Regulating regulation? The OECD in regulatory policy*

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Regulatory frameworks have become a major topic for many states since the mid 1990s. Governments increasingly care not only about specific regulations in policies like telecommunications or railways but about the quality of the institutions and processes regulations are set in and implemented by. Regulatory policy as a meta policy is a relatively new field in which governments, regulatory agencies and non-state actors discuss ideas and instruments in a transnational network.

The OECD is seen as a highly influential player in that network. Yet, the literature gives only cursory pointers to its agenda to improve regulations. This article analyzes the regulatory agenda of the OECD over the last twenty years covering all of its instruments for the first time. It is shown that contrary to the way the OECD presents it, a narrow and a comprehensive understanding of regulation live side by side. This can be explained by different forms of the instruments aiming at different states and groups of states. Additionally, internal actors in the OECD pursue different concepts of regulation. Institutional change has recently strengthened the comprehensive understanding of regulation which gave it a long aspired stronger position in idea production. Yet, the narrow meaning will probably also persist because of the heterogeneity of the states and groups of states at which the OECD aims with its regulatory agenda.

Contents

1 Introduction

How should regulations be designed? How can a regulatory balance be achieved so that there is neither under- nor overregulation? How can regulations be effectively implemented? Questions like these concern governments and non-state actors alike and are discussed in many academic disciplines like economics, law, and political science for quite some time. In this context, regulatory frameworks have become a major topic for many states since the mid 1990s. Governments increasingly care not only about specific regulations in policies like telecommunications or railways but about the quality of the institutions and processes regulations are set in and implemented by. Regulatory policy as a meta policy that aims to improve the quality of regulatory environments is a relatively new field in which governments, regulatory agencies and non-state actors discuss ideas and instruments in a transnational network.

The Organisation for Economic Co-operation and Development (OECD) has been active in transnational regulatory policy right from the start. In the literature, it is even seen as playing a rather influential part (Baldwin 2010, 262). Yet, most

of the times only cursory pointers to its principles for regulatory reform are given. This is surprising. If the OECD is such an influential actor one should know what regulatory agenda it promotes and what instruments it uses to do so. This becomes even more interesting when one considers that the term "regulatory policy" comes with different meanings for scientists of different disciplines or politicians, especially across different national discourses. After all, if one is interested in what effects it has what the OECD does on regulatory policies of states, one should know better the cause of such effects, i. e. the regulatory agenda of the OECD itself.

At first sight, e. g. considering its different principles for regulatory reform, the regulatory agenda of the OECD seems to be unclear at best and contradictory at worst. The OECD itself presents it as systematically developed over time declaring seemingly contradictions as different stages in that development. In contrast, the argument of this paper is that a narrow and a comprehensive understanding of regulatory policy coexist side by side if we consider all instruments the OECD uses in its regulatory policy. This can be explained, first, by the fact that there are different forms and variants of these instruments depending on what states or group of states they are aiming for. Second, different internal actors in the OECD promote different understandings of regulatory policy. Because of that and although the comprehensive understanding just recently got institutionalized and considerably strengthened, both concepts will likely continue to coexist.

Following this introduction, existing research and the analytical framework for the analysis will be presented. The main part of this paper is an analysis of how ideas and the concept of regulatory policy evolved, what (variants of) instruments are used, and what internal dynamics can be identified. The conclusion summarizes the argument and shows how the analysis of this paper can foster future research on regulatory policies of the OECD and its effects on regulatory policies on the state level respectively.

2 Existing research

Starting with Lowi's classic understanding of regulatory policy as one of three different kinds of policies besides distributive and redistributive policies, research on regulation and regulatory policy has considerably broadened over the last decade. Regulation has become a flexible term, inter alia because it does have different meanings in different academic disciplines and for politicians in different national contexts (see Baldwin et al. 2010a).

The OECD is generally seen as "highly influential" in a reform discourse that is internationally, and especially in the European Union, labeled as better regulation. It has been noted that this discourse and the OECD's agenda combines different aims as the reduction of the number of regulations or the rationalization of the

policy process. This can lead to tensions and contradictions (Baldwin 2010, 262 ff.). But it remains unclear in exactly which way or with what instruments the OECD pursues its agenda or how these tensions can be explained because it has not been analyzed in its entirety as to yet.

There is just a handful of studies about the OECD in regulatory policy. The informative study of Lodge (2005) focuses only on peer reviewing. Malyshev (2006) considers all instruments but merely lists and describes them.[1] Moreover, there have been remarkable changes and dynamic developments since the publication of these studies. Research on *better regulation* in Europe includes few remarks on the work of the OECD (see i. a. Radaelli/De Francesco 2007; Radaelli/Meuwese 2009). Baldwin (2005) gives a brief overview but does merely update it for the recently published *Oxford Handbook on Regulation* (Baldwin 2010, 262; Baldwin et al. 2010a, 8). It is remarkable that this handbook also does not include a separate chapter on the OECD which is seen as such an important actor in regulatory policy. Finally, Wegrich gives a few scattered pointers to recent developments (see i. a. Wegrich 2009; Lodge/Wegrich 2009).

