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Florence School of Regulation

REGULATORY DELIVERY

FSR online course for Brazilian Regulators

Preliminary questions in order to establish the appropriate course framework

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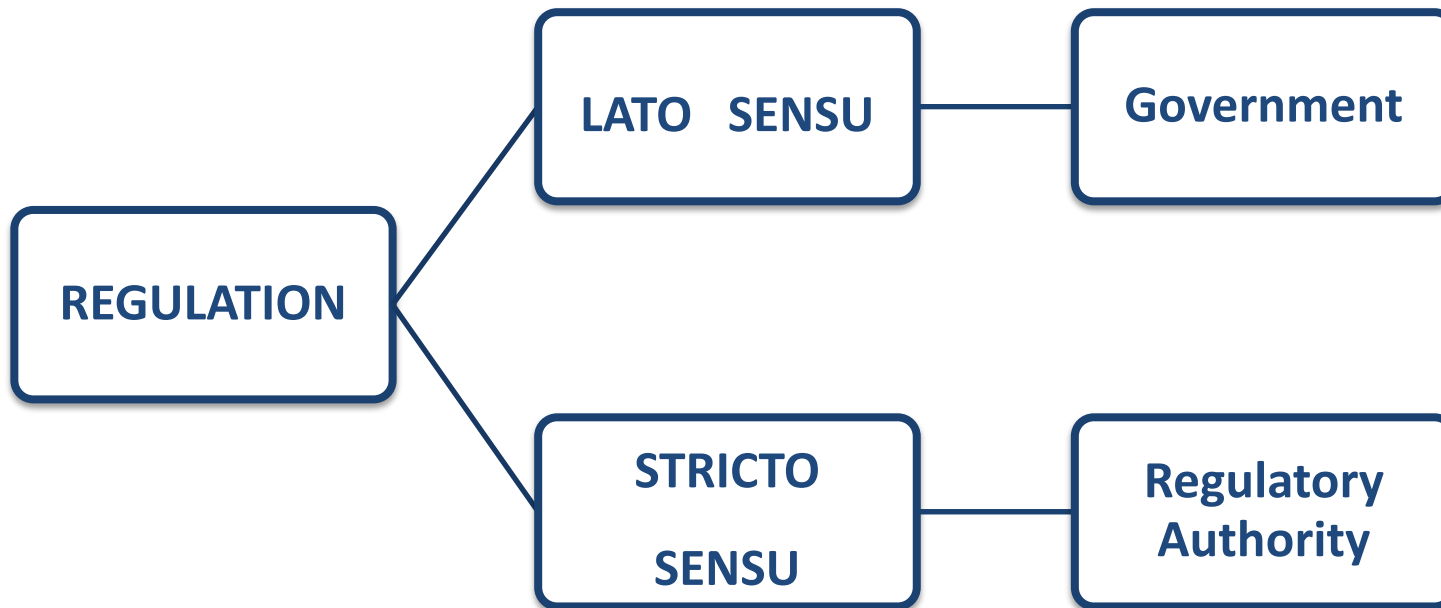
June 18, 2018

“The term “regulation” (...) is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.”

