and regulatory quality is the responsibility of the Cabinet (*présidence du gouvernement)*. Its principal mission is to centralise all legislative drafts submitted by the different ministerial departments, ensure their conformity with the law, collect all legal texts to be published in the *Official Gazette* and give the green light for their publication. a specific institutional framework was set up to implement a project aiming at improving business regulations using the regulatory guillotine approach to reduce administrative burdens for businesses. It is composed of a central steering committee within the Cabinet which supervises the implementation of the process and a ministerial steering committee in each ministry.

In addition, a central technical committee in the presidency and a ministerial technical committee in each ministry were established. The committees assist the working groups created in each ministry to prepare lists of their administrative procedures within the scope of the guillotine and review these procedures. They also approve the results of the inventory and the review of administrative procedures and elaborate a report which

presented to the steering committee for approval. A business consultation committee has been set up to organise consultation with the stakeholders.

Recognising the importance of institutional arrangements for the success of the reform effort, **Jordan** set up the National Agenda Steering Committee by Royal Decree on 9 February 2005. The committee began a qualitative, holistic review of the structures, functions, management systems and working procedures of the public sector. The steering committee is comprised of 26 members representing the government, Parliament, civil society, the private sector, media and political parties. The committee also had the mandate to call on experts and other representatives of stakeholders from various sectors of society with the objective of ensuring an even contribution to reform efforts and a fair distribution of social, economic and political benefits.[8]

In **Bahrain**, the quality of legislation is supported through the Legislation and Legal Opinion Commission, which is an independent institution. The commission is responsible for formulating proposals made by the Cabinet or Shura Council and Parliament into draft legislation, and providing opinion and advice on constitutional, legislative and other legal issues referred to it by the Cabinet, government departments, President of the Shura Council or the President of the Parliament. It provides an interpretation of the texts of laws passed by the legislature. In addition, the commission reviews contracts entered into by the government with companies and individuals to ensure consistency and compliance with local laws and ordinances. It is also charged with reviewing versions of treaties and international agreements concluded by the Kingdom or to which it accedes and represents the government and its ministries or departments.

In **Mauritania**, two offices under the Secretary General of the Government are responsible for co-ordinating texts on the organisation and functioning of the public administration and co-ordinating legislative and regulatory texts respectively.

Another important aspect for regulatory quality is training and capacity-building activities for regulators on a regular basis. For instance, in **Egypt**, regular training courses are not provided for regulators. Some *ad hoc* training programmes are organised in collaboration with technical assistance organisations to support the reform efforts. In addition, in **Mauritania** regulators are sent on training courses in other countries on an ad-hoc basis. However in each department there is a University-trained legal counsellor to ensure the quality.

A similar case is in **Tunisia**, some training courses in regulatory quality are organised for regulators, but there are no annual training programmes. Tunisia, however, introduced a national Masters degree programme in legislative drafting and translation of legal texts.

In **Morocco,** the Secretary General of the Government has inaugurated a 2-year training programme for 15 legal counsellors to be trained on a broad range of topics in regulatory policy (see Decision no 2654.10, 14 September 2010).

In the **Palestinian Authority**, training activities are organised by the University of Bir Zeit and a Diploma in Legislative Drafting was launched. The training is not compulsory and the trainees are selected in view of their experience and operational capabilities. Around 50 officials are trained each year and there is one training course held annually. The supporting written and online materials are available on the websites of institutions specialised in this area. Training activities are also organised within the public institutions. The General Personnel Council and the Ministry of Planning are responsible for developing and providing training programmes. The government estimated that the necessary financial resources to be allocated, including the employment of experts and professionals, come to USD 2 million.

Jordan has also organised training activities for the regulators in order to improve their skills in drafting laws and regulations and the management of the stock of regulations. The training is compulsory and is attended by the majority of the regulators through contracts with many training centres based both in Jordan and abroad.

