

# 12 Professionalism

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This chapter describes the relevance of promoting professionalism and capacity building of inspectors for the regulatory enforcement process and the achievement of expected outcomes. The chapter describes the professionalism principle and relevant practices to train inspectors. It presents OEFA's actions to professionalise its inspection team and provides recommendations.

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*Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency (OECD, 2014<sup>[11]</sup>), (OECD, 2018<sup>[2]</sup>).*

The profession of “inspector” needs to be defined as such, and required competences should include a combination of technical (field-specific) skills and “core” skills linked to risk management, compliance promotion, amongst others. This requires substantial training on both aspects as well as official guidelines for inspectors to help ensure consistency and fairness. Only professional inspectors, with a full understanding of their mission and of the tools available to fulfil it (and of their limitations) can adequately exercise discretion. Such a framework for the inspection profession should be officially stated, and form the basis for recruitment practices, job descriptions, training, professional assessments and performance evaluation for staff.

It is crucial to ensure that inspectors receive the adequate technical training (and regular “refreshers”) and training on their functions and how to best exercise them (and updates on new findings and methods during their career).

Competency of staff members and the overall capacity of the organisations where they work, should be regularly assessed and efforts should focus on continuously enhancing them. Such assessment should be used to identify gaps and needs, and achieve improvements.

## Professionalism of inspectors

Although OEFA’s Regulation on Inspections simply defines the inspector as the ‘natural or legal person that exercises the inspection function as per the legislation in force’ (Art. 5.m of the Regulation), it also provides for a more comprehensive principle of professionalism. Such principle includes a combination of technical skills and competencies related to risk management and compliance promotion to ensure consistency and impartiality during the conduct of inspections (Art. 4.f).

As already mentioned in other chapters of this Review, a number of guidelines, handbook and other tools have been prepared by OEFA – e.g. on environmental inspections, methodology to assess non-compliances, calculation methodology for fines, as well as a Code of Conduct for inspectors—to ensure fairness, ethical behaviour, proportionality, and homogeneity in inspections.

## Training of inspectors

The sub-directorate for Capacity Building in Environmental Supervision is responsible for capacity building within the agency (and beyond). It manages in particular the Academy of Environmental Supervision, OEFA’s library, “Knowledge Routes”, and the Peoples’ development plan (PDP) (OEFA, 2018<sup>[3]</sup>). Diagnosis of training needs are carried out. The Academy (OEFA, n.d.<sup>[4]</sup>) organises courses to improve competencies in particular in Law, Biology, Economics, and Environmental Engineering. For each course, different dimensions (strategical, technical-operational and interpersonal) and different levels of training exist, as well as specialised levels by economic sector. A Virtual Campus provides training material for self-learning activities.

The sub-directorate for Capacity Building is also responsible for designing a Knowledge Route for each profession, where additional training and capacity-building opportunities are proposed to OEFA’s officials. The Academy offers certification upon satisfactory completion of the training. The Review was not able to assess the level of development and implementation of this “Knowledge Route” model.

OEFA has developed a PDP (Personnel Development Plan) (OEFA, 2018<sup>[3]</sup>). The PDP is a strategic document on capacity-building management based on the environmental sector’s vision, OEFA’s institutional mission and one of the objectives set in the Institutional Strategic Plan – ‘modernising’ OEFA’s institutional management.

The PDP acknowledges that human resources are the most important resources within an organisation, as the behaviour and performance of the personnel has a direct impact on the quality and optimisation of the services delivered by the institution.<sup>1</sup> Depending on the position and responsibilities of the official, a general competency objective, and three specific objectives (administrative systems, environmental management, and soft skills – understood as teamwork competencies), are set. The advantage of this model is that not only inspectors, but all OEFA’s staff are considered. The budget is reported to be allocated accordingly.

In addition, OEFA uses the Performance Model developed by the Nacional Authority of Civil Service (SERVIR), which sets a methodology to assess the teams and individual’s objectives in terms of competencies (Autoridad Nacional del Servicio Civil, n.d.<sup>[5]</sup>). This methodology is related to a) training management and b) performance management. The Review was not able to assess to which extent this methodology is adequate for OEFA’s purposes.

According to the rules in force,<sup>2</sup> all public servants who have access to training schemes that are part of the existing PDP – which is the case of OEFA’s personnel—have to take the relevant trainings. In addition to this, new staff are introduced to the position from the first day of work.