Research in International Relations has just recently given attention the OECD. It has focused on important and established policies like economic, labor market, or health policy (see Armingeon/Beyeler 2004; Mahon/McBride 2008b; Martens/Jakobi 2010b) but has so far neglected the fairly new field of regulatory policy. However, it provides a useful analytical framework for this study.

3 Analytical framework

The OECD has just few legal instruments and financial resources at its disposal to influence national policies. It has to use instruments of "soft" governance instead. Martens/Jakobi (2010a) propose a useful and by now most complete framework for the analysis of how these instruments work. They distinguish between three mechanisms, as they call instruments with which the OECD tries to carry non-binding decisions into effect. First, the OECD publishes and disseminates a large number of studies, analyses, and guidelines that point to important policy issues and propose policy solutions. This idea production is meant to influence the international discourse as well as national agendas. Second, the OECD evaluates specific national policies with the instrument of peer reviewing. Third, the OECD produces large amounts of – mostly quantitative – data. Although this set of instruments is pretty fixed, the significance of single instruments can vary across policies and time (Jakobi/Martens 2010, 265–268). Conditions for their application are external actors, internal dynamics, and policy constrains, i. e. how controversial a certain

policy is. Finally, policy change, policy coordination, and policy convergence are seen as effects of the governance mechanisms of the OECD (Martens/Jakobi 2010a, 7 f.).[2]

The advantage of this framework is that it not only stresses idea production as an important dimension of soft governance but specifies instruments and points to actors and processes at the same time. Accordingly, the following analysis first focuses on what instruments the OECD has applied in regulatory policy over time with special attention to the instrument of idea production. Since not only member states of the OECD are addressed, the analysis than considers external actors and especially the European Union. It finally shows that internal dynamics have to be considered to explain seemingly tensions. An analysis of effects of what the OECD does in regulatory policy can not be covered in this study which instead lays the foundation for future studies concerning this question.

4 Expansion and diversification of instruments

The OECD in general uses all of its instruments in regulatory policy and adapts them to different target groups. It focuses on the instruments of idea production (4.1) and peer reviewing (4.2). Data production occurs to a much lesser degree and as to now involves only qualitative data but not large sets of quantitative data (4.3). These instruments are closely connected and including all of them in the analysis gives a much clearer picture of the agenda of the OECD. But within and across all instruments different understandings of regulatory policy coexist and do not simply replace each other over time. The analysis of instruments alone therefore leaves open questions that point to the relevance of – especially internal – actors (5).

4.1 On the path to regulatory governance?

Regarding idea production in regulatory policy, the OECD produced often cited recommendations and principles as well as a number of comprehensive reports. The OECD itself presents them as a systematically developed and coherent agenda leading to the comprehensive understanding of regulatory governance (OECD 2010d, 12 f.). But although this concept has already been fully developed in 2002, it only recently came into effect in a second recommendation. At the same time one can still find a narrow understanding of regulatory policy as market regulation. This is in part due the fact that ideas of regulatory policy are aimed at an enlarged group of states (see 4.1.4 and 4.2).

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[1] His overview also strongly reflects the OECD's own narrative since he wrote it as one of its employees for the cooperation with non-member states.

[2] One has to add the possibility that the governance mechanisms have no effect to that list.

1. Is the Problem Correctly Defined?
2. Is Government Action Justified?
3. Is Regulation the Best Form of Government Action?
4. Is there a Legal Basis for Regulation?
5. What is the Appropriate Level (or Levels) of Government for this Action?
6. Do the Benefits of Regulation Justify the Costs?
7. Is the Distribution of Effects across Society Transparent?
8. Is the Regulation Clear, Consistent, Comprehensible, and Accessible to Users?
9. Have All Interested Parties had the Opportunity to Present their Views?
10. How will Compliance be Achieved?

Figure 1: Reference Checklist for Regulatory Decision-Making, OECD (1995, Appendix).

4.1.1 First Recommendation and Principles 1997

The Council of the OECD adopted a *Recommendation on Improving the Quality of Government Regulation* in March 1995 which was the first international standard in regulatory policy (OECD 2002, 3). By using a recommendation as one of its few legal instruments at its disposal the OECD made a pretty strong statement. The appendix to the recommendation contains a checklist of ten questions which should help improve decision making on regulations in the member states of the OECD (see fig. 1). This checklist was based on the evaluation of 15 lists of that sort from ten member states and the European Commission.

With its recommendation the OECD does not preach pure deregulation as one might have aspected from an international economic institution. On the one hand some phrases indeed point in that direction. The second question for example if government action is justified at all seems to suggest that no government action, i. e. regulation, is always the better option. On the other hand regulations are not called in question as legitimate policy instruments in general. Question six for example points inter alia to their potential benefits. Overall, the checklist is meant to rationalize the process through which decisions on regulations are made. Correspondingly, the questions and the order in which they are listed almost perfectly match the stages of an ideal policy cycle, i. e. going from problem definition (questions one and two) to policy formulation and selection of policy instruments (questions three to nine) to implementation (question ten).

