9 Innovative approaches to support future-proofing regulation

This chapter provide Slovakia with frontier OECD research on innovative approaches to policy making, that can help support the development of strategies to "future proof" regulation. It presents three complementary approaches to consider individually or as a bundle, including introducing forward-looking processes such as strategic foresight and anticipatory innovation, incorporating future proofing as part of regulatory policy making, and using innovative tools such as behavioural insights to understand human behaviour. Finally, it gives recommendations for developing and implementing strategies to begin using these various approaches in practice.

Times are rapidly changing. Economic and digital disruption, political uncertainty, international tensions, declining trust in government, rapid changes to populations, climate, and many others are increasing complexity and uncertainty for governments around the world.

Each of these pressures present challenges for government in the form of changing their way of thinking and approaching policy problems, and often bringing into question the effectiveness of legacy regulations. They also present opportunities to update policy processes, ways of thinking and modernise regulation to be ready for the challenges that lie ahead. In turn, governments around the world are turning to innovative policy making methods to anticipate and forecast these changes, and adapt to them in real time, in an attempt to "future proof" regulatory policy making.

This chapter explores these themes in the context of the Ministry of Economy's desire to utilise innovative policy making tools and future proofing regulation. The Ministry is engaging with these concepts ahead of plans to develop strategic plans in 2021 to begin using these various tools and methods, after the implementation of the RIA 2020 action plan. However, discussions with representatives from the Ministry have identified some roadblocks in terms of a reticent internal environment, a lack of knowledge about the tools available, and the need to define clearly what is future proofing regulation and how it can be implemented in the Slovak context, especially with linking with ongoing work on these topics in other parts of the Slovak Public Administration.

This chapter is intended to provide frontier OECD thinking to support the Ministry's development of these strategies. It will begin by discussing the origins and elements of future proofing regulation from the European level. Then it will discuss three ways in which the concept of future proofing regulation can be implemented in Slovakia: introducing forward looking processes, such as strategic foresight and anticipatory innovation; incorporating innovative approaches to current regulatory policy making; and using innovative policy making tools, such as behavioural insights. Definitions for the various concepts explored in this chapter can be found in Box 9.1.

Box 9.1. Key definitions

Anticipatory innovation governance is a broad-based capacity to actively explore options as part of broader anticipatory governance, with a particular aim of spurring on innovations (novel to the context, implemented and value shifting products, services and processes) connected to uncertain futures in the hopes of shaping the former through the innovative practice.

Anticipatory regulation is a function of anticipatory governance which uses regulatory means to create space for sandboxes, demonstrators, testbeds etc. for various technology options to emerge. This requires an iterative development of regulation and standards around an emerging field.

Behavioural insights uses rigorous research and experimental methods from the behavioural sciences, including behavioural economics, to understand why citizens behave as they do and pre-test which policy solutions are most effective before implementing at larger scale.

Strategic foresight is a structured and systematic way of using ideas about the future to anticipate and better prepare for change. It is about exploring different plausible futures that could arise, and the opportunities and challenges they could present, then using those ideas to make better decisions and act now.

Future proof regulation: updating processes and using innovation in regulatory policy making

There is some ambiguity of the origins and meaning of the term "future proofing" regulation. From the technology perspective, where thinking is more advanced, it is broadly considered to be about keeping options open, looking at the potential scale of effects in the long term (value, rather than costs) and emphasise the heterogeneity of choices. Applied in general terms to regulation, this means being sufficiently agile to adapt to rapid and transformative changes.

In terms of the interest for Slovakia, the genesis for the idea of "future proofing" regulation appears to come from the European Commission, who began the research and thinking on this concept for the Member States. An opinion note produced by the European Economic and Social Committee provides comments on this concept, which "aims to ensure legislation is more in line, in particular, with EU competitiveness and takes account of the specific nature of SMEs and micro-enterprises" (EESC, 2016[1]). The note also identifies two components of future proofing: better regulatory policy making and a focus on innovation.

Better regulatory policy making has been enshrined at the EU level with the "Better Regulation Package" adopted in 2016 (OECD, 2016[2]) and is broadly in line with OECD best practice in regards to good regulatory practices and better regulatory management. This is evident by the European Union's iReg scores being significantly higher than OECD average for each of the three main categories – stakeholder engagement, RIA and *ex post* evaluation (OECD, 2018[3]). The Package seeks to achieve better results through a suite of reforms that sets out to ensure that (European Commission, n.d.[4])

- Decision-making is open and transparent
- Citizens and stakeholders can contribute throughout the policy and law-making process
- EU actions are based on evidence and understanding of the impacts
- Regulatory burdens on businesses, citizens or public administrations are kept to a minimum

Key elements of delivering on these objectives are better consultations through roadmaps, inception impact assessments, and sharing draft acts for comment, as well as improved impact assessments that analyses possible economic, social or environmental impacts.

From an e*x post* perspective, the Package also includes the Regulatory Fitness and Performance (REFIT) programme that evaluates and conducts "fitness checks" of existing policies and laws to simplify and reduce the cost of regulations while still achieving benefits.

The reform also introduced the Regulatory Scrutiny Board, an independent group of Commission officials and experts from outside the commission with the role of checking the quality of all impact assessments and major evaluations (European Commission, n.d.[4]).

Innovation at the EU level is enshrined in the "innovation principle" that promotes smart, future-oriented regulation and policies. The Commission defines the innovation principle as "EU policy and legislation should be developed, implemented and assessed in view of encouraging innovations that help realise the EU's environmental, social and economic objectives, and to anticipate and harness future technological advances" (European Commission, 2019[5]) and encapsulates three objectives:

- Improve the design of existing and future EU regulations with regard to their impact on encouraging beneficial innovation.
- Steer the development of innovative solutions addressing new and complex challenges in a way that embeds EU values and protects Europeans.
- Achieve an optimal balance between predictability of the regulatory environment and adaptability to scientific and technological progress.

This principle has clear links with the Better Regulation Package, especially the REFIT element that seeks to minimise burdens on businesses and citizens.

According to the European Commission's fact sheet, the innovative principle is implemented in three main areas of the policy making process: agenda setting, drafting/legislative, and implementation. These are subsequently joined up with tools such as horizon scanning, impact assessments and innovation deals evaluations as ways to include the innovative principle in these stages (see Figure 9.1).

