

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?

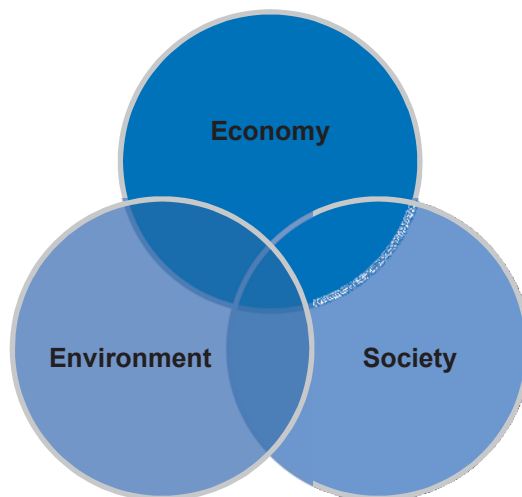
Regulatory policy can be defined as an explicit policy to ensure high-quality regulations. Its objective is to establish regulatory frameworks that serve the public interest.

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).

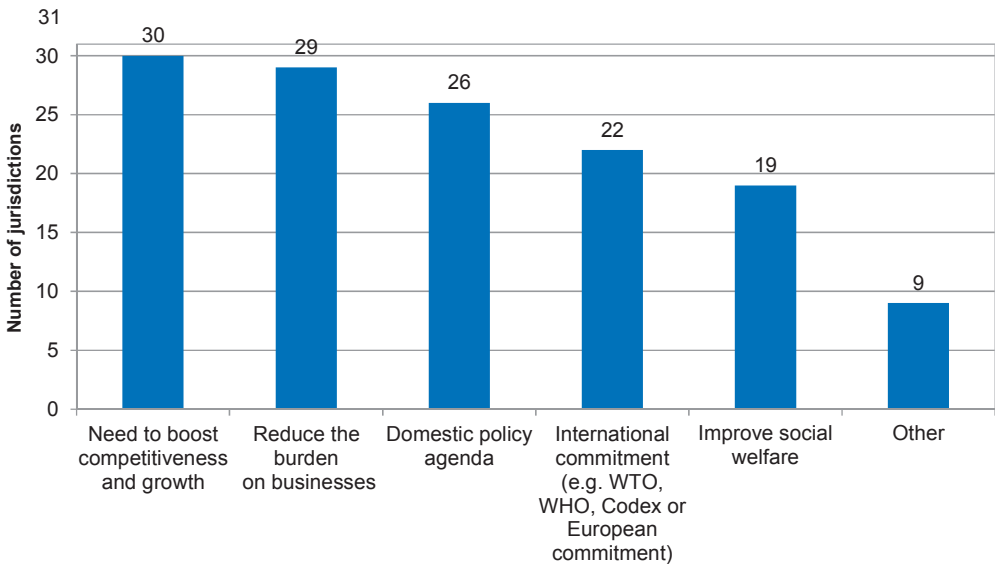
Figure 1.1. The regulatory environment



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.

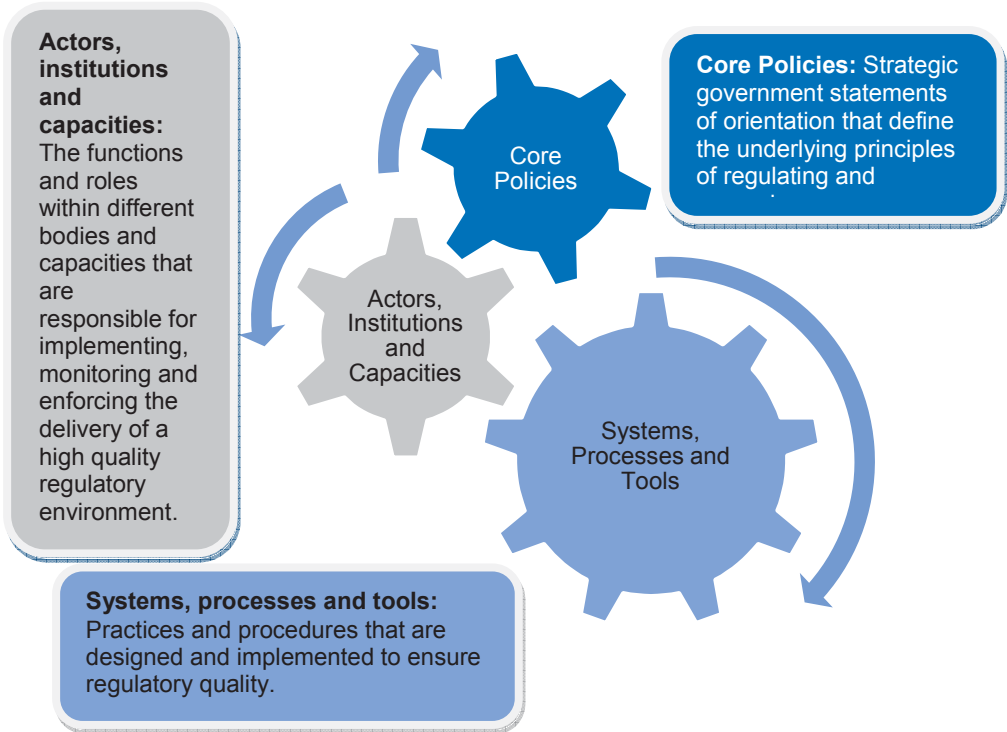
Like many other places, there are a variety of internal and external factors that drive regulatory reforms in MENA countries. The first generation of regulatory reforms were mainly driven by the internal and external desire to develop the economy and reduce barriers to private sector growth. The increasing 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



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](https://doi.org/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 Quality¹

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

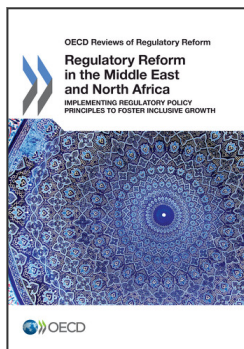
- Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional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

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