Together with the recommendation the Council decided that the OECD should gather more information about how regulations are made and especially about regulatory reform in its member states. The OECD published a corresponding

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
2. Review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively.
3. Ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied.
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
5. Reform economic regulations in all sectors to stimulate competition, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Eliminate unnecessary regulatory barriers to trade and investment by enhancing implementation of international agreements and strengthening international principles.
7. Identify important links with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Figure 2: Policy Recommendations for Regulatory Reform, OECD (1997a, 27–38).

report two years later (see OECD 1997a). The report was based on a number of studies on selected sectors as well as on how regulatory reform would effect public services, consumers, competitiveness, innovation, and international market openness. Seven policy recommendations of regulatory reform (see fig. 2) were formulated based on the results of these studies. These are not recommendations in the legal sense and they are called principles in later publications.

The principles are said to be based on a new approach. In contrast to the recommendations of 1995, this approach not only aims at improving single regulations. It is rather presented as the third installment of an idea that started as deregulation, followed by a re-appreciation of benefits of regulations, e. g. as product standards, and a focus on their quality (Regulatory Quality Improvement), followed again by considering not individual regulations but the entire system in which regulations are made (Regulatory Management) (see OECD 1997b, 202–204). The presentation of this more comprehensive approach comes as a surprise because it does not evolve directly from the summary of the different studies for the report. These instead take a narrower view of regulatory policy as market regulation on sectors like telecommunications and electricity which had been liberalized in many member states of the OECD during the 1990s. Regulatory reform is mainly seen to help improve competitiveness of member states in the global market by making national

markets more dynamic. The role of regulations is merely seen to lessen social costs of liberalization (OECD 1997a, 8) and to ensure a high quality of services.

These conflicting meanings of regulatory policy is also present in the policy recommendations. On the one hand, there is a comprehensive understanding expressed in recommendations one and seven. They call for "broad programmes for regulatory reform" and an integration of other policy objectives. The second recommendation, calling for systematic reviews of regulations, corresponds to this. On the other hand, the narrow perspective of market regulation dominates recommendations three to six that emphasize competition and open market policies. There is a strong preference for less or no regulations in the fifth recommendation even though it is granted that regulations can be in the public interest. Overall, the idea of deregulation which the report presented as an idea of the past is very much alive in the policy recommendations of 1997.

4.1.2 The comprehensive concept of *regulatory governance*

The report of 1997 merely sketched a comprehensive meaning of regulatory policy. The OECD fully develops it five years later in the programmatic report "From Interventionism to Regulatory Governance". Different stages of the development are now called *regulatory reform*, *regulatory quality management*, *regulatory policy*, and finally *regulatory governance* (vgl. OECD 2002, 16). In the perspective of regulatory reform individual regulations are assessed and adjusted where necessary to meet some kind of optimum. This is seen as a dynamic process and continuos task of governments in the perspective of regulatory quality management. Regulatory policy wants to optimize the whole context in which regulations are set to ensure that only high quality regulations are made in the first place. This "whole of government" (OECD 2002, 23) approach is reportedly accepted in all member states of the OECD. Some member states are said to already follow the notion of regulatory governance with which the OECD presents an ambitious concept. It consists of, first, characteristics of successful regulatory policies, second, of tools to improve the design and implementation of regulations, and third, of institutions that foster successful regulatory policies.

First, member states pursue different objectives like reducing administrative burdens for businesses or resolving inconsistencies between regulations depending on specific problems they face. Yet, according to the OECD a successful regulatory policy is based on three main elements and two dimensions. Regarding elements, such a policy should be adopted at the highest political level, should specify precise goals that can be reviewed, and should be equipped with necessary capacities for implementation. Regarding dimensions, it should aim at improving the quality

of new as well as review and improve existing regulations including eliminating obsolete ones (see OECD 2002, 29–39).

Second, the report discusses in detail a variety of tools to improve the design and implementation of regulations. These are *Regulatory Impact Analysis* (RIA) as a "empirical method of decision making" (OECD 2002, 46), the systematic consideration of alternatives to regulations – like voluntary commitments or tradable permits –, ways of administrative simplification – like the reduction of administrative burdens for businesses –, and ways to increase transparency – like public consultations – as tools to improve the design of regulations. Tools to improve implementation of regulations should not only account for compliance with regulations but also for transparent administrative procedures and judicial review. Finally, questions of design and implementation are interconnected because better designed regulations make compliance more likely (see OECD 2002, 44–81).

Third, successful regulatory policies depend on institutions. At the latest with the report of 1997, most member states have established independent regulatory agencies or different forms of regulatory oversight bodies close to the responsible part of government (e.g. ministry) that act as "engine of reform" (OECD 2002, 84). Although the report in general welcomes this development, it also calls attention to potential problems, e.g. especially questions of accountability, related with independent regulators (see OECD 2002, 84–97).

Findings on how far these instruments and institutions are indeed already in use are however disillusioning. On the one hand almost all member states do have regulatory policies. On the other hand these are fragmented, very selective, and do not follow systematically the proposed concept of regulatory policy or even that of regulatory governance. Because of this, they achieve some of the economic goals but fall short of achieving more general social goals. Moreover, systematic evaluation of the results of regulatory reform are scarce. In addition to that, important issues like a necessary change in administrative culture and the inclusion of private actors as well as subnational levels are not yet fully recognized (see OECD 2002, 100–119).