Figure 9.1. The European Commission's innovation principle
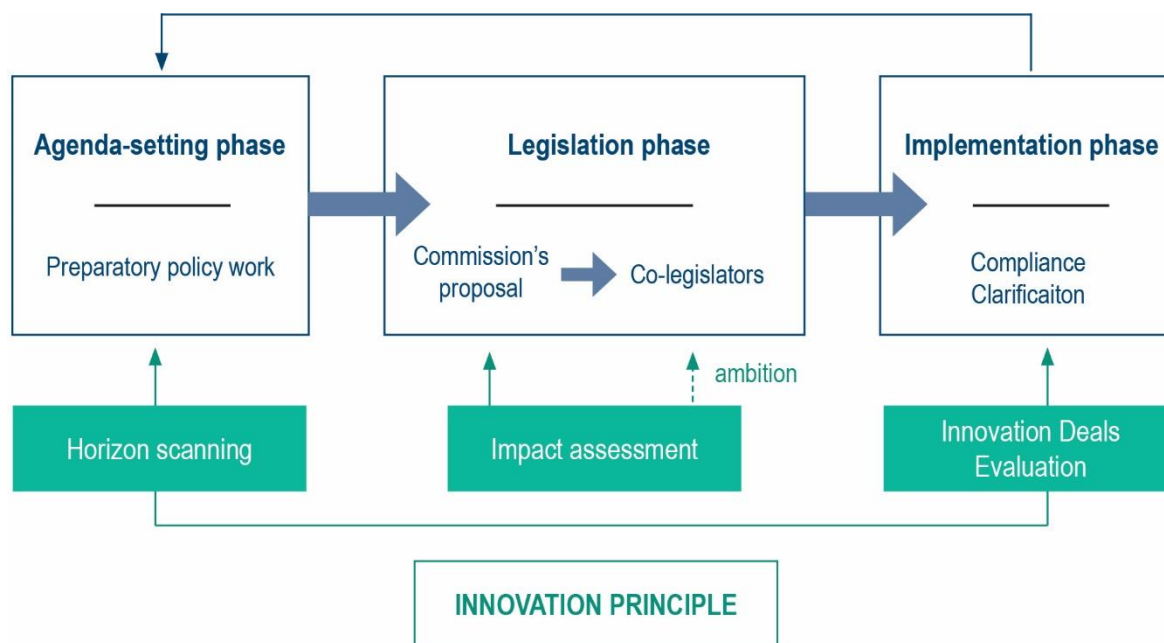
Source: European Commission (2019[5]), The Innovation Principle Factsheet, European Commission, Research and Innovation Department, https://ec.europa.eu/info/research-and-innovation/law-and-regulations/innovation-friendly-legislation_en.

This chapter seeks to build off this framework to suggest ways that better regulation and innovation can be joined together, in line with OECD research and the European Commission's strategic direction. Three related topics will be discussed to support this model: first, the need for foresight and anticipatory regulation; second, reviewing and updating processes and tools to incorporate a focus on future proofing priorities throughout the rule making process, such as administrative simplification and SMEs; and, third, incorporate innovative policy-making tools, with a focus on behavioural insights. While these map broadly with the figure above, OECD research demonstrates that these principles can be used throughout the policy making process to bring innovation and simplification to policy making.

Introducing forward looking processes into regulatory policy making

A key element of future proofing regulation is not knowing, but continuously analysing, what future challenges will be faced by government. For policy-makers and regulators to prepare for and "manage" future technology, it is important for them to have a clear understanding of what technologies might shape the global economy and society over a sustained period and for which their "intervention" may be necessary" (OECD, 2019[6]). This can be both in terms of disruptive technologies that are challenging regulatory systems around the world, or more "normal" shifts in the market, environment or society that then require governments to modernise legacy regulation to ensure their fitness over time.

Changes in the regulatory landscape offer both opportunities and challenges for government (OECD, 2019[6]). On the one hand, government may capitalise on these new tools, technologies and ways of working to become more efficient, reliable and outcome-focused. On the other, challenges include the pace at which some of these changes are occurring, especially regarding emerging technologies that advance faster than regulation or social structure governing that technology (Marchant et al., 2011). Moreover, business models and the functioning of markets can be challenged, which has the potential for impacts throughout the economy.

Five questions may help in tackling challenges discussed above as a beginning step for policy makers and regulators to develop innovative policy and regulatory measures (Box 9.2). These concepts will be elaborated more in this chapter.

Box 9.2. Five questions regulators need to ask themselves

1. What's the current state of regulation?

When answering this question, policy makers will have to consider aspects including the relevance of current regulations, barriers to innovation through prescriptiveness, overlapping or convergent regulations, and other impacted regulations such as employment, taxation etc.

2. What's the right time to regulate?

Typically empowered with mandates to protect citizens and society, promote economic growth and competition and protect national/regional interests, regulators have to make choices of the appropriate time to regulate. They cannot be found to be too slow in avoiding negative impacts to their mandate or too fast or overzealous in protecting their mandates while hampering innovation without understanding the true nature of their impacts.

3. Is regulation the right approach?

When it is decided that government intervention is needed, all plausible alternatives to regulation – including a wide range of non-regulatory solutions – should be considered, including considering evidence of their effectiveness vis-à-vis more direct forms of intervention.

4. What's the right regulatory approach?

When the decision has been made to regulate, regulators and policymakers now have a variety of tools to choose from ranging from traditional regulatory approaches to softer approaches including self-regulations.

5. What has changed since regulations were enacted?

Impact of enacted regulations using tools such as *ex post* evaluations developed by the OECD and others may be used to not only to monitor and evaluate the performance of the regulations but, more importantly, relate them to the state of emerging technologies and business models and determine their relevance.

Note: This box was first published in a working paper *Regulatory Future of Emerging Technologies: A Scoping Paper on Gaps and Opportunities*, presented to the Regulatory Policy Committee in November 2018.
Source: Adapted from Deloitte, (2017[7]), The future of regulation: Principles for regulating emerging technologies, Deloitte Insights, https://www2.deloitte.com/us/en/insights/industry/public-sector/future-of-regulation/regulating-emerging-technology.html.

As the digital transformation has highlighted, policy makers and regulators unprepared to address these challenges have faced an uphill battle in responding to these changes in the market. Strategic foresight and anticipatory governance are two streams of OECD research may support countries in preparing in advance for future changes, and can form the first pillar of a Slovak Republic strategy for future proofing regulation.