This chapter has shown the progress made by MENA countries at the levels of core policies; systems, processes and tools; and actors, institutions and capacities. Reform was generally spearheaded by prime ministers' offices, with technical support from two specialised units attached to the Prime Ministry: ministries of public sector reform and civil service bureaus. Despite tackling a broad agenda with very limited personnel and few if any operations outside the capital, these units have played key strategic, co-ordination and monitoring roles (OECD, 2010a).

Important achievements in the surveyed countries include providing access to regulations, administrative simplification programmes, e-government initiatives and engaging the public through *ad hoc* consultation. Some of them have started measuring the impact of regulations through RIA.

Notwithstanding this progress, the main limitation seems to be a lack of whole-of-government approach as most of the reform effort is fragmented which means that regulatory policy is not coherent and hence its impact is limited.

Notes

1. For further information on the Open Government Partnership, visit the website at www.opengovpartnership.org/. Since 2012, the OECD supports the so-called Deauville Partnership countries in meeting or improving open government commitments; see www.oecd.org/mena/governance/

2. ERRADA e-Registry was suspended in July 2012 but might resume in 2013.

3. National Action Plan for the Open Government Partnership: First Progress Report of Jordan, February 2013.

4. www.sgg.gov.ma/projets_com/dec_proj_ar.pdf.

5. 2012 OECD Recommendation, C(2012)37, adopted on 22 March 2012.

6. OECD (2006) Building an Institutional Framework for Regulatory Impact Assessment.

7. www.oecd.org/gov/regulatorypolicy/38103089.pdf.

8. www.nationalagenda.jo/Portals/0/EnglishBooklet.pdf.

Bibliography

MTIT/OECD (2011), "The Palestinian Authority: E-government Policy Document".

MTIT/OECD (2012), "The Palestinian Authority: PA Implementation Roadmap".

OECD (2009), "Indicators of Regulatory Management Systems", www.oecd.org/gov/regulatory-policy/44294427.pdf, accessed 10 July 2013.

OECD (2010a), *Progress in Public Management in the Middle East and North Africa: Case Studies on Policy Reform*, OECD Publishing. doi: 10.1787/9789264082076-en.

OECD (2010b), "Towards Recovery and Partnership with Citizens: The Call for Innovative and Open Government", meeting of the OECD for Public Governance Committee, 15 November, OECD, www.oecd.org/governance/ministerial/47231930.pdf, accessed 10 June 2013.

OECD (2011a), "Regulatory Consultation in the Palestinian Authority: A Practitioners' Guide for Engaging Stakeholders in Democratic Deliberation", OECD, www.oecd.org/mena/governance/50402841.pdf, accessed 27 July 2013.

OECD (2011b), "Assessment report: The Legislative Drafting Manuals of the Palestinian Authority", OECD, www.oecd.org/mena/governance/50402734.pdf, accessed 8 May 2013.

OECD (2013), *OECD e-Government Studies: Egypt 2013*, OECD Publishing, doi: 10.1787/9789264178786-en.

OECD (2013), "Regulatory Consultation: A MENA-OECD Practitioners' Guide for Engaging Stakeholders in the Rule-Making Process", OECD.

Chapter 4

Recommendations for the MENA region

Even though significant progress in regulatory reform has been achieved in the MENA region, explicit regulatory policies do not exist. Based on the analysis, this chapter gives concrete recommendations how MENA countries can improve regulatory reform in the areas of i) core policies, ii) systems, process and tools and iii) actors, institutions and capacities. The chapter concludes that regulatory reform is a new concept in the MENA region. Yet if seen as a long term permanent agenda and adapted to the context and based on ownership, it has many potential gains to contribute to national priorities.

Significant progress has been achieved in designing regulatory reform policies and launching strategies for improving the regulatory frameworks in the MENA region. Many of these reforms, that adopt a more citizen-oriented approach in policy making, have been designed to address the most pressing problems of the public sector: the challenge to improve the quality of public services and to ensure greater transparency and accountability.

