Equipping Agile Regulators

Conference report

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Speakers

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Vincent Van Langen | Economist, Policy Analyst, OECD Regulatory Policy Division

Richard Davis | Chief Data Officer, Office of Communications/OFCOM, United Kingdom

Maya Bacache | Member of the College, Electronic Communications Regulatory Authority/ARCEP, France

Ricardo Quesada Oré | Manager of Regulation and Economic Studies, Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público/Transport regulator/OSITRAN, Peru

Sophie Nerbonne | Director of Economic Co-Regulations, National Commission for Information Technology and Civil Liberties/CNIL, France

Vera Sopeña Blanco | Presidency Chief of Staff, Comision nacional de los mercados y la competencia/Commission for Markets and Competition/CNMC, Spain

Janis Mikelsons | Executive Director, Public Utilities Commission/PUC, Latvia

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Round tables moderators

Anne Yvrande-Billon | President of the Network of Economic Regulators, OECD and Director Economy, Markets and Digital, ARCEP

Dominique Jamme | President of the Club of Regulators and Managing Director, French Energy Regulator, CRE

Summary

Introduction

Eric Brousseau | Director of the Governance and Regulation Chair and of the Club of Regulators, Paris Dauphine-PSL University

Regulators oversee sectors that are in constant evolution.

- Innovation and new technologies – especially digital technologies – enable the development of new products, services and business models that have profound impacts on markets.

- Major global challenges, in particular the climate change and the resulting ecologic transition necessary to ensure sustainable growth and development, affect sector equilibria and trigger major waves of investments and innovation.

- Exogeneous shocks such as the COVID-19 pandemic and more recently the energy crisis challenge the resilience of operators and of the government to deliver essential services.

These challenges request by themselves adaptative capabilities by regulators to adapt to these new circumstances. Moreover, governments and legislators need to address these issues thanks to innovative policies, which request further ability of adaption by regulators to implement them.

Regulators' agility in responding to changing demands and sectoral dynamics can be strongly influenced by the way they receive and manage their resources. Moreover, their ability to meet new expectations or roles will require adequate resources and skills (e.g. data science and AI capabilities). The reorganisation of their operation can also be on the agenda of regulators, especially when they are in charge of new responsibilities.

Lastly, as many challenges are transversal, the boundaries between sectors may be challenged both by users — think of intermodal mobility — and by operators whose business models cross sectoral and national borders, regulators have an increasing need to cooperate both across sectors and across jurisdictions.

Building on the OECD report *Equipping Agile and Autonomous Regulators*, this conference aim is to discuss the ways in which agile regulators can keep up with market developments, technological changes and evolving mandates.

Relevant findings of the OECD report, *Equipping Agile and Autonomous Regulators*

Vincent Van Langen | Economist, Policy Analyst, OECD Regulatory Policy Division

The Network of Economic Regulators brings together some 70 economic regulators across sectors and countries to discuss governance and performance in their fields. In September 2022, the network launched its report on Equipping Agile and Autonomous Regulators.

About the report

The OECD report "Equipping Agile and Autonomous Regulators" focuses on the human and financial resources of economic regulators, identified as playing a crucial part in the outcomes of their work. The survey prepared to collect data on the resources was completed by 57 regulators across 31 countries.

The report analyses the impact of resources across a variety of dimensions, beyond trends in resourcing arrangements:

- the translation of resourcing arrangements into autonomy and agility;

- the ability of arrangements to boost accountability and transparency in regulatory systems;

- the impact of resourcing arrangements on the ability and capacity of economic regulators to conduct their work;

- the impact of Covid-19 on the resources of economic regulators.

Findings specific to regulators' agility

The need for agility in regulators emerges directly from the increasingly dynamic sectors which they oversee. The OECD's Recommendation on Agile Governance to Harness Innovation is designed to help governments and regulators to ensure that the rules which they develop are not rigid but instead agile and future-proof.

Resources play a crucial part in enabling this last objective.

- **Recruitment**. Economic regulators must be agile enough to bring in new skills or enlarge staff in response to new challenges, and moreover, to do so quickly.