Strategic foresight

Preparing for future uncertainties is an important element of better policy making. However, in times of rapid change, growing complexity and uncertainty, it may be challenging to plan for future events. There are shortcomings to approaches that attempt to predict the future or concentrate only on the most probable developments. A solution is to take into account multiple future possibilities to help governments become future-fit in such challenging contexts.

In Slovakia, the Institute for Strategy and Analysis (ISA) has been established as an analytical unit of the Prime Minister and the Government Office. According to its website (ISA, n.d.[8]), its mission is to provide analytical support to the Government's economic and social policy strategy. The Institute is concerned with the examination of regional development and the effectiveness of the use of the European Structural and Investment Funds in different areas such as regional policy, health policy, education, etc. Other topics include innovations and co-operation between academia and private sector. Recently, the Institute has started a project on reforms in higher education, and has become a Secretariat for the National Productivity Board. The Board has the primary task of monitoring, analysing and evaluating the productivity and competitiveness of the Slovak Republic (ISA, n.d.[9]).

The ISA produces short analyses and commentaries on current development of social and economic affairs in the country. It also conducts modelling using standard methods (i.e. regressions, time series, or spatial models) on the areas noted above. Complex future modelling is performed by the Institute for Financial Policy (IFP), the Council for Budget Responsibility (RRZ) and the National Bank of Slovakia (NBS).

The field of strategic foresight gives governments an approach to identify a number of different plausible future developments, explore what impacts they could have and identify potential implications for policy (OECD, 2019[10]). It can support better policy making by improving anticipation by identifying and preparing sooner for new opportunities and challenges, spurring new policy innovations to address these opportunities and challenges, and stress-testing existing or proposed strategies against a range of future conditions. In doing so, it is important for policy makers to look beyond the silos and consider how multiple developments can intersect and interact in unexpected ways. Effective foresight also benefits agile policy making, as sometimes policy processes can be slower than the changes that may be occurring.

Strategic foresight benefits policy by revealing implicit assumptions, challenging dominant perspectives, and engaging with surprising and significant disruptions that might otherwise be dismissed or ignored. Foresight uses a range of methodologies to reveal and discuss useful ideas about the future (see Box 9.3).

Box 9.3. Strategic foresight methods

Horizon scanning: seeking and researching signals of change in the present and their potential future impacts. Horizon scanning is the foundation of any strategic foresight process. It can involve desk research, expert surveys, and review of existing futures literature.

Megatrends analysis: exploring and reviewing of large-scale changes building in the present at the intersection of multiple policy domains, with complex and multidimensional impacts in the future.

> **Scenario planning**: developing multiple stories or images of how the future could look in order to explore and learn from them in terms of implications for the present.
>
> **Visioning and back-casting**: developing an image of an ideal (or undesirable) future state, and working backwards to identify what steps to take (or avoid).
>
> Source: (OECD, 2019[10]).

Effective foresight requires it to be integrated as a sustainable, on-going and widespread element of policy making to avoid it being relegated as a niche responsibility for a small group of experts or one-off projects. (OECD, 2019[10]) identifies five broad areas where action has been taken to build effective foresight systems:

1. **Demand**: Sustained demand from senior levels in government and the public service can help to ensure that the necessary institutional changes, resource allocations and practices are put in place, and permission is granted to focus attention on foresight and to explore issues proactively.

2. **Capacity**: Governments need to draw on intellectual capacity and skills needed to implement foresight thinking and apply it to policy making. On the one hand, this requires individuals trained in the theory and practice of foresight methods, and skills to design and facilitate strategic dialogue with policy experts. On the other, governments may want to provide basic foresight and futures literacy[1] training programmes to public servants.

3. **Institutions**: Arrangements may take many forms, but for many governments the key is having at least one central dedicated foresight unit to champion, conduct and co-ordinate foresight work across government. Departments and agencies may also wish to develop their own dedicated foresight teams to support the application of foresight in their mandate area.

4. **Embeddedness**: Foresight serves as an integral part of policy making, and not an isolated or 'extra' option to consider. Foresight can be used at any point in the policy cycle, from initial scoping to design and implementation, through to review and testing of existing strategies. It is important to involve public servants, senior public servants, politicians, citizens and other key stakeholders. This is because foresight is about engaging action, not simply 'studying the future'.

5. **Feedback**: Building a foresight system requires feedback and review to improve and respond to new circumstances, as well as adequate evaluation to demonstrate positive impacts or identify possible areas of improvement.

Anticipatory innovation

While strategic foresight is the structured and explicit exploration of multiple futures to inform decision making, anticipatory innovation is the framework that allows it to happen in practice by allowing for systematic embedding and application of foresight throughout the entire governance architecture (OECD, 2019[10]). Simply, it seeks to institutionalise and operationalise strategic foresight methods and related innovative methods into policy analysis, engagement and decision making (OECD, 2018[11]). It is about exploring new frames of reference and paradigms about how things can work, which then inform what should be done.

At its core, anticipatory innovation is about recognising and engaging with deep uncertainty about not only what works, but also what is appropriate or possible (OECD, 2018[11]). It works together with foresight tools and methods to create knowledge to anticipate future challenges and opportunities by exploring new frames of reference and paradigms about how things can work, which then inform what should be done. However, it does not seek to predict the future but, rather, help to shape how the future might play out.

Anticipatory innovation functions best when it is used as part of a portfolio approach that invests in multiple strategies to avoid being blind-sided, leaving government with a range of choices available to help them respond (OECD, 2018[11]). Anticipatory innovation focuses on picking up weak signals and engaging with them before a new course or paradigm is locked in. It explores things that may fundamentally challenge a system and current paradigm. It reads signals that may foretell these challenges, but also actually exploring options on the ground and innovating around them.

The future is highly uncertain, and can take many twists and turns. Investment in anticipatory innovation can therefore be challenging. Most of the time, the benefits of anticipatory innovation are only clearly seen in absentia – i.e. when no anticipatory innovation has happened, and there are then issues that arise, such as a lack of preparation for the major changes brought by social media to the information ecosystem surrounding politics and citizen engagement. Therefore, this process does have a difficult time demonstrating return-on-investment, as there is no counterfactual to calculate differences. This is where anticipatory innovation has tended to be focused on areas where there is a clear and recognised cost to being surprised, such as defence, agriculture, cyber-security and health (OECD, 2018[11]).