OECD

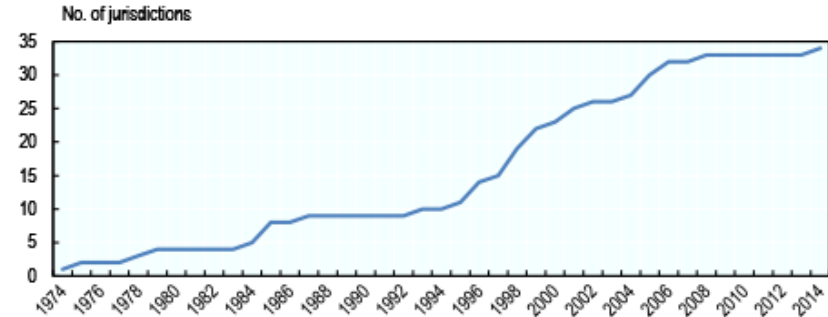
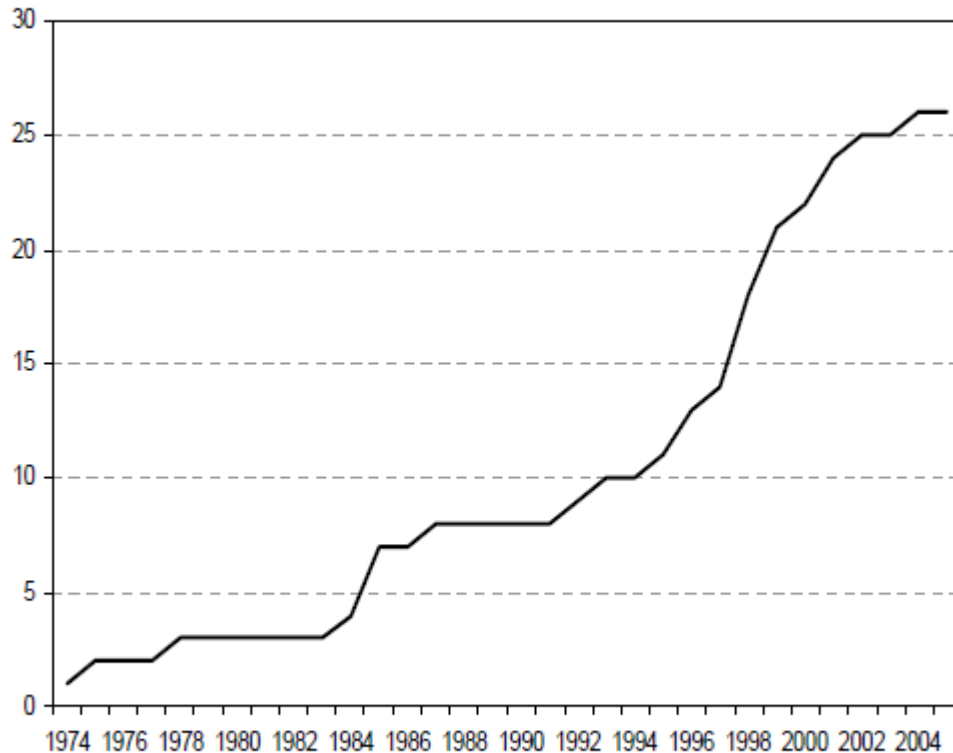
<http://www.oecd.org/dataoecd/16/45/43325693.pdf>

What is regulation ?




Regulatory impact analysis

Figure 1. Trend in RIA adoption across OECD countries
1974-2005



Source: OECD (2007d), *Indicators of Regulatory Management Systems*, OECD Working Papers on Public Governance, 2007/4, OECD.

Recent example of Regulatory Delivery initiative at government level (UK)

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News story

Launch of Regulatory Delivery

New directorate created to simplify regulation for UK business.

Published 1 April 2016
From: [Regulatory Delivery](#)



Related content

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The launch of Regulatory Delivery today combines policy expertise and practical experience to ensure that regulation is effectively delivered in ways that reduce burdens on business, save public money and properly protect citizens and communities.

This course **DOES NOT** address regulation *lato sensu* and therefore it **DOES NOT** discuss Regulatory Delivery initiatives at government level.

This course focusses on regulation *stricto sensu*, i.e., regulation performed by independent regulatory agencies. “Regulatory Delivery” will be analyzed in this context only.

A preliminary, fundamental question:

What is energy regulation today ?

(communications, water, railway, etc.)

This fundamental question will **NOT** be discussed in the present FSR/ANEEL course.

However, it would be very useful to get from the involved Brazilian regulatory agencies, asap, their own definitions – i.e., the regulators' self-understanding.

Another fundamental question:

What is “Regulatory Delivery” ?

