

7 Regulatory compliance, enforcement and inspections

This chapter reviews Slovak Republic's strategy for regulatory compliance, enforcement and inspections. It pinpoints the need for a whole-of-government policy on reforming inspections and promoting compliance.

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Compliance monitoring

The general level of compliance rates is not monitored in Slovakia. Individual ministries or central government bodies monitor compliance in specific sectors such as the financial sector or in tax regulations. Specific regulatory bodies monitor compliance with regulations within their area of competence (e.g. the Nuclear Regulatory Authority, the Office for Public Procurement, and the Office for Personal Data Protection). However, no government-wide guidance exist for monitoring compliance and/or analysing reasons for non-compliance.

Regulatory enforcement and inspections

Ensuring effective compliance with rules and regulations is an important factor in creating a well-functioning society and trust in government. If not properly enforced, regulations cannot effectively achieve the goals intended by the governments. Regulatory enforcement is therefore a major element in safeguarding health and safety, protecting the environment, securing stable state revenues and delivering other essential public goals. Inspections are the most visible and important among regulatory enforcement activities. For more information on the OECD's view on the issue of regulatory enforcement and inspections, see the OECD Best Practice Principles for Regulatory Enforcement and Inspections see (OECD, 2014^[1]) and (OECD, 2018^[2])

Box 7.1. The OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections

1. Evidence based enforcement. Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly.
2. Selectivity. Promoting compliance and enforcing rules should be left to market forces, private sector and civil society actions wherever possible: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulations' objectives.
3. Risk focus and proportionality. Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.
4. Responsive regulation. Enforcement should be based on "responsive regulation" principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.
5. Long term vision. Governments should adopt policies on regulatory enforcement and inspections: clear objectives should be set and institutional mechanisms set up with clear objectives and a long-term road-map.

6. Co-ordination and consolidation. Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.
7. Transparent governance. Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded.
8. Information integration. Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.
9. Clear and fair process. Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.
10. Compliance promotion. Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
11. Professionalism. Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: (OECD, 2014^[1]) *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, Paris, <http://dx.doi.org/10.1787/9789264208117-en>.

Such as is the case in most of the OECD countries, no cross-cutting, government-wide policy on reforming regulatory enforcement exists. However, some of the inspection authorities have policies that implement some of the elements described in the OECD Principles. This is especially due to the fact that regulators and inspection authorities in recent years got their budgets cut while at the same time, more competences have been added to their portfolio. They should, or are even forced, to look for ways how to make their activities more targeted.

The majority of inspections in Slovakia are regular (planned). Most of the inspection authorities prepare their inspection plans, mostly annual, in some cases more long-term. The plans are based on various criteria, however, in many cases, the goal is to inspect all regulated subjects during a certain period of time instead of focusing on potential risks. Potential risk is used as one of the criteria for planning inspections rather rarely. The same applies to the record of previous inspections of individual inspected subjects (with some exceptions, e.g. the environmental inspection). What is sometimes taken into account is the size of inspected companies, the existence of natural monopolies, etc.

In case of the Slovak Trade Inspection, inspections focus on products rather than facilities. Their inspection planning is based on:

- complaints of consumers and economic operators
- announcements of other administration bodies
- based on requirements from new legal norms
- experience from previous inspections
- experience from appeal procedures
- follow-up of the measures applied
- notifications from RAPEX system and ECHO system
- risk assessment.

These aspects are taken into account in deciding whether a product is suspicious and whether we will take a sample of it or not within scope of risk assessment (before sampling of products):

- type of product – with recurrent risk
- the origin of the product – the manufacturer
- riskiness of the economic operator – the importer
- the distributor

Individual inspectorates have the database of operators according the degree of risk.

A high percentage of inspections is complaints-based, in some cases, such as the environmental inspection, the ratio is 80%. While complaints are evidently a relevant source in terms of assessing the likelihood of a problem, they give only limited information (or information of limited reliability) about the potential magnitude or severity of the problem. For inspection activities to be properly 'evidence-based', complaints information should be systematically combined with other sources. For example, an analysis of the actual impact of past violations, the potential effects of current economic activities, and the reliability of past complaints in terms of predicting the severity and magnitude of damage.

Providing advice to regulated subjects on how to comply with regulations does not seem to be embedded in a mind-set of regulators and inspection authorities. During interviews, many representatives of inspectorates expressed the opinion that regulated subjects should be able to find all necessary information on which regulations they have to comply with. In some cases, ad hoc information is provided based on a request by a concrete company or individual.

There is some co-ordination among various inspectorates, for example the occupational health and safety inspection co-ordinates with labour inspectorate and environmental inspection, when needed also with the police. However, this co-ordination is not a result of a systemic, government-wide policy.

The National Healthcare reform included some interesting provisions in the area of inspection reform. The changes mostly focused on automatisisation of inspections using ICTs and sharing data on the results of inspections with other inspectorates. A centralised portal should have been created enabling access to crucial information for inspected subjects. Unfortunately, the reform law was withdrawn from the Parliament in December 2019 and it is not clear when the legislative process will start again and how the substance will change.

Training is provided to inspectors by individual inspection authorities and also based on the Civil Service Law. The trade inspection, for example, trains its inspections also in soft skill, such as communication and interaction with inspected subjects.

Assessment and recommendations

As is the case in many other OECD countries, *Slovakia does not have a whole-of-government strategy on improving regulatory compliance and reforming inspections*. The issue of regulatory delivery is not part of regulatory policy and there is no central body responsible for co-ordinating regulatory enforcement and inspections. While elements of good regulatory enforcement are implemented by some individual inspectorates, the use of evidence when planning inspections, targeting inspections based on risk as well as more focus on promoting compliance are still not fully embedded in the daily work of the inspectorates. Better co-ordination among different inspection authorities would also be useful and contribute to reducing regulatory burdens on inspected subjects.

The OECD Secretariat makes the following policy recommendations:

- **Slovakia would**, as many other OECD countries, **benefit from adopting a government-wide strategy on reforming inspections or even a specific law on inspections**. The approach of the Lithuanian government could be used as an example of a successful strategic approach.
- **The government should bolster the use risk-based approaches to enforcement in Slovakia**. Regulatory enforcement strategies continue to be mostly based on prescribing sanctions to regulated businesses and individuals. The Slovak Government should introduce changes to encourage inspectors to use risk-based strategies, such as warnings for minor or unintentional infractions, so that strained inspection resources can be used to in-depth audits of high-risk areas.
- **All inspectorates should move to focus on raising compliance rather than simply handing out sanctions**. They could accomplish this by issuing guidance materials, providing inspection checklists, or through information portals (see Principle 10 of the Compliance and Enforcement Principles).
- **Better co-ordination among inspection-authorities should be ensured at the central level**. This can be achieved through the voluntary exchange of inspection plans, creation of an inter-inspectorate co-ordination body (ex. the Slovenian Inspection Council) and automatic exchange of data and information on the results of inspections among inspectorates.

References

- OECD (2018), *OECD Regulatory Enforcement and Inspections Toolkit*, OECD Publishing, Paris, [2]
<https://dx.doi.org/10.1787/9789264303959-en>.
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