Some of the other issues particular to this process are:

- Disconnection from core business. Anticipatory innovation can be seen as something frivolous, esoteric or removed from the day-to-day pressures and priorities. This can lead to resentment or distancing of the work, as it is not seen as relevant.

- Out-in-front. Anticipatory innovation can sometimes be too far out in front of the curve, and thus misinterpreted or simply not understood. This can harm the ability of anticipatory innovation to meaningfully influence the present.

- Too big picture. Anticipatory innovation can be seen as too removed or distant from what matters, meaning that the work may not be engaged with.

- Challenging values. By calling into question the current state, anticipatory innovation can challenge people's beliefs and assumptions about how the world works, and the place of them and their work within it. Due to this, anticipatory innovation can be actively resisted or worked against, being seen as an attack on existing values.

In order for anticipatory innovation to occur, several factors are necessary (OECD, 2018[11]):

- Structural autonomy. Anticipatory innovation is about different possibilities, and thus sits uncomfortably with delivering on existing and thus very tangible priorities. Where anticipatory activity is not shielded structurally, more immediate priorities are likely to always have pre-eminence.

- Political or institutional cover. Being about weak signals and exploration of potentially radically different possibilities means that anticipatory innovation can be seen as frivolous or even fanciful. Topics like artificial intelligence or the risks of automation may throw up weird ideas. Without some form of political coverage or institutional legitimacy, such activity is unlikely to last.

- Longer-term commitment. Making significant progress with anticipatory innovation will usually not occur quickly, as it requires new knowledge, mixing different perspectives and capabilities, the exploration of multiple potential options, and investment to help shape preferred futures.

In addition to these, there are also a number of relevant supporting factors to help anticipatory innovation thrive. First, there needs to be a clear sense of consequence such that the general risks and pitfalls of being blindsided and caught unprepared are understood and appreciated. Second, giving explicit freedom to consider the unimaginable can help ensure more radical ideas can not only be considered, but actively explored. Finally, encouraging unconventional partnerships and relationships can provide the space to engage with different perspectives that may not seem immediately relevant.

(OECD, 2018[11]) also advocates for clear line of sight to decision makers, involving senior leaders into anticipatory processes, and creating a catalogue of examples and cases where failure to develop options in advance lead to crises to support the long-term sustainability of anticipatory innovation. Conversely, focusing on the overly-practical applications, making anticipatory work compete with business-as-usual activities, and not defending "out there" thinking can make anticipatory governance vulnerable to disruption or derailing its use.

Incorporating future proofing as part of the regulatory policy making cycle

The previous section introduced different strategic level processes and institutions that could be created to focus on modelling, preparing and integrating solutions for future scenarios that could impact the fitness of regulatory stocks. This section will focus on the way current regulatory strategies and processes could be made more innovative throughout the regulatory policy making cycle that could help future proof the existing stock of regulations.

As a tool of government, regulations consist of rules that identify permissible and impermissible activity on the part of individuals or firms with sanctions or incentives to ensure compliance (OECD, 2018[3]). For the purposes of this review, future proofing regulation was defined by the EC above as focusing on promoting the development and success of SMEs. The assumption then is that the system of regulatory policy making and resulting regulations have an impact on SME development and success.

There is evidence to support this assumption. OECD (2018[12]) argues that medium to large companies have an easier time complying with regulations compared to SMEs as these larger companies have a greater ability to internalise the costs and deal with the administrative burdens. The focus of this section then is to introduce different ways of creating regulations throughout the policy making process such that the burdens on SMEs are considered and reduced. In turn, this should help support greater entry of SMEs into the market, as well as help them grow and stabilise as viable businesses.

Incentivising innovation through different approaches to regulation

The traditional approach to regulatory policy making is through a prescriptive-based approach. This approach prescribes a set of standards and focuses compliance efforts on the degree to which an entity followed the rules. On the one hand, this can hinder SME development by placing a high cost on compliance – especially if necessary regulatory obligations are scattered throughout may different legislative and regulatory texts. On the other, this crowds out innovative businesses who do not fit within the prescriptive model and actions are thus deemed to be "illegal".

OECD research[2] has identified a wide range of alternative approaches and tools to regulation that can help foster greater innovation and reduce compliance costs to varying degrees:

1. **Performance or outcome-based regulation:** Specify measureable outcomes (performance measures, risk thresholds, etc.) that allow businesses greater opportunities for innovation, as long as it is easy to demonstrate that the desired performance has been achieve (Roca et al., 2017[13]). Since the outcomes are defined, firms and individuals are then able to choose the process by which they will comply, which enables them to identify more efficient and lower costs solutions. This can also simplify regulations as the outcomes are identified, rather than a large list of prescriptive requirements.

2. **Management-based regulations**: Also known as "enforced self-regulation" (Ayres and Braithwaite, 1992[14]), these aim to shift decisions to businesses with the most information (Roca et al., 2017[15]) as these businesses have the best understanding of the risks and benefits in a given sector. Typically, such regulations require businesses to maintain a range of processes, systems, and internal management practices to achieve goals defined in the regulations which could be

outcome based. Regulators generally do not need to check direct compliance with legislation, but rather to audit the corporate management systems, and in some cases to review documentation provided by businesses to show compliance. While this gives greater flexibility, it also increases the risk of capture and further compounding natural monopoly characteristics.

3. **International regulatory co-operation (IRC)**: In some instances, such as emerging technologies, products generated by companies may span multiple industries and jurisdictions (Saner and Marchant, 2015[16]), requiring a co-ordinated approach among regulators. IRC takes many forms and types, and can differ in geographical scope from bilateral to multilateral (OECD, 2013[17]). These range from the most binding through the harmonisation of rules through to the lightest being exchanges of information among regulators.

4. **Self-regulation and co-regulation**: These are instruments with no government involvement. Self-regulation typically involves a group of regulated entities voluntarily developing rules or codes of conduct that regulate or guide the behaviour, actions, and standards of those within the group. While taking many different forms, co-regulation generally involves governments given explicit legislative backing in some form for the regulatory arrangements developed by industry.