The report of 2002 is a significant contribution to the OECD's idea production in regulatory policy. In contrast to the report of 1997, it considers regulatory policy not primarily as market regulation but as part of the modernization of the state in terms of an improved decision-making process and the modernization of administrations. Although the concept of regulatory governance still includes a market orientation as far as it is based on ideas of new public management, this is a much broader perspective as well as an ambitious agenda. Accordingly, the report finally calls for a new checklist that accounts for the dynamic and comprehensive perspective of regulatory governance and complements the static view of the recommendation of 1995 (OECD 2002, 122 f.).

4.1.3 Principles 2005 and Second Recommendation

Three years later and after peer reviews of regulatory policy in twenty member states (see 4.2), the OECD publishes another substantial report on regulatory policy. The comprehensive concept of regulatory governance is affirmed at the outset (OECD 2005, 12 f.). Yet, this appears to be only paying lip service. Because the report of 2005 in most parts follows up on the report and principles of 1997 with their narrow view of regulatory policy as market regulation and an emphasis on competition and market openness. For instance, the report of 2005 calls for a strong link between regulatory and competition policy. This would require to make sure that any regulation is necessary at all and, if so, conforms to competition law. Overall, high priority should be given to fostering strong competition cultures (OECD 2005, 29 f.).

Accordingly, the OECD published not a new checklist but only slightly revised "Guiding Principles for regulatory quality and performance" in April 2005.[3] Principles one, four, and seven of 1997 remain exactly the same. There are supplements and changes in wording to a very small degree in principles two, three, and five that do not reflect the new perspective on regulatory policy of 2002. Supplements in principle six even back the narrow understanding of regulatory policy as market regulation because they emphasize "continued liberalisation (. . .), market openness (. . . and) economic efficiency and competitiveness". In contrast, all explanations concerning the comprehensive concept of 2002 are transferred to the extensive annotations to the principles. Since principles and annotations are published as a single document, one could argue that the comprehensive understanding is well presented. Yet, this is an indirect presentation at best because important points remain implicit. In daily practice, moreover, a reference will mostly be made only to the principles themselves as this can even be seen in subsequent publications of the OECD itself. All in all, the report and principles of 2005 seem to be rather a step backwards. They are certainly not a decisive step towards the realization of regulatory governance.

It's been not before 2010 that the concept of regulatory governance got revived prominence. The completion of the EU-15 project (see chap. 4.2) and the financial crisis prompted a report that extensively discusses the state of regulatory policy and hardly considers competition and market openness policies (see OECD 2010d, 25–27). The concept of regulatory governance not only gets strongly reaffirmed but gets developed into a "regulatory governance cycle". This explicit reference to an ideal policy cycle has already been implicit in the first recommendation of 1995 as shown above. It stresses not only that regulatory policy should be a continuos and dynamic process. Moreover, the regulatory policy cycle is also meant to point to

different tasks to be in part fulfilled by different actors which again requires proper institutions (OECD 2010d, 49–51).

In addition to that, there is an interesting shift of emphasis within the concept of regulatory governance. In 2005 it was assumed that all of its elements should be implemented in all member states more or less unmodified. For instance, it was generally recommended to establish a centralized oversight body. In 2010 in contrast, institutional and cultural differences – especially in legal and administrative cultures – are explicitly acknowledged. One lesson of the EU-15 project would be that "one size does not fit all" (OECD 2010d, 53). In fact, the OECD did not have to learn about national differences from the EU-15 project because it had referred to them in its reports since the 1990s. Yet the report of 2010 displays a remarkable reassessment in this regard.

Most importantly and in contrast to 2002 and 2005, the council of the OECD finally adopted the long demanded second recommendation on 22 March 2012 as its second legal act in regulatory policy after the first recommendation of 1995.[4] Its twelve principles lack any reference to competition and open market policies but fully adhere to the comprehensive understanding of regulatory governance. Hence, they emphasize a "whole of government" approach, transparency and accountability, systematic and continuous monitoring – especially by the means of RIA –, the necessity of proper institutions, coordination across supranational, national and sub-national levels, and – as a new issue, i. a. pushed by the financial crisis – the need for risk assessment and management.

4.1.4 More than just the Member States

At the same time the OECD developed its ideas about regulatory policy, it systematically spread them beyond its member states. Therefor, regional cooperations and bilateral agreements[5] have been established since around the year 2000. The regional cooperations cover states and economies that are much more heterogeneous than the OECD member states. In all of them, one finds a a mix between a narrow understanding as market regulation and the comprehensive concept aiming at regulatory capacities. Peer reviewing is not part of any regional cooperation but voluntary self-assessments are documented in some cases.

First, the OECDs cooperation in regulatory policy with the *Asia-Pacific Economic Cooperation* (APEC) led to the *APEC-OECD Integrated Checklist for Regulatory Reform* in 2005.[6] Regulatory policy is just one policy aside competition and open market policies covered by 39 questions of the checklist. Hence, the latter overlay

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[3] URL: http://www.oecd.org/dataoecd/24/6/34976533.pdf; accessed 17 March 2012.