    - 29% of economic regulators, however, must go through approval procedures involving ministerial bodies before they may hire staff for new positions within the organisation. This barrier complicates their operations, especially when the maximum staffing threshold has been set at a level lower than the minimum required for proper functioning.

    - As is the case across other public bodies, difficulties to recruit digital and IT skills has proven an obstacle to improvement.

- **Career development.** The staff already present must be able to adjust its ways of working to develop new skills and knowledge. Regulators must ensure they are able to keep up with changes in the sector and understand new developments, as well as bring fresh perspectives into the organisation.

  - 86% of economic regulators allow their staff to earn external qualifications by giving them financial support for this purpose.

  - 44% of regulators exchange staff at the domestic level, while 41% of them do so internationally with other bodies.

- **Financial resources.** The effectiveness and predictability of resources can be affected by a number of factors, which in turn impact the organisation's overall agility.

  - For 90% of regulators, the budget is appropriated annually. 28% of regulators, however, can see modifications to the already-approved budget, and are thus hindered in the way they go about their operations by a lack of predictability.

  - 89% of regulators are subject to restrictions on carrying over funds between financial cycles, and thus cannot smooth revenues over time.

  - 80% of regulators funded through fees have fees based on a cost recovery mechanism, and thus have greater security as to the sufficiency of their funding. Possible additional safeguards include clear procedures for budget revision and the use of multi-annual forecasts.

- **Financial management.** The degree of autonomy provided to economic regulators in managing their financial resources is generally limited by rules on public spending and procurement. 53% of regulators are subject to additional rules on spending, such as caps on specific cost categories. This is less frequently the case for multi-sector regulators.

Éric Brousseau

Did regulators report any problems in hiring new talents in IT and data, who are in short order world-wide and thus in a position to be demanding on wages?

Vincent Van Langen

The majority of regulators report being able to recruit positions for most staff, data and digital being amongst the skills they face more issues to recruit. Furthermore, as three-fourths of regulators are subject to government remuneration rules, they may not always be able to pay the salaries expected by these candidates. This problem is the weightiest for regulators in energy and e-communications.

Éric Brousseau

Do their response strategies include any form of cooperation with counterpart agencies, to bypass these constraints, reach critical mass and potentially enjoy economies of scale?

Vincent Van Langen

Such strategies were beyond the scope of the survey. We did, nonetheless, note that they take measures to play up the advantages of public sector work, including higher job stability. Through other workstreams, we have also seen regulators engaging together, for instance, in data-driven approaches.

Round Table 1 : Sectoral Experiences

Moderator : Anne Yvrande-Billon | President of the Network of Economic Regulators, OECD and Director Economy, Markets and Digital, ARCEP

Anne Yvrande-Billon

This session will highlight the methods employed by regulators to adapt to new regulations and responsibilities in the sectors they regulate to take on the new issues at stake.

Contributions

Richard Davis | Chief Data Officer, Office of Communications/OFCOM, United Kingdom

OFCOM is responsible for regulating the communications sector in the United Kingdom as a whole, from broadcasters to telecoms, as well as in the near future, video sharing platforms. A bill concerning online safety, currently under review in Parliament, places the latter under the responsibility of OFCOM, asking specifically that it ensure that platforms, search engines and adult services have the necessary systems and processes in place to protect their users from illegal content or content harmful to children.

Most recently, it has intensified its focus on avenues for upscaling technology, not only for online safety, but also to reflect the changing digital nature of all the areas it regulates.

Responses through changes in structure

The Technology, Data and Innovation Group was formed with the intention to lead on Tech First policy and decision-making, by ensuring that technologists are involved in discussion on policy-marking, from as early as the first instance.

Originally made up of 20 people, it has now grown to include 80 and is projected to reach 120 or more. This growth is projected to come through four main areas:

- tech policy, i.e., the interface between the policy teams and technologists to translate technology into policy;

- communications and media tech, which explores emerging technologies, prototyping those technologies and looking to understand the in-depth methodologies they use in those areas;

- trust and safety technologies, or online safety and the technologies that can be used to provide safer experiences in those areas, e.g., automatic content classification, age verification technology, and also generative adversarial networks that produce deep fakes

- the Data Innovation Hub, which is aimed at enabling the use of data evidence in the regulator's decision-making, as efficiently, effectively and as safely as possible.