Despite important developments in setting up institutional structures to manage regulatory reform in the MENA region, introducing efficient regulatory institutions remains still a challenge for most of the countries. Often it is due to challenges related to political understanding and commitment to regulatory reform and effective co-ordination among institutions involved in the regulatory processes.

A major obstacle is also related to expertise and financial and human resources. Hence, it is important to ensure political commitment at different levels of government to embed a culture for regulatory quality. The institutional function to manage, oversees, promote and measure regulatory reform with the appropriate resources is also critical. It is also crucial to consider the best solution that can be applied for the establishment of an institutional arrangement considering the country's institutional context and other specificities.

OECD country experience shows that implementing regulatory policy is a gradual process. In countries with resource limitations, it is often the case that simple regulatory policy reforms are started with and these evolve and escalate in scale as resources improve. This is part of the cultural and organisational change involved in implementing reforms.

The change management process for cultural transformation can be reinforced by an effective communication strategy to engage all actors within the regulatory system which includes government, parliament or congress, private sector and civic organisations, academia and the media.

Generally speaking, regulatory reforms in the MENA region were steered so far by concepts of improving rule making; however, the need for regulatory quality is increasingly dominating the legislative reform agendas as a means to overcome and respond to red tape and bureaucratic impediments hindering the development of businesses, including SMEs, in the region.

It is essential for MENA region governments and policy makers to identify regulatory quality as a strategic goal within national strategies for reforming policies and regulations affecting business (including SMEs) in their countries and thus introducing efficiency and credibility to their national regulatory frameworks to support other priority reforms.

Ensuring proper regulatory management and improving the quality of the regulatory stock as well as of new regulations is an important concern for public officials in the MENA region. While a number of international efforts have been made to assess the economic impact of regulations, few indicators exist on regulatory management systems as such. They are a key component of public management indicators. As the need for effective governance is felt in a growing number of OECD and non-OECD countries, the demand for public management indicators has increased.

In most MENA countries *ad hoc* measures (such as separate initiatives to improve the stock of regulations or statements in the constitution to ensure political support) have been introduced as part of the reform agenda. Governments need to clearly demonstrate objectives and benefits of regulatory reform which should be embedded in a long-term strategy. They should adopt regulatory policy as a means to not only improve the trust and the rule of law but also to support inclusive economic growth.

The following recommendations are applicable for ensuring effective regulatory quality within MENA countries based on the results of this report. However the situation in many of the MENA countries is changing and therefore more detailed individual analysis and review of countries is recommended to provide more tailored and specific recommendations for each country.

Core policies

There are core government policies that have been introduced in many MENA countries. Policies on open government and enhancing communication mechanisms are examples of good regulatory practices that have been implemented. However, an *explicit regulatory policy* by the government does not exist in any of the countries under review. The term and concept is still a new one within the region and requires further elaboration and localisation.[1]

Often regulatory policies are equated with the implementation of some of the systems, processes and tools that are usually associated with regulatory management. In order to achieve greater impact, it is important to

1. See Box 2.1 on linguistic challenges to conceptualising regulatory policy.

recognise that specific regulatory management tools and processes such as impact assessments and administrative simplification are important but do not substitute for a comprehensive co-ordinated programme and a whole-of-government policy.

The regulatory policy should clearly identify the responsibilities of politicians and senior civil servants for implementing that regulatory policy within their respective portfolios. In addition, assigning a specific minister and permanent secretary or undersecretary with responsibility for maintaining and improving the operation of the whole-of-government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process would be beneficial.

The content of the regulatory policy will vary from each country depending on the capability and commitment within the country. At this stage a sophisticated regulatory policy would not be appropriate and instead one with some key principles may be of greater relevance.