Information reported by OEFA suggests that objectives of managerial staff’s performance are based on indicators established in OEFA’s strategic and operational documents. In particular, each strategic objective established by the PEI will be under the responsibility of certain directorates of OEFA, and the performance of the personnel of such directorates will be evaluated accordingly, based on their level of responsibility within the Directorate.

Courses and workshops for EFAs are based on the needs identified by OEFA, as follows:

- Local governments: environmental inspections and enforcement; solid waste management; environmental noise; fines calculation methodology
- Provincial governments: sanctioning administrative procedure; formalisation and enforcement with regard to informal mining operators; fines calculation methodology
- National government (including OEFA): public management and environmental policies; environmental compliance promotion; sanctioning administrative law.

Efforts and activities to ensure professionalism do not only strictly relate to OEFA, but also to other EFAs, so as to ensure that new principles and methods of professionalism “percolate” throughout the system, including in regions, and that all inspectors are effectively (and regularly) trained. Nevertheless, the titles of the different trainings seem to suggest that the focus is still rather reactive than preventive and proactive and that a high percentage of the capacity-building activities relate to enforcement, fines, and sanctions.<sup>3</sup>

The list of “core competencies for regulators” in the United Kingdom can serve as a model to further refine which abilities and aptitudes are needed for inspectors, see Box 12.1.

### **Box 12.1. Core competencies for regulators, Office for Product Safety and Standards, United Kingdom**

Effective local regulation depends upon the professionals involved. Reviewing their development needs is essential, as the nature of their roles and the legislation that they enforce change over time. OPSS thinks there is a set of core competencies relevant to all regulators, regardless of the level and nature of their work.

**Context**

- Understanding of the role of regulation as a tool of Government
- Ability to work within the wider regulatory framework
- Ability to work towards your organisation's regulatory objectives
- Ability to work with the legislation relevant to your regulatory function(s)
- Ability to work within your organisation's regulatory policies and procedures
- Understanding of the role and responsibilities of partner organisations

**Risk assessment**

- Ability to assess regulatory risks
- Ability to gather, analyse, use and share data to inform risk assessment
- Ability to use risk assessment to guide your activities
- Understanding of risk management in a business context
- The term 'business' is used throughout to denote a regulated entity. Some regulated entities are not businesses but could be individuals acting in a private capacity. Many of the core competencies will apply equally in these cases.

**Understanding those you regulate**

- Understanding of the current business environment and the business sector(s) regulated
- Understanding of how regulation and the way it is enforced can impact business communities and individual businesses regulated
- Understanding of the factors that affect business approaches to compliance
- Ability to engage constructively with business
- Ability to tailor your approach to businesses and individuals that you interact with

**Planning your activities**

- Ability to act within your role and area(s) of responsibility
- Ability to make appropriate intervention choices, drawing on your understanding of the context in which you operate, of those that you regulate, and of the use of risk-based approaches so as to have the greatest impact
- Ability to work effectively with other organisations
- Ability to plan your work, and that of your team, so as to deliver your responsibilities efficiently

**Checking compliance**

- Ability to prepare appropriately for checks on compliance
- Ability to conduct checks in a proportionate manner
- Ability to be responsive to the circumstances encountered
- Ability to make informed assessments of compliance and risk
- Ability to follow-up on checks on compliance in an appropriate manner

**Supporting compliance**

- Understanding of the need for compliance support amongst those you regulate
- Ability to promote the importance of compliance, and your organisation's role in supporting compliance

- Ability to communicate in appropriate ways to suit the circumstances
- Ability to provide the information and guidance that is needed by those you regulate
- Ability to provide the tailored advice that is needed by those you regulate, where appropriate

#### Responding to non-compliance

- Ability to select proportionate responses to non-compliance and potential non-compliance
- Ability to communicate effectively with businesses that have failed to comply
- Ability to conduct thorough investigations of non-compliance and allegations of non-compliance
- Ability to prepare and implement effective responses to non-compliance
- Ability to provide appropriate support for those adversely affected by non-compliance

#### Evaluation

- Ability to monitor and report on your activities and performance
- Ability to evaluate your activities in relation to your regulatory objectives and your organisation's strategic priorities
- Understanding of the value of feedback from those you regulate, and the beneficiaries of regulation in informing future activities.