There seems to be no ready-made, clear-cut definition of this concept. Therefore, this brief presentation is an attempt to better understand the concept and to align ANEEL and FSR views.

In the following slides, “**RD**” will be used instead of “**Regulatory Delivery**”.

Whatever is RD, there are 3 basic ideas / moments involved,
as described in the picture below



Only these 2 basic ideas / moments
will be addressed here
(and in the course)

Assessment usually leads to feedback, improving regulation...

In order to come to a more specific definition of the scope of the course, the following basic questions must be addressed:

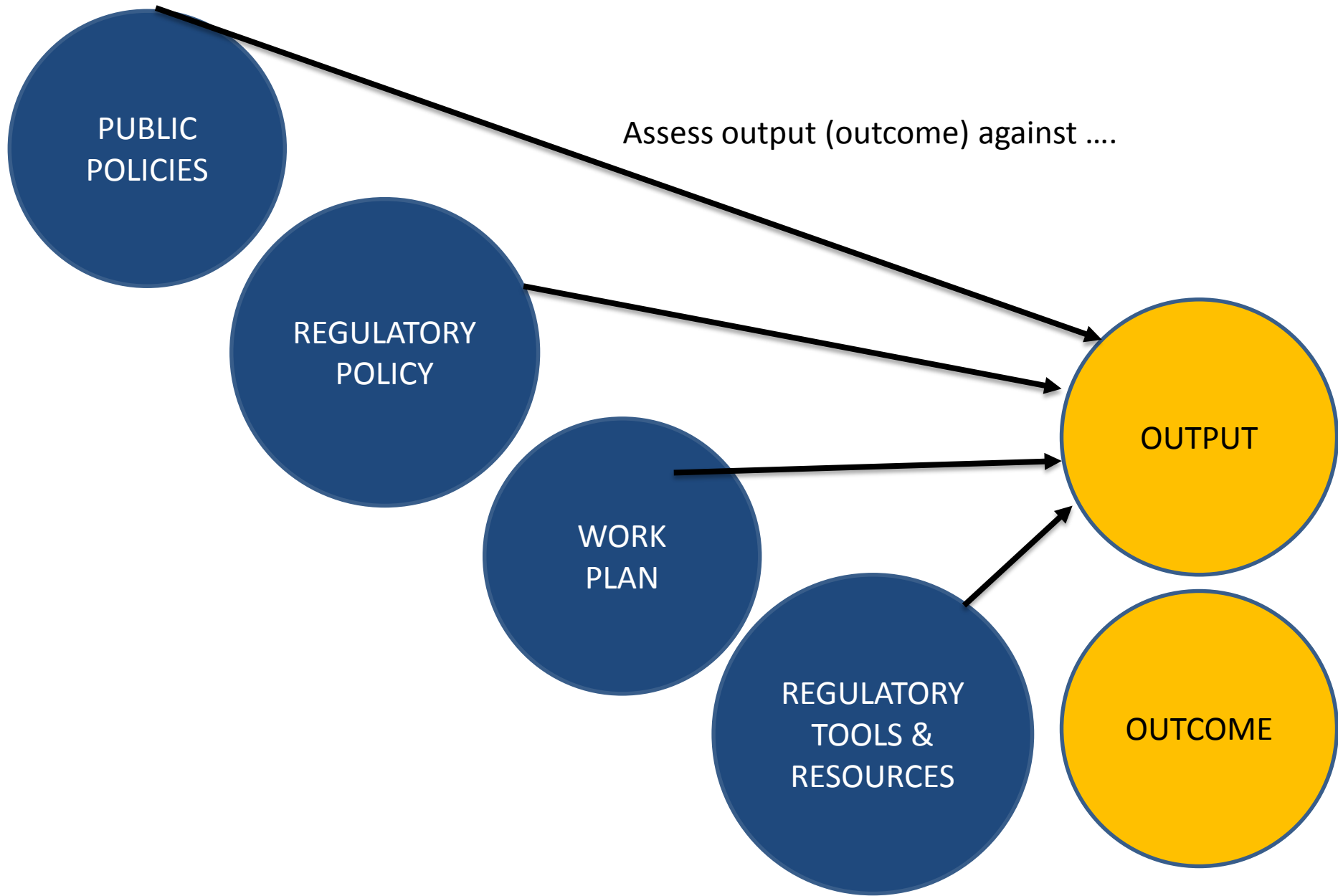
Delivery what?	What is the intended object of RD?
How to assess the degree of RD?	What is a successful RD? Which assessment methodology shall be applied?
Who qualifies the quality of RD?	Who specifies/ measures/ assesses RD? The subjects of RD and RD assessment
Why/what for a RD discussion?	What is the purpose of RD analysis?