[4] URL: http://www.oecd.org/dataoecd/45/55/49990817.pdf; accessed 29 March 2012.
[5] Since peer reviewing is the most important part in it, bilateral agreements are discussed in chap. 4.2
[6] URL: http://www.oecd.org/dataoecd/41/9/34989455.pdf; accessed 10 January 2012.

the questions concerning regulatory governance much more than they already do, as shown above, in the OECDs principles of the same year. Accordingly, the report of the APEC on the impacts of regulatory reform of 2009 only considers regulation as market regulation.[7] On the one hand, cooperation between the OCED and APEC does not come as a surprise because seven member states of APEC are also (influential) member states of the OECD. On the other hand, that APEC falls short of adopting the comprehensive concept of regulatory governance can be explained by the fact that cooperation between APEC member states themselves, which are much more heterogenous than OECD member states, is without obligations.

Second, in the framework of the MENA program, the OECD cooperates with countries of the Middle East and North Africa in regulatory policy since 2005 which resulted in a *Regional Charter on Regulatory Quality* at the end of 2009.[8] The charter basically approves the recommendation of 1995 and principles of 2005 of the OECD. This is backed up with support and workshops to build up regulatory capacities in MENA countries. On the one hand, this can be seen to strengthen the comprehensive understanding of regulatory governance beyond the charter. On the other hand, its non-binding character and differences between MENA countries are explicitly mentioned in the charter.

Finally, the comprehensive understanding is reflected in reports that the OECD recently published in the context of existing and for future cooperations. These reports are meant to diffuse the regulatory policy agenda of the OECD beyond its member states. Especially the studies on RIA and the simplification of public administrations (OECD 2008; 2009) are meant as guidance to policy makers. There are arab versions of these studies for the regional cooperation in the context of MENA but also russian and chinese versions which points to important bilateral cooperations (4.2).

4.1.5 Summary

The analysis of the idea production refutes the claim of the OECD that it has systematically and stepwise developed its agenda since the 1990s resulting in the concept of regulatory governance. This claim obscures that a narrow understanding of regulation as market regulation dominates the principles for regulatory policy both of 1997 and of 2005. While the comprehensive understanding of regulatory governance is systematically developed in the important report of 2002, it takes ten years before it finds its way into a new recommendation. In this context, the report and principles of 2005 could be even seen as a step back in idea production. This

would correspond to findings of Radaelli (2007) regarding the better regulation discourse in the European Union. In a more cautious manner, one can conclude that the comprehensive concept did not automatically and easily diffuse.

The expansion of regulatory policy beyond the member states points to another possibility, namely that a narrow and a comprehensive concept coexist and are deployed depending on what state or group of states is addressed. This would be a process of simultaneity and not of orderly (more or less delayed) sequence of different concepts. An inclusion of the instruments of peer reviewing and indicators as well as of internal dynamics in the analysis can bolster this interpretation.

4.2 Variants of peer reviews

Following the notion of the report on regulatory policy of 1997, the Council of the OECD decided to carry out an ongoing program of peer reviews of regulatory policies in its member states. Many international organizations like the World Bank or the World Trade Organization also use different forms of peer reviewing. Yet, it is the OECD this instrument is most closely associated with since the OECD has used peer reviews for a much longer time and has extensively developed it (Pagani 2003, 12).

There are reviews for 23 member countries as well as for China, Brazil, and Russia at the time. These reviews vary in form and focus depending on the context of their production. There are multidisciplinary reviews of the regulatory policies of member states, peer reviews in the framework of the EU-15 project, reviews in the context of the SIGMA initiative, and reviews of non member states.

Multidisciplinary reviews can be seen as the standard model of peer reviewing in the field of regulatory policy. They have been carried out since 1998 and are called multidisciplinary because they cover not only regulatory reforms and institutions of regulatory policy but also consider the broader economic context, competition and market openness policies as well as regulatory reforms in selected sectors (OECD 2005, 9). Multidisciplinary reviews are conducted in the framework of the *OECD Horizontal Programme on Regulatory Reform* by request of a country that wants to be reviewed. Sectors in which regulatory reforms should be reviewed in detail are also selected by a country itself. Reviews are a mix of self assessment and peer reviewing. A self assessment through filling in two questionnaires builds the foundation of the review. Additional information is gathered, often with the help of on-site visits by representative of the examining countries. The draft of the final report is discussed by the involved subsidiary bodies of the OECD[9] and finally the *Ad Hoc Multidisciplinary Group on Regulatory Reform* where reviewed countries are expected to respond to questions (see Pagani 2003, 52–54).

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[7] URL: http://publications.apec.org/publication-detail.php?pub_id=917; accessed 17 January 2012.
[8] URL: http://www.oecd.org/dataoecd/30/2/45187832.pdf; accessed 18 February 2012.

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[9] For further details on the actors involved see chap. 5.

In the first round of multidisciplinary reviews between 1999 and 2005 on which the report of 2005 is based, twenty member states were reviewed and comprehensive reports published on their respective state of regulatory reform. Reviewing activities expanded after 2005 and as a result multidisciplinary reviews have not been conducted in such short terms and such a large number since then (see tab. 1 in the appendix). Three countries (Japan, Korea, Mexico) have been reviewed a second time to monitor improvements (OECD 2010d, 94).