To promote regulatory transparency, the accessibility of enacted regulations has been improved for the public and private sector. A complete and up-to-date legislative and regulatory database that is freely available to the public in a searchable format through a user-friendly interface over the Internet would be useful for most countries. In fact, many MENA countries now provide online databases of existing legislation; however, publishing draft regulation for comments and consultation is still an exception and should be improved.

Specific recommendations:

- **Design and publish a single consistent whole-of-government regulatory policy.** Although all surveyed countries have elements of regulatory policy programmes, this does not substitute the need for a comprehensive regulatory reform policy. In line with OECD 2012 Recommendation of the Council on Regulatory Policy and Governance, the policy should emphasise a whole-of-government approach for regulatory quality; have clear objectives of regulatory reform objectives and frameworks for implementation.

  The policy should cover the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence. This policy should also include a communication strategy to generate the sustained support required for the success of the reform effort.

The complexity of the policy should be proportionate to each specific country's resources and commitment and at the beginning it can be simple to include greater transparency and accountability and impacts of regulations.

Support should be created at three levels:

− at highest political level to ensure sustainability of reform;

− within the public administration to avoid resistance to change and reform; and

− within society to generate trust in the reform effort.

The policy can include short and medium term indicators to monitor the progress and track the contribution of the various regulatory reform initiatives toward the overarching strategic regulatory policy.

- **Implement a public consultation and engagement policy for regulatory transparency.** Many of the MENA countries have improved their civic engagement mechanisms and efforts considerably. Yet many of these are not consistently implemented. An official policy on consultation ought to be passed determining how to notify stakeholders about draft regulations and the minimum consultation period, which should be long enough to give stakeholders enough time to respond.

  The policy should also stipulate the publication of consultation results and responses to ensure the transparency of the process. A standard public consultation and engagement policy with clear guidelines, specifying how to identify relevant stakeholders, when to consult and methods used for consultation would help to institutionalise these practices consistently across the government apparatus.

- **Develop a risk and regulation strategy.** Although not a priority for all the MENA countries in this report, having a strategy on risk and regulation would assist in some government regulatory reform policies and programmes. Having a shared understanding and approach toward risk is key to designing and implementing targeted interventions. This is of greater importance where resources are particularly limited or stretched. For instance licensing and inspections reforms would benefit from some overarching principles on the approach to risk to help develop better regulatory regimes.

Systems, process and tools

The focus of many regulatory policy programmes in the MENA region has been in simplifying the stock of regulations and to a lesser extent managing the flow of new legislation. Managing both the stock and the flow is particularly important for MENA countries in the transition process to eliminate obsolete laws and develop a fair regulatory environment conducive to equitable growth. It also ensures accountability of governments and engagement of the public in the preparation of legislation that has an impact on their lives.

There have been a number of administrative simplification programmes that have mainly managed to clean up many out-of-date laws and regulations. The process of conducting such initiatives themselves has introduced the concept of regulatory policy and opened the opportunity toward other regulatory policy tools, such as regulatory impact assessments (RIA). Administrative simplification programmes can maximise their impact through addressing the burdens of currently implemented regulations more and not just the redundant regulations that are part of the stock of legislation.

RIAs are still new within the MENA region and form part of an effort to enhance the regulatory quality of new legislation. Other legislative reforms have also been introduced in many of the MENA countries in this report.

The 2012 OECD Recommendation supports the implementation of integrated RIA. OECD experience has demonstrated that the most successful RIA systems have been those where the RIA is part of a streamlined policy or law-making process, and not an add-on to the existing processes. In many OECD countries, RIAs are attached to the first draft of a law proposal or amendment prepared by the competent authority.

RIA undertaken at the right time allows for an initial debate and communication about the possible effects that the legislation may have once it is approved. It also allows for consideration of non-regulatory options during the design of regulations. Thus, it helps inform decision makers in a systematic manner without introducing unnecessary delays into the decision-making process. If, however, the preparation of an RIA is completed or commenced late during the regulatory process, the results of the analysis could fail to inform the policy-making process. In this case, RIA can be seen only as a political tool to justify decisions, and lacking a rigorous method.