Assess **what**?

- 1) One (individual) regulatory action?
- 2) A set of related regulatory actions?
- 3) A regulatory style / approach (e.g. light regulation)?
- 4) The overall performance of the regulatory agency?
- 5) ...

Assess the performance of the regulatory agency in terms of:

- a) Use of available resources
- b) Compliance with statutes
- c) Fulfilment of a given regulatory strategy/policy
- d) Adherence to relevant public policies
- e) Correspondence to stakeholders' expectations
- f) ...



What is the difference between an “output” and an “outcome”?

These two terms are in common use in quality management systems. An “output” is the result of a process. An “outcome” is the achievement to be obtained.

Put another way – an output is “what is produced”; an outcome is “why you care.”

A couple of examples –

For a training program – Outputs of a training program may be “x workshops completed” or “y individuals trained”. An outcome may be “x fewer eye injuries because workers wear appropriate eye protection when needed.”

For a highway construction project – Outputs could be “improved highway design” or “X number of highway miles completed.” Outcomes, the difference made by these outputs, may be better traffic flow, shorter travel times and fewer accidents. (This example is from a blog post on the Harvard Business Review website – [It’s Not Just Semantics: Managing Outcomes vs. Outputs.](#))

The regulator's toolkit includes a very large number of objects.

Therefore, what is supposed to deliver (i.e., is object of analysis):

- A single decision
- A single incentive
- A single sanction
- Information
- A single procedure
- A mechanism
- A suit of actions
- A comprehensive set of actions
- A suit of tools
- A comprehensive set of tools
- ...

How to assess RD?

Define

- 1) What was/is the purpose of RD
- 2) How to measure the degree of achievement
- 3) Time periods for
 - a) implementation of the “regulatory process” and
 - b) measurement of “delivery”

Impacts:

- Microeconomic
- Macroeconomic
- Social
- Environmental
- Technological
- Behavioural
- ...

Measure... (examples)

- Compliance of regulated undertakings with rules
- Litigation : level / degree of regulatory success
- Satisfaction of users/consumers
- Economic impact
- Social impact
- Environmental impact
- ...

Take into account :

- Goals
- Instruments
- Procedures
- Information
- Participation
- ...