On the one hand, the narrow understanding of regulation as market regulation is reflected in multidisciplinary reviews strongly and for a long time. A sectoral perspective focusing on typical sectors for market liberalization policies like electricity and telecommunications is dominant until 2006. On the other hand, the comprehensive understanding of regulatory governance is accounted for in recent multidisciplinary reviews. Although competition and market regulation policy are still important parts of the reviews, recent multidisciplinary reviews consider more general challenges for regulatory reforms like environmental regulations or regulation across multi levels.[10]

Another form of peer reviewing has recently been carried out for a limited number of OECD member states. The OECD conducted the EU-15 project between 2008 and 2010 in cooperation with the European Commission. It included reviews of the regulatory policies of the 15 member states of the European Union before its eastern enlargement. The process of the reviews in general conforms to that of multidisciplinary reviews. Though the drafts of the final reports are passed on to the OECD Working Party on Regulatory Management and Reform, they do not get discussed in detail there like multidisciplinary reviews. The discussion takes place between representatives of examiner countries, of the country under review, of the OECD, and of the European Commission instead (see European Commission/OECD n. d., 4 f.). Moreover, the EU-15 project differs from multidisciplinary reviews in focus and content of its reviews. These follow explicitly and only the comprehensive understanding of regulatory governance. Accordingly, the reviews cover eight general dimensions of regulatory policy like overall strategy and policies, institutional capacities, questions of transparency, or issues of compliance and enforcement. An important part of the reviews is a country profile that acknowledges national characteristics like state structure and administrative cultures. Reports get pretty specific in mentioning improvements but particularly in discussing critical points.[11] For instance, Germanys rather narrow scope of regulatory policy focusing mainly on reduction of administrative burdens is criticized (OECD 2010b, 39) as

well as missing political support for regulatory reform in Austria (OECD 2010a, 42 f.). Even countries with a very good record in regulatory policy get advice to improve even more like the overall exemplary Netherlands that could improve the implementation of RIA (OECD 2010c, 14).

Reviews in the context of the SIGMA program can be seen as precursors to the reviews of the EU-15 project to some extent. The OECD and the European Union join forces in the *Support for Improvement in Governance and Management* (SIGMA) initiative that they have established in 1992 to support central european countries in reforming their public administrations. SIGMA is mainly financed by the EU but institutionally established at the OECD.[12] In the framework of SIGMA, the OECD undertook studies on regulatory policies and reform capacities of the twelve central, east, and southeast european countries that became members of the European Union in 2004 and 2007 respectively. With its strong emphasis on governance and public administration reform the content of the review process adheres to the comprehensive concept of regulatory governance (see OECD 2007, 101–109).

Finally, some states that are not member states of the OECD take part in the Regulatory Reform Programme for some years now. These are the so called BRICS states that international investors have become an interest in since the start of the millennium. Three of the BRICS states have even participated in peer reviewing corresponding to the process of multidisciplinary reviews. A report on Russia was published in 2005 that especially considers reforms in the electricity and railways sectors. The OECD has furthermore, yet to date without success, tried to introduce RIA into Russian regulatory policy. A report on Brazil that focuses on electricity, transport, private health services, and telecommunications was published in 2008, a report on China focusing on energy and water sectors in 2009. Workshops and meetings in preparation of reviews are on their way for India and South Africa for which sectors like energy, water, and civil aviation are considered. All in all, a narrow understanding of market regulation is prevalent in reviews on regulatory policy in non member states to date although the OECD is trying to integrate elements of the comprehensive understanding, especially RIA.

As shown, the instrument of peer reviews varies in form and approach in the regulatory policy of the OECD. The standard form of multidisciplinary reviews still mainly follows the narrow understanding of regulation as market regulation although the comprehensive understanding seems to have just recently gained some ground. In contrast, reviews in the EU-15 project fully adhere to the whole of government approach of regulatory governance. This can explained, first, by the selected group of member states of the EU within the OECD. In this context, the

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[10] See tab. 1 in the appendix and the list of reports by subject under URL http://tinyurl.com/d5eezca, accessed 29 April 2012.

[11] Reports are accessible under URL http://www.oecd.org/gov/regref/eu15. 14 reports are published to date and the report on Greece is announced for mid 2012.

[12] See information under URL: http://tinyurl.com/sigmareg

comprehensive understanding was strengthened by the fact that the EU propagates an corresponding understanding with its approach of better regulation (see chap. 5). Second, specific forms of peer reviews are conducted in different institutional contexts. This also explains why reviews in the framework of the SIGMA initiative focus on regulatory capacities, i. e. follow the comprehensive understanding already from 2004 on. Finally, different forms of reviews do have different target groups which explains which understanding of regulatory policy they follow. As a case in point and in contrast to the reviews in the framework of the SIGMA initiative, in the multidisciplinary reviews of non member states still dominants a narrow understanding of market regulation to date. Hence, it does not seem to be just a matter of time until the comprehensive understanding will have replaced the narrow understanding.