The RIA process is a tool to improve the quality of the regulations themselves so that they are comprehensible and clear for parties to easily understand their rights and obligations. Access to information with clear guidance on compliance with regulations, making sure that affected parties understand their rights and obligations also enhances regulatory compliance

and therefore delivery of the policy objective. It is also recognised that capacities to conduct cost-benefit or impact analysis are still low in the surveyed MENA countries. Therefore simplified methodologies of impact assessment would be more appropriate in these cases. Having RIA implemented with the appropriate political will at different levels, will be essential to mobilise capacity building initiatives.

Also, when public consultation occurs, it is not part of a comprehensive RIA process – but organised on an *ad hoc* basis; the consultation process itself is detached from other cost-benefit or impact analysis, which limits the effectiveness of RIA as a tool that informs policy makers about the potential impacts of policy alternatives (OECD, 2013).

Other systems of regulatory management do not exist in the MENA countries in this report, such as regular performance assessments of regulations and regulatory systems, taking into account the impacts on affected parties and how they are perceived. Communication of the results of these assessments to the public to increase accountability is also important.

Policies and practices for inspections and enforcement are also a key element of good regulatory practices and strengthening the rule of law. It is also the interface between the regulated entities and the regulator where friction can often occur. Therefore this is a new area of regulatory policy that is apt for most countries across the world, and also those in the MENA region, although it may not be an immediate priority for all countries.

Specific recommendations:

- **Design and pilot a RIA strategy** clearly stating how it can be incorporated into the policy-making process to ensure it affects the decision-making process and rationalises the existing administrative procedures for making regulations.

  The strategy should also include an action plan for piloting the implementation of RIA (defining the scope, roles and responsibilities of the various institutions involved in the process, steps of implementation, resources required and the plan for training staff to carry out pilot RIA studies).

  The strategy should establish mechanisms to ensure that RIA is conducted gradually and in a managed way for designated regulations (primary and secondary legislation, threshold criteria for when a RIA is/is not required).

  The impact assessment could include an assessment on the impact of new legislation on SMEs to reduce the burdens on them.

- **Adopt and develop legislative drafting standards manuals** and seek to implement them across the government and all regulatory institutions to enhance the quality of regulations. MENA countries could benefit from legislative drafting instructions, such as the recent Palestinian legislative drafting manual.

- **Develop a strategy for reducing the administrative burden, particularly for SMEs**, which sets priority sectors identified in consultation with businesses and experts. The strategy should seek to identify high burden regulations in priority sectors and targets should then be set to reduce the identified burden over a two to five-year period. A monitoring and evaluation system should be put in place to monitor progress.

- **Review and amend the stock of regulations in specific policy areas with special attention to challenges for SMEs** such as government procurement law, taxation, social insurance and licensing requirements. The review should also streamline authorities that SMEs have to deal with. Review the need to aim at encouraging the formalisation of SMEs. This may also include simplifying particular processes for business start-ups, measures to encourage investment, and the introduction of common commencement dates and sun-setting clauses which can facilitate a more systematic review and increase legal certainty for SMEs.

Actors, institutions and capacities

As the OECD countries' experiences show, institutional frameworks are often complex and uncoordinated, and this can cause difficulties in implementing an effective regulatory management system. Various approaches are used in different OECD countries to overcome some of these challenges to take account of the individual country context. It is therefore important to introduce solutions adapted to the countries' specifics (political, cultural and social) to ensure the successful implementation of the regulatory policy. The specific institutional solution must be adapted to each system of governance.

The Charter states that countries will publicise an explicit policy for regulatory policy based on sound principles of good governance which an oversight unit can be responsible for monitoring, so that problems and gaps can be identified, the benefits of regulation measured, and progress reported to the government and to the public on a consistent and regular yearly basis. Countries will establish institutional arrangements for regulatory quality that are accountable and transparent, including measures that promote integrity with regulatory institutions ensuring that the public interest is respected.