5. **Regulatory experiments**: This involves a wide range of regulatory approaches that allow for greater flexibility for companies through temporary regulations. This includes sunset clauses that define goals and enable adjustments over time, to creating "regulatory sandboxes" that allow firms to roll out and test new ideas without being forced to comply with the applicable set of rules and regulations. Foresight and anticipatory innovation, discussed above, also have a role to play in this area as well by creating different futures and setting up rule-making processes to leverage on the feedback.

Good regulatory practices

Taking a different approach to regulating in support of future proofing regulation needs to be supported with the right tools to make a difference. This means reflecting the outcomes desired via future proofing in the policy making tools to ensure these outcomes are considered and addressed. In the case of the Slovak Republic, the focus is on better business outcomes. The OECD would also encourage social and environmental outcomes to be included, such as gender, as these are often key drivers for inclusive growth and sustainability in the long run.

For regulatory policy, the good regulatory practices (GRPs) of *ex ante* assessment, stakeholder engagement and *ex post* review are useful for identifying and reviewing which regulations are essential for achieving given outcomes, ultimately making regulatory compliance as straightforward and meaningful as possible. Each are described in detail in the respective chapters above, so this section will focus on their potential role in the future proofing agenda.

In regards to the Slovak priorities, GRPs facilitate a stable and enabling regulatory environment for businesses that can help boost investment, trade and entrepreneurship. While GRPs identify benefits for businesses of all sizes, they are special helpful for SMEs who are comparatively less adaptive to – and potentially disproportionately affected by – the stock and flow of regulations (OECD, 2018[12]). A burdensome regulatory environment may irritate a larger enterprise but cripple an SME, shrinking the latter's already limited resources and inhibiting its creativity to succeed.

As SMEs are an important driver of most economies around the world, a key part of future proofing regulation for the benefit of businesses is to ensure SMEs can reap the benefits of future changes. However, as OECD research notes, SMEs are lagging behind in the digital transition as most of them ignore the potential benefits derived from the adoption of digital technologies, cannot clearly identify their needs, or do not have enough capabilities or financial resources to access and effectively use digital instruments (OECD, 2019[18]). These issues intersect with key issues for the Slovak economy noted in Chapter 1, including shortages in skilled labour to take advantage of technological change and an aging

workforce. GRPs then offer a way to explicitly incorporate SMEs and related challenges for the Slovak economy into regulatory policy making to ensure their role in the future economy is considered and addressed.

Future proofing regulation then entails incorporating these key elements of a 'future proof' Slovakia into the GRPs. For *ex ante* regulatory impact assessments, this means including categories that measure the impacts of regulatory changes on key elements of the Slovak economy, including SMEs, as well as more broadly on marginalised or under represented social groups and environmental outcomes. Actively reaching out to these groups and including their voices in stakeholder engagement processes helps the government understand more deeply how policy can affect these groups now and in the future. Finally, reviewing *ex post* the stock of regulations to see where bottlenecks create difficulties for these groups can help amend and revise regulations to make them fit for purpose going forward. Supporting this with strong oversight is a critical link that can support implementing these formal requirements.

Using behavioural insights as an innovative regulatory policy making tool

It is also important to think beyond using regulatory policy processes and practices more effectively to address future needs. Governments need to consider how new innovations in policy making can provide new tools and methods for making more effective policies. This section will specifically focus on the benefit and method for applying behavioural insights (BI) to regulatory policy as a method for creating better policy now and for the future.

OECD countries around the world have been turning to innovative policy-making methods and tools as a means of making more effective public policy (OECD, 2019[19]). BI was one of the earliest tools adopted by governments, beginning with the UK in 2010. Policy makers often assumed that humans make "rational" decisions and built policy based on this model. However, BI has demonstrated that social context and behavioural biases systematically influence people's abilities to act rationally, and often counter to these models of rational decision making.

The initial rise of BI came from a demand for more effective and efficient policymaking, in particular achieving better outcomes without resorting to additional rules or sanctions (OECD, 2017[20]). This was popularised as "nudging," which is "any aspect of the choice architecture that alters people behaviour in a predictable way without forbidding any options or significantly changing their economic incentives" (Thaler and Sunstein, 2008[21]). Over the next decade, behavioural research and application has demonstrated that BI is more than just nudge, but rather a suite of behaviourally informed approaches to designing and delivering policy (OECD, 2019[22]).

It is for this reason that policy makers around the world have turned to the field of BI for a clear methodology that generates evidence on how people "actually" behave. The field of BI is fundamentally about analysing policy problems based on lessons derived from the behavioural and social sciences, collecting evidence of which solutions works and which do not, and applying these findings to improving the outcomes of public policy.

This has been especially important for regulatory policy, where much of the early influence of behavioural insights was seen (Lunn, 2014[23]). Regulatory policy, especially in the field of economic regulation, draws heavily on deductive models – applying economic concepts of rationality and incentives to solving issues in regulation and market failures. One of the earliest contributions of behavioural insights to regulatory policy has been to support possible alternative, non-rule based interventions (Lunn, 2014[23])and has evolved since they to include different ways BI can support better regulatory policy making for support behaviour change in individuals and organisations (OECD, 2020[24]).

As with future proofing regulation, it is the desire of the Ministry of Economy to also develop a strategy to use BI in regulatory policy making. At the time of writing this review, the development of this strategy was still in the nascent stages. The section aims to help support the Ministry in the development of this strategy by introducing the BASIC methodology for applying behavioural insights, connecting BI with other work done in the Slovak Republic, and bringing lessons from around the world that may support the further development of BI.

Current practice of behavioural insights in the Slovak Republic

The Slovak Republic established a centrally-located team to conduct BI, known as Behavioural Research and Innovations Slovakia (BRISK). BRISK was established in February 2019 and sits in the Office of the Deputy Prime Minister for Investments and Information Technology (BRISK, 2019[25]). It has been given a four-year mandate to investigate the applications of BI in the Slovak Government, with a focus on a behaviourally-informed digital public administration and simplifying communication. It will also create methodologies and manuals for use by the Slovak Public Administration.

BRISK operates a partnering approach, whereby they can also receive requests by other government entities to support behaviourally-informed work. They have identified some early projects on matching job seekers with positions with the City of Bratislava and trials on taxes with the Ministry of Finance. They are also working with the Public Procurement Office to digitalise end to end the procurement process, which is in line with their focus on digital public administration.