4.3 Indicators

Although to a lesser degree than idea production and peer review, the third instrument of data production is in use in the OECD's regulatory policy as well. In order to construct the above mentioned questionnaires used for the multidisciplinary reviews, it was necessary to build a system of indicators. With the help of this indicators, the OECD regularly collects data on regulatory policies with additional questionnaires independent from peer reviewing. The *Regulatory Indicators Questionnaire* has been sent to member states in three rounds 1998, 2003, and 2008 to date. The first version of 1998 of this questionnaire included just two sections on regulatory policy and governance capacities respectively aside sections on competition and market openness policies as well as on the regulation of specific sectors (telecommunication, transport, retail distribution industry, public procurement).[13] Later, the sections on regulatory policy were extensively expanded to form the *Regulatory Indicators Questionnaire on Government Capacity to Produce High Quality Regulation* which has been used to collect data in two additional rounds in 2005 and 2008.

Like the different forms of peer reviews, these different questionnaires reflect that a narrow understanding of regulation as market regulation coexists with a comprehensive understanding of regulatory governance. Accordingly, there are two independent systems of indicators to survey regulations at the OECD, namely the *Indicators of Product Market Regulation* on the one hand and the *Indicators of Regulatory Management Systems* on the other hand. By now, these systems of indicators encompass non member states like the multidisciplinary reviews do.

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[13] URL `http://www.oecd.org/dataoecd/58/22/35862076.pdf`; accessed 28 February 2012.

5 External and internal actors

The analysis of instruments has shown that a narrow understanding of regulation of market regulation and a comprehensive understanding of regulatory governance co-exist side by side in the regulatory policy of the OECD. Internal and external actors seem to play only a subordinate role in the analytical framework of Martens/Jakobi where they are subsumed under "conditions". Yet, they are an important part of the explanation of the simultaneity of concepts in the regulatory policy of the OECD. First, the analysis of peer reviews has made some references to the EU which leaves an open question about the relationship between the OECD and the EU, especially whether the EU is an external actor in the regulatory policy of the OECD. Second, the analysis of internal dynamics shows that the two concepts correspond to different institutional contexts.

The EU with its better regulation – respectively since the end of 2010, "smart regulation" – strategy is itself an important actor in transnational regulatory policy (see Radaelli/De Francesco 2007). Yet, the EU is more of an internal than external actor in the regulatory policy of the OECD. Member states of the OECD and the EU overlap to a great degree. 21 of the 34 member states of the OECD are also member states of the EU, respectively only six member states of the EU are not member states of the OECD as well. Moreover, the European Commission itself could be called a quasi member of the OECD. It participates in committees and working groups and, according to the Supplementary Protocol No. 1, it is represented in the Council of the OECD almost like a member state.[14] Hence, a close cooperation between the OECD and the EU, inter alia in the RPC (see below), and joint projects like reviews in the context of the SIGMA initiative or the EU-15 project do not come as a surprise. Regulatory policies, i. e. strategies and agendas, of the OECD and the EU are not independent. Nor forms the regulatory policy of the OECD the broader, international framework for the better regulation agenda of the EU. In fact, both regulatory policies are closely entangled as part of an international network of regulatory policy.

Second, it took some time before regulatory policy became a policy in its own right within the OECD which just recently led to its institutionalization. The working program of the OECD, on which the Council yearly decides, is acted out in about 250 Committees with the support of corresponding directorates and devisions of the secretariat of the OECD. Hence, an indicator for the importance of a policy within the OECD is its institutionalization, i. e. in how far a Committee and a corresponding structure in the secretariat of the OECD is established to deal with it.

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[14] Since the EU does not contribute to the budget of the OECD, the EC is not entitled to vote on legal acts the Council adopts. See information under URL `http://tinyurl.com/OECD-EU`, accessed 14 February 2012.

Until the end of 2009, the Public Governance Committee took responsibility for regulatory policy within the OECD. Its work was supported by the Directorate for Public Governance and Territorial Development, and more specifically of its Regulatory Policy Division (REG). The Public Governance Committee was established in 1990 to deal with questions of the modernization of public administrations which the OECD had been concerned with since the second half of the 1980s. Issues of regulatory reform were part of its working program right from the beginning which resulted in the first recommendation of 1995. For the following working program, i.e. to develop the regulatory agenda and to monitor regulatory reforms, the Working Group on Regulatory Management and Reform and the Group on Regulatory Policy were established. Although the Public Governance Committee took lead in these groups, a number of other Committees of the OECD directly took part in its regulatory policy. For instance, a total of five Committees were involved in the process of multidisciplinary reviews (OECD 2002, 25, fn. 4) of which the influential Economic Committee and the Committees on Competition Law and Policy as well on Trade especially carry weight. These Committees and their corresponding directorates take a pretty strong economic perspective on regulatory policy and reform as they do on other policies (see also Mahon/McBride 2008a, 15–17).