Set up in 2019 with two individuals, the **Data Innovation Hub** is now run with a team of 45 and will grow to around 80 in the next year, reflecting the successes it has scored, including the production of 20 pilots in advanced analytics techniques, but also data.

Data Strategy ambitions

The ambitions for the data strategy extend far beyond the aforementioned, and enjoy strong support from senior members:

- **Governance risk and reporting**. Work in this area is aimed at ensuring that the necessary data governance (ethical framework and privacy framework) is in place for data analytics, and tracking the benefits of productions underway, product deliveries, costs and budgets thereof, all for the purpose of ensuring adequate return on investment.

- **Delivery and workload**. The numerous data teams at OFCOM were excessively siloed until recently, using differing technologies and working parameters. The aim today is to build a community through which a common language can emerge for handling data in the future, not only to ensure effective operations, but also reuse code, information and efforts.

- **Data platforms**. The internal future strategy is designed to ensure that the organisation is equipped with the full data catalogue and lineage to understand which data are being used, the metadata behind them, the safety and security principles needed, and the identities of the data users at any given point in time. The key lies in providing the tools across the organisation so that analysts can use these effectively.

- **People and Community**. With the number of entities subject to regulation by OFCOM set to increase 100-fold, a holistic approach has been developed to build the skills and community needed in the organisation for data use and analytics, especially in the scale-up of the online safety regime. Unable to attract the same talent as high-paying large tech companies, the regulator puts its emphasis on attracting individuals earlier in their career and offering them the opportunity to develop their skills with high-quality tools.

  - *The Apprenticeship Team* targets in particular the less represented socio-demographic groups.

  - *A grant scheme* has been opened to bring in young graduates ready to be trained for the regulatory space.

  - *The Data Profession*. Individuals are targeted and encouraged to embark on learning. Throughout the organisation, individuals will be educated to the necessary base level: as the aim is to make effective use of data, it is essential that every member of the organisation be able to question the data and apply the methodologies presented.

  - *Targeted learning*. Here, the challenge lies in placing the advanced tools common today in the hands of an early school leaver population. To attract them, OFCOM offers them certifications to enable career profile building, and enables interaction with external organisations.

  - *Internal apprentices*. While remaining in their current positions, OFCOM workers are given the opportunity to serve data apprenticeships, in which they learn advanced techniques so as to later provide data-driven decision-making in their own teams, with the support and skills of a central hub.

- Secondments. Tech industry workers and researchers serve three days per week at OFCOM, and the remaining two days at major institutions such as the Alan Turing Institute, where they engage in the more advanced research that interests them. OFCOM benefits from the access to these more sophisticated technologies, such as recommender systems or the risk of processes in algorithms, as well as from the services of more academically inclined individuals. Through the Digital Regulators' Collaboration Forum in the UK, secondments and job swaps are offered to enable learning from other regulators as well as best techniques and methodologies.

Maya Bacache | Member of the College, Electronic Communications Regulatory Authority/ARCEP, France

Though entrusted with a new mandate relating to environmental issues, ARCEP continues business as usual in a sense, insofar as it has always regulated innovative and changing industrial sectors. However, the mandate now covers a new sector and a new objective: digital sustainability.

The new mandate marked the start of a new process, which required ARCEP to consider whether it would be willing to act without a comprehensive legal mandate. Taking a bottom-up approach, thanks to both the board and the staff interested in taking up environmental issues and challenges and, without the legal mandate, initiated entire workstreams to study this new area. Two years later, in 2018, it was endowed with the necessary legal powers to collect data. The approach taken was collaborative and open, with workshops attended not only by staff, but also associations, researchers, operators, and generally all stakeholders.

Affecting environmental outcomes

ARCEP's regulations can have a significant impact on the production and exchange work engaged in by telecom operators. Its actions can be direct or indirect:

- incentives to operators to invest in greener technologies, such as fixed versus mobile, copper versus fibre, etc.

- gathering and sharing data, to guide consumer choices as well as public policies, in the yet little-known field of environmental sustainability. ARCEP serves in this sense as the neutral expert working to raise awareness in all stakeholders.

