



Part 3

3.3

Advocacy Tool 3

How to formulate enabling environment reforms

Section 3.3: Advocacy Tools

Providing alternatives



Purpose

This tool will assist EOs in incorporating alternative approaches into its policy proposals.



How to use this tool

This Assessment Tool is designed for use by EOs. It is best used as a guide for employers and enterprise development specialists who will facilitate the assessment process with the EO and among other actors.

Step 1: Is a regulatory approach the right one?

Step 2: Mapping Options



Step 1: Is a regulatory approach the right one?

Governments establish the policy framework and the laws and regulations which emanate from it. They are tasked with ensuring that the policy framework responds to the needs of citizens and to continually monitor and effect change where and when required.

They are entrusted in particular with rectifying any behaviour in society, including private markets, that is not in line with broad societal goals.

Government usually deploy some of the following interventions to correct behaviour in private markets:

- Use of moral, social, or political pressure to modify behaviour;
- attempt to better define and/or enforce markets to correct market failures;
- use economic instruments to provide more accurate market signals about costs and benefits (taxes, fees and charges, and tradable permits are possible examples);
- regulatory approaches.

However, the last response listed here, 'regulatory approaches', is most often the *first* response to a problem by government, despite the availability of a broad range of alternative approaches which may be more suitable to rectifying a concern. These range from voluntary agreements, standardization, conformity assessment, self-regulation, along with a 'do nothing' solution.

For example EOs can first advocate a "light-handed" approach, such as requiring consumers to be given

certain information that does not disrupt market behaviour.

Regulation may well be the right response from government but the job of the EO is to ensure that it has exhausted all other alternatives before it pulls the regulatory levers.

1.1 Codes of conduct and practice

An industry or sector can self-regulate, by producing its own rules and codes of conduct, which it then enforces. Codes of practice are generally adopted and administered by the industry to which they relate. Codes may deal with a range of issues such as membership eligibility, standards for processes, practice or products and services and complaint handling procedures; one of the advantages of codes is that they are industry specific. Generally, codes of practice can be amended more quickly than legislation, in many cases they can be less costly, more flexible, and crucially, more effective than legislation.

WORKPLACE SAFETY CODE

Employers and unions in Ireland developed a Workplace Safety Code. The code's purpose was threefold: namely, to prevent accidents at the workplace; to intervene immediately when accidents occur; and to provide any necessary follow-up treatment and support to those affected by occupational accidents or diseases. The latter measure aims to allow the affected employee to return to work in as short a time as possible. Employers agreed to the following actions:

- Developing a safety culture at the workplace;
- carrying out regular risk assessments and updating safety statements;
- consulting with employees and workplace safety representatives;
- ensuring competence and/or training to ensure a safe workplace;
- providing employees with a comprehensive brief in workplaces where hazardous products are used and to encourage the use of safety data sheets;
- complying fully with current legal and contractual obligations.

In organizations that adopt the code, employees make the following commitments: to be responsible for both their own safety and the safety of their colleagues; to cooperate in preparing risk assessments, safety statements and procedures; to observe safety arrangements; to take a responsible approach to accident prevention; to participate in training; and to ensure familiarity with procedures.

A declaration of compliance publicly displayed by employers will be the most significant difference for employers.

The code was a useful vehicle to encourage safer and effective workplace practices without going down a new regulatory road. The widespread support (unions and all employers) along with numerous state bodies suggests it is a more effective vehicle to reach actual targets than a legislative route.

1.2 Quasi-regulation

Quasi-regulation can be used by government to influence businesses to comply with rules and standards, for example government-endorsed industry codes of practice, government agency guidance notes, and national accreditation schemes (see example below).¹

Quasi-regulation, like self-regulation, can be more flexible and responsive than formal government regulation. It can also result in better compliance if the rules are designed in collaboration with industry experts.

In going down this route the EO should ask of policy-makers the following questions:

¹ Business Advocacy Network: *Alternatives to regulation*.

- Can the issue be addressed through the market and existing legislation?
- Will new legislation (if this is proposed) improve in real terms the situation or could it instead move the problem elsewhere?
- Will the costs of government action be greater than the costs imposed by the problem it is designed to correct?
- Was the issue caused by previous government action?
- Could the issue be resolved by removing, simplifying or amending existing legislation, rather than adding new regulation?

EXAMPLE: STATUTORY CODE OF CONDUCT

The Irish Small Firms Association worked with a variety of other stakeholders in pushing for and succeeding in the establishment of a new statutory Code of Conduct for Business Lending to SMEs² under the auspices of the national financial regulator. The code, which is legally binding on all licensed banks:

- ✓ Contains the option for an annual review meeting for all SMEs with their bank, which will include a discussion on all credit facilities and the levels of security (which allows small businesses to ask for their security back if it is no longer required);
- ✓ ensures that applications by SMEs for financing are dealt with promptly, with clear explanations being given for decisions made and a commitment not to seek unnecessary security;
- ✓ clear procedures for the handling of complaints (e.g. a perceived unfair refusal of lending);
- ✓ provides for the commitment by recapitalised banks to fund and cooperate with an independent review of credit availability;
- ✓ commits recapitalised banks to increase their lending capacities to SMEs by ten per cent;
- ✓ establishes a “clearing group” to identify and solve issues around the flow of credit.

Once the EO has analyzed the cost impact on businesses in dollar amounts of the constraint, it can suggest alternatives to regulation.

Step 2: Mapping Options

At the outset of a policy cycle the EO will need to have a number of ‘desired futures’, or, in other words, options. Its preference may be for no regulation in a given area but if government is committed to regulation then the EO needs to start thinking of other options such as shaping the regulation itself. The matrix below illustrates how an EO can work through advocacy ‘options’.

² <http://www.financialregulator.ie/processes/consumer-protection-code/Pages/codes-of-conduct.aspx>

ISSUE: CHANGING FDI LICENSING ARRANGEMENTS³

Problem/Objective of proposed change	Anticipated impact of proposed changes			Summary of EO's main concerns
	Proposed options	Key intended benefits	Costs	
<p>Problem Licensing arrangement provides opportunities for corruption and discourages investment</p> <p>EO Objective Reduce average costs involved in securing approval for foreign investment license to levels achieved in best practice countries</p>	<p>1. "Do nothing"</p>	<p>No benefits</p>	<p>Continuing loss of competitiveness and suboptimal investment and employment growth</p>	<p>EO has increasingly emphasised that "doing nothing" is likely to result in reduced FDI approvals (especially of smaller projects) as foreign investment approval regimes are simplified in neighbouring countries</p>
	<p>2. Replace current foreign investment licensing system with a unified business registration system where all investment proposals that meet simple and transparent requirements are permitted</p>	<p>Reduced costs and risk in securing FDI licence this will encourage increased investment and employment, reduce corruption, increase productivity, and reduce public administration costs</p>	<p>No additional costs to businesses or consumers. Minor initial administrative costs to establish new procedures and to improve national business registration system</p>	<p>Reform should ensure more balanced investment and employment creation: this could have major impact in reducing poverty (government's priority)</p>
	<p>3. Abolish all foreign investment registration requirements</p>	<p>Removes all business licensing costs. This should encourage higher investment and employment growth</p>	<p>Lack of publicly available company information may limit commercial transactions. Loss of instruments to monitor FDI</p>	<p>Would remove this administrative workload from government</p> <p>Not considered a politically feasible option at this stage</p>

³ Investment Climate Advisory Services of the World Bank Group: *How to Reform Business Licenses*, June 2010.