The specific institutional context, i.e. of a Committee or Directorate, can explain whether the narrow or comprehensive understanding of regulatory policy gets promoted. This is true for all instruments. In idea production, the report of 2002 with its comprehensive understanding of regulatory governance was developed in the framework of the Public Governance Committee and the Regulatory Policy Division respectively. In contrast, the report of 2005 with its narrow understanding of market regulation was prepared in the context of the Working Group on Regulatory Management and Reform heavily involving the Economic, Competition Law, and Trade Committees. In peer reviewing, multidisciplinary reviews are carried out and discussed in the context of the Ad hoc Multidisciplinary Group on Regulatory Reform involving those Committees whereas the Public Management Committee took responsibility for reviews in the SIGMA initiative and the EU-15 project. Indicators of Regulatory Management Systems are managed by the Directorate for Public Governance and Territorial Development whereas the Economics Department is in charge of the Indicators of Product Market Regulation.

In October 2009, the Council of the OECD finally established the Regulatory Policy Committee (RPC). This institutional change certainly shows the increased importance of the comprehensive understanding of regulatory governance and will further strengthen it. This can already be seen in reports and handbooks that have been published since then and especially in the recent second recommendation which was prepared by the RPC. The Mandate of the RPC explicitly lists all elements of the comprehensive understanding of regulatory governance as guiding the work of the Committee.[15] At the same time, the RPC replaces both Working groups that included other Committees in the regulatory policy of the OECD.

6 Conclusion

The regulatory policy of the OECD, i.e. the way the OECD tries to influence regulatory reforms in and beyond its member states, consists of more than the often cited principles for regulatory reform. It has evolved in many ways over the last twenty years and has seen a dynamic development especially in recent years. When all instruments are included in the analysis, it is revealed that a narrow understanding of market regulation was not systematically and completely succeeded by the comprehensive concept of regulatory governance. In fact, the expansion and diversification of instruments resulted in the coexistence of both concepts. This can be explained, first, by different states or group of states at which different forms of instruments and understandings are aimed at. Second, the narrow and the comprehensive concept are promoted by different internal actors within the OECD. Not before recently, an institutional change documented and further helped the breakthrough of the comprehensive understanding at least in idea production.

Seven years ago, Lodge (2005) came to the conclusion that the regulatory policy of the OECD does not seem to have much of an effect on regulatory policies of its member states. This assessment was adequate and convincing back then but would certainly be too general by now. First, recent years have seen many changes in the regulatory policy of the OECD as shown. Moreover, the group of states that are potentially influenced by the regulatory policy of the OECD has increased and become more heterogenous. This is already true for the group of member states itself that increased by four and even more so considering regional and bilateral cooperations with non member states. Furthermore, different states or groups of states are exposed to different understandings of regulatory policy – from EU member states participating in the EU-15 project to APEC member states or states participating in the MENA program – resulting in different likely effects. If we ask for the effects of the regulatory policy of the OECD, our research designs have to take that into consideration.

The establishment of the RPC has certainly opened a new chapter in the regulatory policy of the OECD which has already strengthened the comprehensive understanding of regulatory governance. Future will show if it will further diffuse, e.g. into the instrument of multidisciplinary reviews or the cooperation with non member states. Yet, the narrow understanding will probably not fade away. Non member states and especially the BRICS states are mainly interested in a closer

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[15] URL http://www.oecd.org/dataoecd/53/42/44679685.pdf, accessed 01 December 2010.

integration into the world market. In that context, the OECD plays it "classical" part as actor in international economic policy of which the narrow understanding of regulation of market regulation as well as competition policy is an important element. After all, the institutionalization of the comprehensive understanding in the RPC did not automatically delete the narrow understanding that is institutionalized in other Committees.

Appendix

Year	Country	Sector
1999	Japan	Electricity, Telecommunications Industry
1999	Netherlands	Electricity, Telecommunications Industry
1999	Mexico	Telecommunications Industry
1999	United States	Electricity, Telecommunications Industry
2000	Denmark	Electricity, Telecommunications Industry
2000	Hungary	Electricity, Telecommunications Industry
2000	Korea	Electricity, Telecommunications Industry
2000	Spain	Electricity, Telecommunications Industry
2001	Czech Republic	Electricity, Gas, Road and Rail Freight, Telecommunications Industry
2001	Greece	Electricity, Domestic Ferries, Trucking
2001	Ireland	Electricity, Gas, Pharmacies, legal services
2001	Italy	Electricity, Gas, Railroads
2002	Canada	Telecommunications Industry
2002	Poland	Postal and Energy Sectors, Telecommunications Industry
2002	Turkey	Electricity, Gas, Road Freight
2002	United Kingdom	Electricity, Gas, Professions, Telecommunications Industry
2003	Finland	State-owned enterprises (especially Postal Services)
2003	Norway	State-owned enterprises (Civil Aviation, Hospitals, Labor Market Institutions)
2004	Germany	Electricity, Gas, Pharmacies, Telecommunications Industry
2004	France	Civil Aviation, Telecommunications Industry
2006	Switzerland	Electricity, Air Transport, Railways, Telecommunications and Postal Services
2007	Sweden	Environmental, Climate, Energy, and Chemicals Policy, Multi-level regulatory capacity
2010	Australia	Multi-level regulatory capacity

Table 1: Multidisciplinary peer reviews 1999–2010, own compilation, Source: URL http://www.oecd.org/regreform/backgroundreports, accessed 12 December 2011.

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