Rather than adopting an ex-nihilo approach, the agency chose to build on what it terms its relative advantages: quantitative analysis, technical knowledge, data analysis, etc. to achieve the greatest environmental impact. This decision was risky in that regulators are rightly known to best perform a single task and pursue a single objective. With this new outlook, in contrast, ARCEP must reconcile multiple objectives: by way of illustration, network sharing is known to be more protective of the environment, but may run counter to competition.

In its studies carried out under the new mandate, it has identified:

- the major impact of terminals on the carbon footprint of the French digital ecosystem,

- the predominant contribution of manufacturing to the carbon footprint, as compared to the distribution process and product use.

A survey of telecom operators and data producers is underway with the aim of building a comprehensive measure of digital impact.

Independent regulators are a necessity in the framework of the environmental sustainability mandate. Neutral experts foster trust in this area, through an impartial decision. ARCEP has strived to build that trust through its collaborative approach, informal debate, and provision of comprehensible, acceptable and precise information and measures.

A risk arises from entrusting regulators with a political, rather than technical, objective. Nonetheless, environmental sustainability has now become more technical in nature than political. ARCEP thus believes in the benefits of including environmental objectives in every regulation, and not only as incidental or supplementary to existing objectives.

An agile regulator is needed to tackle this new mandate.

- ARCEP has woven its new responsibilities in the regulation, taking a pragmatic approach, before even having a legal mandate to do so.

- It has strived to build on its relative advantages, rather than approaching the environment as a new workstream or sector to regulate. Its status as a neutral expert was essential in the creation of a common and acceptable solution.

- Telecommunications and digital technologies can be a solution, not only a problem, and can positively impact the environment. ARCEP strives to address the negative impact, as well as foster the emergence of the positive.

Ricardo Quesada Oré | Manager of Regulation and Economic Studies, Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público/Transport regulator/OSITRAN, Peru

OSITRAN is based on a concession contract of public private partnerships. It enjoys technical, administrative, economic and financial autonomy. It regulates and supervises public transportation infrastructures such as railways, ports, airports, waterways and roads granted to the private sector; it does not regulate the transport service, with the exception of quality of service on the Lima Metro Line. It encompasses 32 concession contracts entailing investment of 16 billion dollars.

OSITRAN has strived to provide adequate training to its workers in a situation with few resources and significantly limiting restrictions. In order to deal with market change and meet citizens' needs, regulators must have not only talented, but also committed capital: the nation is in the throes of political and economic crisis, where public salaries are no longer competitive with the private sector, and there exists a general lack of interest in working in the public sector.

As the regulator in Peru, OSITRAN has been in place for just over 25 years. Its creation coincides with a process of structural reform that enabled the country to emerge from the greatest economic crisis in its history and become a market economy in which the State reclaimed its role as arbitrator and granter of competition. Nonetheless, it believes it has much to road to cover in learning, improving and establishing itself as a world-class regulator.

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Primary challenges

In this regard, it faces **three main challenges**:

- Making its activities known to the general public;

- Becoming trustworthy in the eyes of the citizens, especially against the backdrop of political scandals and instability that have hurt the credibility of public institutions;

- Building team of committed and qualified staff.

Moreover, it must deal with **political restrictions and obstacles**: even though the regulator was technically created as an autonomous institution, it is limited in practice by the rules placed upon it by central government. For instance, the regulator's budget is derived from the 1% of the income of the regulated enterprises. It receives no funds from the State Treasury. However, when the time comes to use its budget, it must comply with the restrictions set by the central government.

Other restrictions relate to the **functioning of the human resources department**: in order to hire new staff members, it must secure the approval of the central government. As a consequence, there is little flexibility and staff is less likely to receive the necessary training.

Peru's public sector is divided into **different regime levels**, each offering different wages and work benefits.

- When OSITRAN was created in the 1990s, it was assigned to the labour regime of the private sector, so that it would be able to offer competitive working conditions and attract the best capital. Its hiring mode was designed to enable institutions, such as economic regulators, Inland Revenue and competition authorities to boost the development of the market-based economy. Only 38% of its staff currently works under that labour regime.