BI has also been used on a more ad hoc basis previously inside the Slovak Public Administration. According to the (Lourenço et al., 2016[26]), there were at least three previous uses of behavioural-informed or aligned initiatives in Slovakia: increasing organ donation with the Ministry of Health, increasing tax compliance with the Ministry of Finance, and raising enrolment in pension schemes with the Ministry of Labour, Social Affairs and Family.

(Lourenço et al., 2016[27]) also notes at least three institutions academic supporting BI in government:

- The Institute of Experimental Psychology, Slovak Academy of Sciences: Conducts research in behavioural decision-making and on the influence of personality and cognitive variables on the process of decision making and self-regulation in naturalistic situations.

- The Centre of Trans-disciplinary Studies of Institutions, Evolution and Policies (CETIP): A collaborative research network dedicated to generating novel ideas in environmental research, education and policy making. CETIP's main mission is interdisciplinary research across natural and social sciences. It focused in particular on incorporating institutional, behavioural and ecological economics into the environmental governance and policy making. Based in Slovakia and associated with the Slovak Academy of Sciences, CETIP is a supra-regional network involving scholars from Slovakia, Czech Republic and Slovenia.

- The Faculty of Economics, Matej Bel University, Slovakia: Created a "calculator of future savings" using behavioural levers such as framing and anchoring to explain the impact of savings strategies on the final pension pot. Moreover, the "Savings Manager" is a research project focused on streamlining and automating savings to avoid sub-optimal decisions. Further research is oriented on "decumulation" strategies. Another study – Annuity Selector – applies principles of behavioural economics to show where, how and why a suboptimal choice is made. This study informed the law on old-age pension saving to improve the annuity selection process.

How to apply behavioural insights: The BASIC Toolkit

A key feature of the BI methodology is its empirical approach, driven by experimentation and piloting. This approach also allows policy makers to experiment and test solutions at smaller scale to determine the best course of action. As a result, governments can test multiple policy solutions with the beneficiaries at once before committing to resources to implementing full policy solutions that may need to be revisited later.

OECD (2019[22]) released the BASIC Toolkit. BASIC is an acronym for the five steps policymakers can go through to apply BI to public policy:

- **B**ehaviour: Identify and better understand the behavioural policy problem from the non-behavioural policy problem;
- **A**nalysis: Review the available evidence to identify the behavioural drives of the problem;
- **S**trategies: Translate the analysis into behaviourally-informed strategies;
- **I**ntervention: Design and implement an intervention to test which strategy best addresses the problem; and,
- **C**hange: Develop plans to scale and sustain behaviour.

The BASIC Toolkit equips the policymaker with best practice tools, methods and ethical guidelines for conducting BI projects from the beginning to the end of a public policy cycle. Earlier BI frameworks have primarily focused on the end stages of the policy cycle such as experimentation or compliance while less emphasis is placed on the behavioural analysis of a policy problem (OECD, 2019[22]). BASIC aims to bridge this gap by providing guidance on how to apply to BI to *ex ante* appraisal as well as the *ex post* evaluation stage of a policy cycle. This approach is reflected in the five stages of BASIC (Table 9.1). By understanding how and under what circumstances BI can be applied to cause behaviour change, policymakers are far more likely to design and deliver more effective policies.

Table 9.1. Applying BASIC to reduce missed medical appointments

Stage	Description	Example
BEHAVIOUR	Identify and better understand your policy problem.	Reduce costs incurred by unused government services caused by citizens failing to attend their medical appointments.
ANALYSIS	Review the available evidence to identify the behavioural drivers of the problem.	People have limited attention and recall but tend to respond to environmental cues.
STRATEGY	Translate the analysis to behaviourally informed strategies.	Send timely SMS reminders that include the cost of a missed appointment to the health system.
INTERVENTION	Design and implement an intervention to test which strategy best addresses the problem.	Test whether the new SMS reminders are more effective in reducing missed appointments than the status quo.
CHANGE	Develop plans to scale and sustain behaviour.	Share results with citizens, apply findings to system-wide reminders and monitor long-term consequences of the intervention.

Institutional design of behavioural insights around the world

OECD (2017[20]) presents the finding of the first ever international study of BI institutions, which surveyed 60 units applying BI around the world. They survey finds that support for BI can come from various places. It is often driven from high-level leadership with the intention of using BI to improve policy making, often with the support of partnerships with academic or non-profit institutions that can lend capacity and capabilities within government. Where support did not come from high-level leadership, it was supported by agency heads and senior management or directly from ministers. In some cases, the use of BI can be driven by units or divisions with the institution, often dedicated to economic analysis and statistics, or a combination of leadership's commitment paired with some push from a unit or division. In a few cases without leadership or institutional support, BI was driven by individual initiatives or external support, often in the form of external funding.

OECD (2017[20]) further finds a variety of institutional models that stem from this support. It argues that they can broadly be condensed into three:

- *Central steering model*: specialised units usually within the Centre of Government focusing fully or in part on applying, supporting, and advocating for the use of BI across government.
- *Specialised model*: Existing units within a department or specialised agency at central government or local government levels applying BI.
- *Project model*: BI used by practitioners or policy makers for specific projects or through specialised teams.

These models are not mutually exclusive. They co-exist, evolve over time and develop patterns of co-ordination (both formal and informal) between the different models.

Expertise in applying BI can be either via internal or external sources. Many governments around the world hire experts or behavioural scientists with degrees in psychology, social sciences, anthropology, economics and neuroscience, among others, to work on BI within the organisation. Many institutions combine these experts with staff from other disciplines to offer a multi-disciplinary approach to applying BI. Other institutions have either recruited experts to work part-time or have engaged external experts on a consultancy basis to help advise, design, develop and conduct the research, surveys, experiments and trials for behaviourally informed initiatives (OECD, 2017[20]). In the case of Slovakia, the presence of analytical units with experts in related fields provides a potential ready-made opportunity to leverage some internal expertise to support the application of BI internally.

In regards to resources needed to conduct BI experiments, OECD (2017[20]) finds that costs are often not an issue with often minimal (i.e. few thousands) costs associated with conducting interventions. Some, however, did cost more – in rare cases over a million. This may be a result of the embeddedness of BI, in that it is using existing government budget so the cost to government is negated.

