

# FIVE PRIORITIES FOR STAKEHOLDER ENGAGEMENT

April 2016

On the occasion of the 2015 Public Governance ministerial meeting, BIAC emphasized the fundamental importance of an enabling regulatory framework and a good understanding of the prerequisites for growth. We expressed our strong support to OECD activities aiming to restore trust in public institutions and in business, and reminded ministers that businesses need stable, transparent, predictable and efficient legal frameworks and their consistent implementation, recognizing that sustained stakeholder engagement and consultation are key to improve regulatory processes.

Stakeholder engagement is a pillar of sound, evidence-based regulatory frameworks. An essential mean for stakeholder engagement, effective regulatory consultation processes and well-conducted impact assessments contribute to improve the design of sustainable regulations. These are drivers for stakeholder buy-in and commitment in the implementation of regulations and contribute to the efficient monitoring of regulatory practices. The key features of sound and efficient stakeholder engagement are as follows:



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## Openness

While policy capture bears risks for the entire civil society, including the private sector, in many countries the willingness of regulators to engage with the private sector needs to increase. Discussions on specific companies' failures have not always been balanced with the broader picture, and with due consideration to the very positive role the private sector can play in the analysis of existing regulations, in the assessment of relevant measures and as a key provider of expert advice. Relevant stakeholders are ignored or their views misrepresented, insufficient publicity or time is afforded to the process, documents are unclear and questionnaires leading or ill-designed so that problems with the proposed measures cannot be presented in the answers.

**RECOMMENDATION:** All stakeholders affected by the possible action should have the opportunity to participate in consultations during the whole regulatory process. The OECD should provide tools for the analysis of the depth and breadth of the engagement (private sector at national and international level, civil society, etc.) and of the way stakeholders engage.

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## Transparency

Transparent and accessible information about impact assessments is key to raising awareness amongst stakeholders, who must be invited to feed into the process, and throughout the process. Feedback should also be given to those who provide comments and suggestions. This enhances the regulators' chances of receiving and assessing relevant comments from all sectors and businesses concerned.

**RECOMMENDATION:** Consulting regulators should make documents for consultation more easily accessible and better explain how the information provided during consultations will be used. The OECD could develop tools to analyse the adequacy of the means used to engage with stakeholders.

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## Consistency

Stakeholders should have an opportunity to contribute information not only at an early stage when policy concepts are not yet precisely defined, but also later when more detailed legislative provisions are drafted. A strong involvement of relevant stakeholders should also be part of an independent ex-post evaluation of the governance cycles.

**RECOMMENDATION:** Regulators should provide continuous engagement opportunities by involving stakeholders not only in the decision making processes, but also in ex-post evaluations, and allow greater time for business to contribute. The OECD could develop tools to analyse the consistency of stakeholder engagement processes through the policy lifecycle (from the inception of a regulation to its implementation, including in RIA and ex post evaluation).

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## Implementation

Already during the 2012 Recommendation drafting process in 2011, BIAC stated that it would be important to have independent, third party reviews of progress on regulatory reform and quality in OECD countries. According to the 2015 OECD Regulatory Policy Outlook, all OECD countries have some kind of RIA and stakeholder consultation in place. It is however significant that, according to a 2014 BIAC survey, business in over one third of OECD countries assesses that partial RIAs are rarely or never carried out, and in two-thirds that complete RIAs are rarely or never carried out.

BIAC sees the OECD project on Measuring Regulatory Performance as an effort to encourage the implementation of good regulatory policy as promoted by the Recommendation, but this effort needs to be sustained and progress needs to be monitored. We will be looking forward to further OECD activities in that sense.

**RECOMMENDATION:** An effective means for the OECD to assess the proper implementation of good regulatory practice would be to conduct more country surveys and independent reviews, involving affected parties.

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## Impact

Although we acknowledge that Regulatory Impact Assessment is an aid to political decision-making and not a substitute for it, it is essential to keep in mind that even a well-conducted impact assessment can see its relevance strongly limited by pre-conceived political choices.

**RECOMMENDATION:** The OECD could develop indicators to assess how stakeholder engagement actually affects the resulting draft regulation.

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## A SOUND REGULATORY FRAMEWORK REQUIRES

- The development of efficient processes to implement good regulatory practice and tools to monitor their actual implementation
  - A sound regulatory culture supported by high level political commitment and a centralized approach, but also by sufficient capacity and skills in services, and a good understanding of the benefits of stakeholder engagement
  - Oversight by independent bodies with veto rights benefitting from an adequate level of resource (in terms of staffing, finances, and political commitment)
  - High level recognition of the value and benefits of ex post evaluation also involving relevant stakeholders
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