Source: Government of the United Kingdom (2016<sup>[6]</sup>), *Core competencies for regulators*, <https://www.gov.uk/guidance/core-competencies-for-regulators> (accessed 15 October 2019).

## Assessment

OEFA has placed professionalism at the centre of its efforts. Guidelines and tools to ensure fairness, ethical behaviour, proportionality, homogeneity in inspections have been prepared. Training and capacity-building opportunities have been developed, especially through the Academy of Environmental Supervision. As concepts such as risk management, compliance promotion and proportionality are still new, additional guidelines on risk analysis, on how to frame the use of discretion and on all inspection-related activities (when not available), should be considered. Additionally, these tools allow inspectors and other staff to self-assess their competencies against a well-defined set of aptitudes and capabilities designed in line with good international practice. These tools could also be useful to embed new methods, and settle the paradigm shift towards a result-oriented approach to regulatory inspections and supervision.

Training and capacity building is systematically and regularly delivered to new and existing staff, and there is a clear effort in setting the objectives of such activities based on strategic goals of the agency, as set in the relevant Strategic Plan. A diagnostic of training needs is also performed on different types of EFAs and training is being delivered accordingly. To ensure that OEFA's efforts to nurture professionalism actually deliver the expected outcomes, the emphasis on training and capacity building should be gradually put on prevention rather than on reaction (calculation of fines, methodology to assess type of non-compliance, amongst others), as well as on competencies internationally recognised as being key in inspectorates that are modern, effective and risk-oriented.

## Recommendations

- Further efforts would be desired to develop more guidance tools as these are needed not only for inspectors, but also for other employees of the OEFA and the EFAs who deal with risk analysis and assessment, environmental evaluations, enforcement and planning. The former is particular

relevant as it is important to take into consideration the characteristics and the behaviour of the regulated subjects when deciding on measures and sanctions other than fines and when defining advisory inspections.

- OEFA would benefit from putting a special emphasis on the following areas of competencies and skills: result-oriented risk management, ‘soft’ and communication skills—especially towards business operators and stakeholders—compliance promotion techniques, and stakeholder engagement techniques, amongst others,
- In a context where concepts such as risk management, compliance promotion and proportionality are still new and in the process of being translated into tools and practices, and where formalism and burdensome procedures permeate the regulatory framework, it could be interesting and useful to consider developing some of the following, and reflecting on international experience in this regard:
  - Regulations, or at least guidelines, on all supervision-related activities of OEFA, such as advisory inspections, environmental impact assessments amongst others,
  - A risk assessment methodology, including if possible a) how to conduct the overall risk identification, analysis and evaluation process, as well as b) the process of prioritising inspection-related efforts and actions based on evidence-based risks.
  - A tool enabling inspectors and staff of OEFA and other EFAs to self-assess their competencies.
  - Develop guidelines, when not already available, for all inspection-related activities, as well as a general risk-assessment methodology.
  - If the development of standardised risk-based checklists is considered (see Chapter 11 on Compliance promotion), the preparation of guidelines to prepare them based on risk-assessment is also recommended. This will ensure that all checklists are developed following the same method, in line with good practice international experience.
  - Develop a list of core competencies needed by inspectors. Such competencies shall include all aptitudes and capabilities that are crucial for an inspector to perform their work based on the new guiding principles of environmental regulatory inspections and enforcement. Emphasis of training activities should be put on these competencies, and on risk prevention rather than enforcement.
  - Consider developing a tool for OEFA and the EFAs’ staff to self-assess their competencies against a well-defined set of aptitudes and capabilities designed in line with good international practice (see previous recommendation).
  - In general, training and capacity building organised and provided by OEFA should emphasise competencies as result-oriented risk management, “soft” and communication skills, compliance promotion techniques amongst others. Moreover, the focus of the training should gradually move from methods and techniques related to reaction (for instance, calculation of fines and assessment of the gravity of violations) to prevention.

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## Notes

<sup>1</sup> See *op. cit.*, I.3.

<sup>2</sup> See resolution of Executive Presidency No. 141-2016-SERVIR-PE.

<sup>3</sup> This is also shown in OEFA's webpage on regulations in force and draft regulations—most of available documents are related to sanctions and fines. See: <https://www.oefa.gob.pe/normas-y-proyectos-normativos>.



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