An oversight body in the centre of government is a key institutional component of a regulatory management system. It co-ordinates and monitors the regulatory system and maintains the regulatory policy brand across institutions. It also contributes to enhancing transparency and coherence and to foster better implementation of regulatory reform and regulatory quality initiatives throughout the government. It needs, however, commitment and support from all relevant institutions involved in the regulatory process.

The 2012 *Recommendation of the Council on Regulatory Policy and Governance* elaborated on the role of the regulatory oversight body and supports for the oversight body to be established close to the centre of government. The authority of the regulatory oversight body should be set forth in its mandate, provided for by the appropriate institutional instrument such as a decision, statute or executive order. In the performance of its technical functions of assessing and advising on the quality of impact assessments, the oversight body should be independent from political influence.

The regulatory oversight body should be entrusted with a variety of functions or tasks in order to promote high-quality evidence-based decision making. Tasks should include:

- quality control through the facilitation and review of the quality of impact assessments and proposed rules;

- examining the potential for more effective regulatory delivery including through promoting the consideration of non-regulatory measures in areas of policy where regulation is deemed to be necessary;

- contributing to the systematic improvement of the application of regulatory policy;

- co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods;

- providing training and guidance on impact assessment and strategies for improving regulatory performance.

The performance of the oversight body, including its review of impact assessments should be periodically assessed.

A central oversight body, as described above, is critical in co-ordinating and progressing regulatory policy programmes across the whole of government. Such a body does not exist in the MENA countries in this report or any others MENA countries with which the OECD has engaged.

In MENA countries an oversight body with some of the functions, but not all, may be more relevant. The institutional champion is an important element in implementing regulatory policy successfully. However in many OECD countries this body has evolved as the implementation and understanding of regulatory policy has progressed. Therefore in MENA countries the body will have to streamline its functions into relevant priority activities. It is also important to note that OECD experience has shown this may not require a new institution or body to be set up, but rather roles and functions are required to be established in the right part of the government structure.

OECD countries have shown that successful regulatory systems are those that involve and engage all of the actors in the regulatory process. These are often much wider than the governmental or public administration institutions but also include parliaments or congress, academia, private sector and civic associations, think tanks and the media. Having institutionalised co-ordination mechanisms for these different actors to be engaged in the regulatory process is not yet practiced in the MENA region.

A key challenge for many countries, including in the MENA region, is the human resource capacity to implement and engage in regulatory policy initiatives, which are new to many. Therefore a key focus should be on raising the awareness of regulatory policy and providing opportunities to enhance and build the capacities among all actors to engage in the regulatory system.

Specific recommendations:

- **Design a proper institutional mechanism within the central government aimed at enhancing the quality and efficiency of government policy and programmes.** Such a mechanism should be responsible for monitoring and evaluating policy formulation and the quality of the regulations produced.

  In addition, such a mechanism should work on improving the decision-making process within government units through effective inter-governmental consultation as part of a strategy aimed at increasing transparency and accountability and controlling corruption with the use of evidence based decisions. This mechanism is usually an oversight body at the centre of government with the appropriate political authority and support.

- **Building and Strengthening co-ordination mechanisms** inside and outside the administration to foster coherence across policy objectives and to clarify the responsibilities and roles of the various actors in the regulatory system. This involves the design of appropriate co-ordination mechanisms to develop regulatory policies and practices for all levels of government, including where appropriate, through the use of measures to achieve harmonisation, or through the use of mutual recognition agreements.

- **Develop a policy for the continuous awareness raising and training of regulators** to ensure that they develop the required skills to conduct systematic reviews and produce quality regulation. This may be through institutionalised programmes at government or civil service training bodies or universities.