Ethics are often cited as a concern when deciding to start applying BI. The survey conducted for OECD (2017[20]) finds that this is actually a barrier for surprisingly few, possibly because the respondents were operating in large part with support from senior leadership. Nonetheless, addressing this concern has been a focus of the behavioural community (OECD, 2017[28]). In response, ethical guidelines are included in the BASIC Toolkit (OECD, 2019[22]), noted above, that present guidelines for applying BI responsibly according to:

- *General guidelines*: Always conduct an ethical evaluation of behaviourally informed interventions; note that public acceptance of BI does not make it always ethically permissible; and, carefully consider issues related to consent and awareness.
- *Before beginning an intervention*: Consider establishing an ethical review board; ethical supervision of data collection, use and storage; observe existing ethical guidelines and codes of conduct.
- *Each stage of BASIC*: Specific guidelines are enumerated and can be found in OECD (2019[22]).

Assessment and recommendations

The Ministry of the Economy is taking positive steps with the goal of elaborating strategies on future proofing regulation and applying behavioural insights. The Ministry has clearly identified these areas as being important to designing and delivering more effective and efficient regulatory policy, which should have positive outcomes. This is also in line with OECD member and non-member countries around the world who are adopting innovative approaches to policy making. However, the focus of this strategy is on business outcomes and should be extended further to include important societal and environmental outcomes, such as for gender or under-represented groups, which are also key drivers in promoting better economic outcomes.

The challenge will be developing and implementing these strategies in an environment of competing priorities. The Ministry is taking on a number of ambitious reforms, including the RIA 2020 strategy and use of artificial intelligence. Collectively all these reforms, strategies and priorities will take up significant resources. This could result in two negative outcomes, especially for the strategies on future proofing and behavioural insights. One the one hand, these latter strategies are not currently in development and have been delayed in favour of prioritising the RIA 2020 strategy. There is a risk that they experience significant further delays as finite human and financial resources may continue to be diverted away to supporting other institutional priorities. On the other, incentives may encourage a rushing of these strategies to keep from further delays and progressing in line with the other priorities. Such a rushed or under-considered design and implementation could lead to a lack of confidence and trust in these new innovative methods, leading to a lack of take up, reduced overall impact, and a reticence of engaging in similar reforms in the future due to a perceive "failure" in the previous iterations. Either allocating or obtaining the right amount of resources to the development and implementation of these strategies will be essential for their longer term success.

The Ministry may find further challenges in demonstrating the effectiveness of these strategies amongst the outcomes from all the other reforms and new programmes under way. Lessons learned from the roll out of innovative strategies around the world, especially behavioural insights, have demonstrated that effective implementation is supported by two elements: a clear idea of areas where the innovative approaches can be applied with success and a defined period of time to deliver these results. For example, when the United Kingdom created the Behavioural Insights Team (BIT), they were mandated to deliver a ten-to-one return on investment over the first two years, which forced BIT to focus on a narrow set of policy problems that could demonstrate the effectiveness of BI (Halpern, 2015[29]). This may be difficult for the Ministry as multiple reforms compete for time, money and attention for senior decision makers.

Considering the broader objectives of the Slovak Government in implementing similar reforms provides an opportunity to gain senior level support and maximise the impact of these strategies. There is clear focus from the Centre of Government to develop capacities to use strategic foresight, anticipatory governance and behavioural insights with teams established in the Office of the Government and the Deputy Prime Minister's Office. These units have experts with background in these subject areas, and experience already in developing strategies and implementing them. Connecting and partnering with these institutions would provide the Ministry of the Economy an opportunity for accelerating the development of their strategies and reforms, as well as for collaboration, mutual learning, and expanding impacts on a broader level. This may also provide sustainability in terms of political support and funding if the Ministry can demonstrate the wider impacts and connections of their efforts.

Mobilising analytical units may offer significant internal support for the roll out of these strategies in the medium to long term. Implementing strategies on future proofing regulation and behavioural insights will require expert support. For countries, this typically comes in one of two forms: hiring experts with a mandate to build capacity to deliver over a several year mandate or using external experts in consultancy-style relationships to design and deliver on initial projects. The Slovak Government is in a position of strength, as they have already build analytical units in some ministries that are stocked with experts in various technical fields, and are well regarded for their technical and academic knowledge and skills. Mobilising these experts may provide ready-made and in-house solutions to the initial roll out of both strategies, enabling short implementation periods and faster results.

The OECD Secretariat makes the following policy recommendations:

- **Develop and gain high-level support from senior levels in government for both strategies**. This should include a clear idea which policy areas in most need of these approaches and identify projects that could return early positive returns to demonstrate the effectiveness of the tools. The Ministry should use this strategy and its positive outcomes to "make the case" for human and

financial resource allocations to support these strategies, and how to differentiate the outcomes of these strategies compare to the others.

- **Carefully consider how best to institutionalise and embed these two strategies in the work of the Ministry**. Work by OECD member and non-member governments around the world on both strategic foresight/anticipatory governance and BI gives many examples of how to institutionalise teams. Careful consideration needs to be given towards how these teams are created, and especially how they are embedded in the policy-making process to ensure their work is not isolated or disconnected from real policy development and implementation.

- **Establish connections and collaborate with other parts of the Slovak Public Administration who are currently working on foresight/anticipatory governance and behavioural insights** to co-ordinate approaches and leverage collective expertise, as well as address policy problems in a joined-up approach. Special attention should be paid to ensuring that efforts are not duplicated and that senior decision makers see the mutual benefit of these approaches across government. This could be especially relevant for the BRISK team in the Deputy Prime Minister's Office who has a mandate to support Ministry in applying BI. Establishing an informal or formal co-ordination network could provide an early win opportunity.

- **Consider various approaches to developing expertise and capacity to deliver efficiently on these new strategies**. Internally, explore the opportunity to leverage the expertise of analytical units to support foresight/anticipatory governance and behavioural insights. Externally, the Ministry could consider partnerships with universities or private partners to lend expertise and support, either via consultancy-type contracts or secondments to work with the Ministry.

- **Create opportunities for change as these new strategies are designed and implemented**. For instance, consider workshops and capacity building events to introduce and capacitate Ministry officials on the benefits of foresight/anticipatory governance and BI. Pay special attention to establishing linkages between those who will be doing innovative work and officials who need to be incorporating the findings into their policies. Use success stories to create broader support for the use of these tools. Finally, disseminate findings to both internal government audiences, including senior decision makers and politicians, as well as externally to the respective communities so that other countries can learn what works, as much as what did not.