How to measure

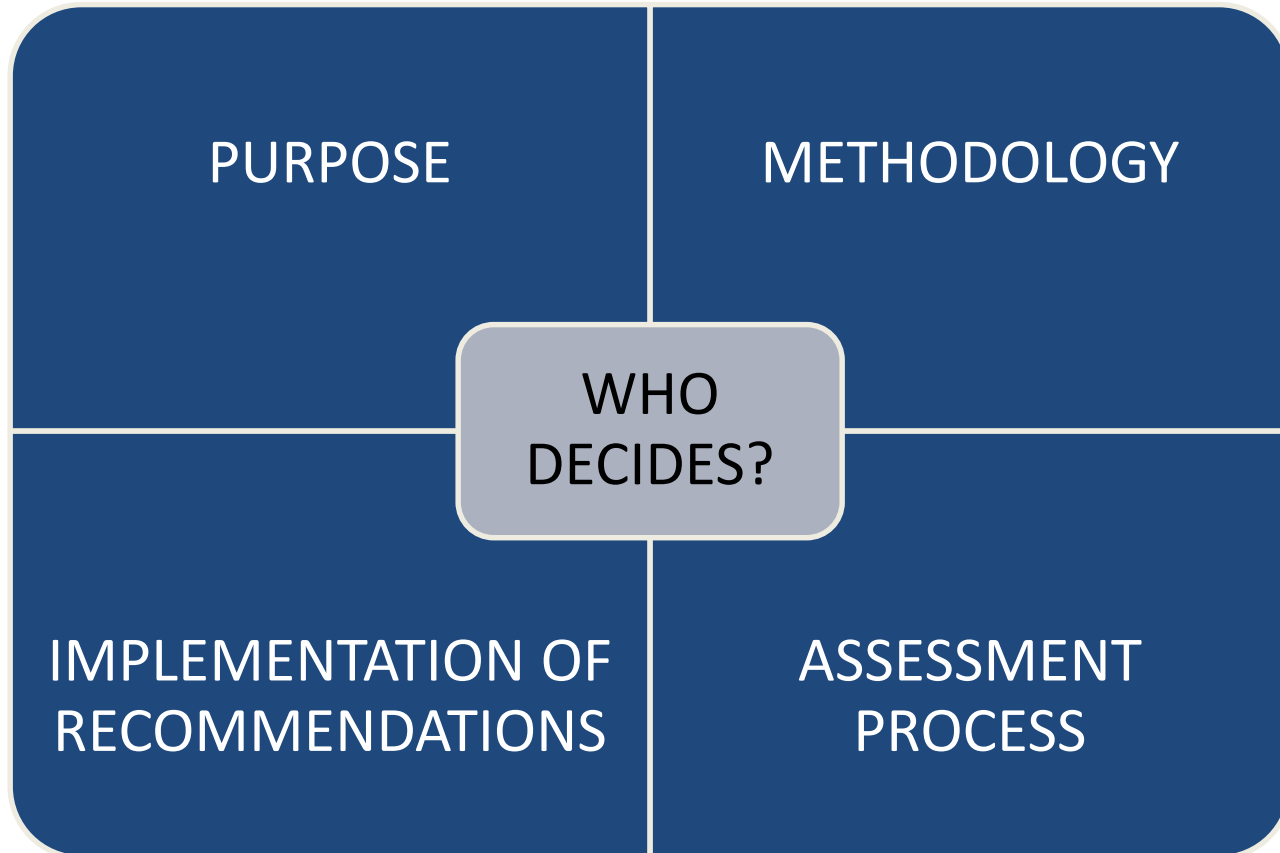
- Compliance with formal procedures
- Quantitative goals
- Qualitative goals
- ...

How to deal with

- Uncertainty
- Opportunistic behaviour
- ...

Who defines, assesses, decides?

- 1) Independent academic panel
- 2) Regulator itself
- 3) Other regulators (peer review)
- 4) Stakeholders
- 5) Parliament
- 6) Court of auditors
- 7) Courts
- 8) ...



What for?

- 1) Improve quality and transparency of regulatory decisions (e.g. ex ante RIA)
- 2) Improve regulatory agency performance through redesign of internal processes (internal agency process)
- 3) Improve regulatory agency performance through redesign of institutional processes/framework (external agency process – e.g. at government level)
- 4) Improve accountability
- 5) ...

SIMPLIFIED
RIA
APPROACH

Proposed regulatory action

- What is the purpose ?
- What are the expected benefits and costs ?
- Is the option of regulating better than the choice of No Regulation?
- Is it compatible with public policy goal(s), regulatory policy and statutes ?

Improving and implementing regulatory action

- Review initial proposal
- How is it going to be implemented?
- Monitoring mechanisms
- Review procedures

Regulatory Impact Assessment

- Is the proposal a cost-effective way to implement the strategy/goals?
- Which alternatives ?
- The Regulatory Agency has the necessary resources and competences to implement it?

A multi-disciplinary project...

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