Final conclusions

Figure 4.1. Regulatory policy conclusions for MENA countries
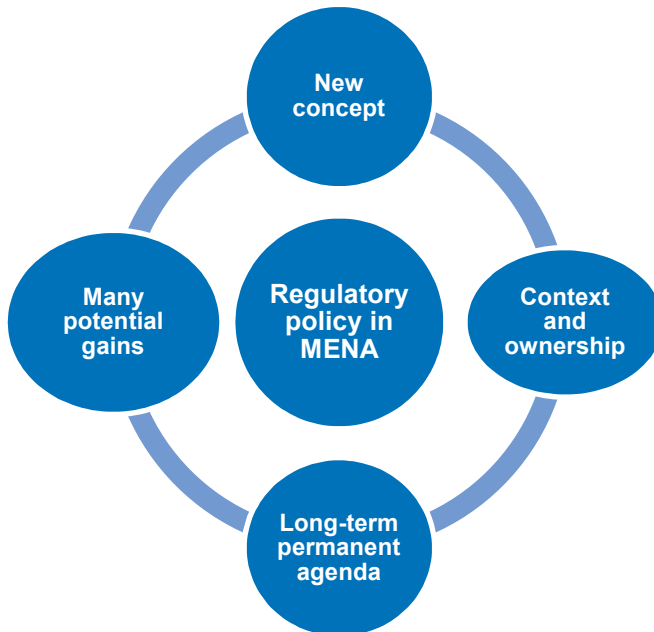
Regulatory policy remains a new concept within the MENA region. It will take further time and effort to contextualise the concept into a reform agenda. However reforms are not a new concept and therefore the understanding of the potential gains from this *different perspective of reforming* to achieve similar objectives will be possible if communicated effectively and appropriately.

Political and institutional ownership of improving the way governments regulate will help the sustainability and ownership of reform efforts. Institutions geared towards specific responsibility for regulatory policy has been one of the key elements in successful implementation of better regulatory systems in OECD countries. This report shows that where MENA countries have invested in appropriate institutions, there have also been gains. These investments should not go to waste and should be built upon.

Similar to countries in the OECD, regulatory policy and governance must be a long term permanent agenda. It is normal that there will be progress and setbacks. Successful regulatory reforms have been achieved and maintained in OECD countries where there has been a continuous effort towards implementation that has been gradual and that has evolved overtime. The MENA countries in this report have started the journey and the efforts to date are welcomed. They should continue their efforts and where possible build greater momentum for the benefit of the economy, environment and citizens.

Bibliography

OECD (2009), "Regional Charter for Regulatory Policy", www.oecd.org/mena/governance/45187832.pdf, accessed November 2012.

OECD (2010), *Risk and Regulatory Policy: Improving the Governance of Risk*, OECD Publishing, doi: 10.1787/9789264082939-en.

OECD (2012), "Recommendation of the Council on Regulatory Policy and Governance", www.oecd.org/gov/regulatory-policy/2012recommendation.htm, accessed 10 July 2013.

OECD (2013), "Regulatory Consultation: A MENA-OECD Practitioners' Guide for Engaging Stakeholders in the Rule-Making Process", OECD.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

OECD Reviews of Regulatory Reform

Regulatory Reform in the Middle East and North Africa

IMPLEMENTING REGULATORY POLICY PRINCIPLES TO FOSTER INCLUSIVE GROWTH

Contents

Other relevant publications:

Consolider la transparence budgétaire pour une meilleure gouvernance publique en Tunisie (2013)

Strengthening Fiscal Transparency for Better Public Governance in Tunisia (forthcoming)

International Regulatory Co-operation: Addressing Global Challenges (2013)

OECD Integrity Review of Tunisia: The Public Sector Framework (2013)

Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest (2011)

Progress in Public Management in the Middle East and North Africa: Case Studies on Policy Reform (2010)

Risk and Regulatory Policy: Improving the Governance of Risk (2010)

Regulatory Impact Analysis: A Tool for Policy Coherence (2009)