Notes

[1] Future literacy has been defined as the "capacity to explore the potential of the present to give rise to the future" (Miller, 2007[30]) which means recognising that developments in the present are signals of what the future might hold.

[2] Presented in a working paper *Regulatory Future of Emerging Technologies: A Scoping Paper on Gaps and Opportunities*, presented to the Regulatory Policy Committee in November 2018.

References

Ayres, I. and J. Braithwaite (1992), *Responsive regulation : transcending the deregulation debate*, Oxford University Press.   [14]

BRISK (2019), *Behaviorálny výskum a inovácie Slovensko*, https://lepsiesluzby.digital/ (accessed on 7 February 2020).   [25]

Deloitte (2017), *The future of regulation: Principles for regulating emerging technologies*, https://www2.deloitte.com/us/en/insights/industry/public-sector/future-of-regulation/regulating-emerging-technology.html (accessed on 7 February 2020).   [7]

EESC (2016), *Future proof regulation: Exploratory opinion from the Slovak presidency*, https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/future-proof-regulation-exploratory-opinion-slovak-presidency (accessed on 7 February 2020).   [1]

European Commission (2019), *The Innovation Principle*, European Commission, Research and Innovation Deaprtment, https://ec.europa.eu/info/research-and-innovation/law-and-regulations/innovation-friendly-legislation_en (accessed on 7 February 2020).   [5]

European Commission (n.d.), *Better regulation: why and how | European Commission*, https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en (accessed on 7 February 2020).   [4]

Halpern, D. (2015), *Inside the nudge unit: how small changes can make a big difference*, Penguin Random House UK, London.   [29]

ISA (n.d.), *Inštitút pre stratégie a analýzy*, https://www.vlada.gov.sk/institut-pre-strategie-a-analyzy-isa/ (accessed on 7 February 2020).   [8]

ISA (n.d.), *National Productivity Board*, Inštitút pre stratégie a analýzy, Bratislava, https://www.vlada.gov.sk/data/files/7654_nrp-sr-isa-en.pdf (accessed on 6 March 2020).   [9]

Lourenço, J. et al. (2016), *Behavioural Insights Applied to Policy: European Report 2016*, European Commission, http://dx.doi.org/10.2760/903938.   [26]

Lourenço, J. et al. (2016), "Behavioural Insights Applied to Policy: Slovakia Country Overview", in Lourenço, J. et al. (eds.), *Behavioural Insights Applied to Policy: European Report 2016*, European Commission, Brussels, https://ec.europa.eu/jrc/sites/jrcsh/files/jrc-biap2016-slovakia_en.pdf (accessed on 7 February 2020).   [27]

Lunn, P. (2014), *Regulatory Policy and Behavioural Economics*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264207851-en.   [23]

Miller, R. (2007), "Futures literacy: A hybrid strategic scenario method", *Futures*, Vol. 39/4, pp. 341-362, http://dx.doi.org/10.1016/j.futures.2006.12.001.   [30]

OECD (2020), *Behavioural Insights and Organisations: Fostering Safety Culture*, OECD Publishing, Paris, https://dx.doi.org/10.1787/e6ef217d-en.   [24]

OECD (2019), *Embracing Innovation in Government - Global Trends 2019*, https://trends.oecd-opsi.org/ (accessed on 7 February 2020).   [19]

OECD (2019), *OECD Digital for SMEs Global Initiative: Concept Note*, [18]
http://www.oecd.org/going-digital/sme/resources/D4SME-Brochure.pdf (accessed on
7 February 2020).

OECD (2019), *Regulatory effectiveness in the era of digitalisation*, [6]
https://www.oecd.org/gov/regulatory-policy/Regulatory-effectiveness-in-the-era-of-
digitalisation.pdf (accessed on 7 February 2020).

OECD (2019), *Strategic Foresight for Better Policies*, https://horizons.gc.ca/en/our- [10]
work/metascan-3-emerging-technologies/ (accessed on 7 February 2020).

OECD (2019), *Tools and Ethics for Applied Behavioural Insights: The BASIC Toolkit*, OECD [22]
Publishing, Paris, https://dx.doi.org/10.1787/9ea76a8f-en.

OECD (2018), *Good Regulatory Practices to Support Small and Medium Enterprises in* [12]
Southeast Asia, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264305434-en.

OECD (2018), *Innovation facets part 6: Anticipatory innovation*, https://oecd-opsi.org/innovation- [11]
facets-part-6-anticipatory-innovation/ (accessed on 7 February 2020).

OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, [3]
https://dx.doi.org/10.1787/9789264303072-en.

OECD (2017), *Behavioural Insights and Public Policy: Lessons from Around the World*, OECD [20]
Publishing, Paris, https://dx.doi.org/10.1787/9789264270480-en.

OECD (2017), *Behavioural Insights in Public Policy: Key Messages and Summary from OECD* [28]
International Events, http://www.oecd.org/governance/regulatory-policy/OECD-events-
behavioural-insights-summary-may-2017.pdf (accessed on 7 February 2020).

OECD (2016), *The Governance of Inclusive Growth: An Overview of Country Initiatives*, OECD [2]
Publishing, Paris, https://dx.doi.org/10.1787/9789264265189-en.

OECD (2013), *International Regulatory Co-operation: Addressing Global Challenges*, OECD [17]
Publishing, Paris, https://dx.doi.org/10.1787/9789264200463-en.

Roca, J. et al. (2017), "When risks cannot be seen: Regulating uncertainty in emerging [15]
technologies", *Research Policy*, Vol. 46/7, pp. 1215-1233,
https://doi.org/10.1016/j.respol.2017.05.010.

Roca, J. et al. (2017), "When risks cannot be seen: Regulating uncertainty in emerging [13]
technologies", *Research Policy*, Vol. 46/7, pp. 1215-1233,
http://dx.doi.org/10.1016/j.respol.2017.05.010.

Saner, M. and G. Marchant (2015), "Symposium: Proactive International Regulatory Cooperation [16]
for Governance of Emerging Technologies", *Jurimetrics*, Vol. 55, pp. 147-178,
http://dx.doi.org/10.2307/24395569.

Thaler, R. and C. Sunstein (2008), *Nudge : improving decisions about health, wealth, and* [21]
happiness, Yale University Press.

From:
Regulatory Policy in the Slovak Republic
Towards Future-Proof Regulation

Access the complete publication at:
https://doi.org/10.1787/ce95a880-en