- Over the years, a new regime has been created, under which it is possible to hire workers on administrative service contracts. It applies to 62% of OSITRAN employees today – but carries fewer benefits for workers.

- In an attempt to overcome this problem, a new labour regime was created in 2013, announced as a unified employment regime for public officials. However, OSITRAN applies this regime today only to the Board of Directors.

Consequently, the contracts, salaries and benefits of the organisation's employees are governed by three parallel systems, which could undermine the continued motivation of human resources practices. Insofar as it is not authorised to increase the number of employees under the private-sector regime, its staff has grown in recent years only through hiring under the second regime.

As to the staff's profile: 86% holds at least a Bachelor's degree, and 75% of the management team holds a Master's Degree. In addition, approximately 38% of the staff is in its 40s.

OSITRAN must deal with many **financial constraints** that make it particularly difficult to fund training for staff. In addition, the pandemic prevented the organisation from earning even the basic income it needs to operate in the day-to-day. Despite these challenges, staff turnover has decreased greatly in the last few years, from 10% in 2019 to 6% in 2022.

Securing quality staff

It manages to recruit qualified professionals and provide them with advanced training, thanks first and foremost to its **Extension Training and Recruitment Programme** specifically aimed at students and recent graduates with high academic performance.

- Each year, some 1 000 applications are received for the 45 spots available. Those selected are able to take part in a multi-disciplinary programme with all expenses paid. More than 650 university students have been part of this programme in the last few years. 50% come from universities outside Lima.

- Participating students are able to improve their employability, while OSITRAN can train young professionals whom it can later hire, to the extent allowed by budget restrictions. At the time of the regulator's creation, there were no educational programmes addressing topics in economic regulation or competition policy. Today, 32 of its staff members have been trained through this programme, and many others have found jobs at different companies.

- While as a result of the pandemic, the most recent editions of the extension training programme have taken place online, a return to face-to-face learning is expected in the near future.

The second approach adopted in this respect is the **Management and Talent Development Model** for staff. This in-house programme is aimed above all at providing the team with advanced training.

- To understand this programme, it is important to keep in mind that a national authority governs all aspects of human resources. Until 2014, OSITRAN was able to provide its employees with financial aid for Master's Degrees or PhDs. Without the new regulatory regime, it would be impossible to do so today. In addition, it is required that all training include a management instrument known as the People Development Plan. Approved annually, the plan has very little flexibility for the addition of supplementary training.

- As a consequence, an in-house training sequence was developed as follows:

    - Awareness-raising for Human Resources Department staff

    - Analysis and diagnosis of training needs by aforementioned staff

    - Design of a training plan for motivated and well-trained, well-managed workforce.

    - Talent and key position matrix created, identifying the training needs (e.g., digital transformation, fight against corruption) and indicating both the positions to target and the processes recommended for doing so.

- Through this process, the organisation learned that the staff, especially in management roles, included many people university professors and specialists from different fields. Seeing the limited financial resources available to the organisation for training, it called upon these individuals for support. As a result, free training courses were created. In 2021, for example, more than 950 employees took part in 35 workshops, i.e., three training sessions per year per member.

- Furthermore, the Human Resources Department increased training opportunities by funding other free courses likely to be of interest to other employees. Since the Extension programme has gone online, an additional platform with over 200 hours of recorded classes has been available for use in the induction plan and in-house self-learning. As important as it is to engage in international exchanges and training cooperation, these are not financially within the organisation's reach for the time being.

Despite all the restrictions against which it must struggle, OSITRAN has been certified as a Great Place to Work. This recognition reinforces its commitment to continue training and upgrading staff, and thus find the tools that enable it to be an agile regulator and meet the needs of its stakeholders.

Discussion

Éric Brousseau

The speakers all illustrated the importance of providing staff with opportunities for growth as a means of closing the wage gap inherent in the system. How did the stakeholders and public react to ARCEP's decision to take into account environmental issues?

Maya Bacache

As ARCEP's approach had been designed to be gradual and inclusive, the response was quite positive. It began with a study on the impact of the usage of terminals in the future. Small in scale, it was the first of its kind and thus greatly appreciated. In the following stages, it worked with partner organisations and held an online workshop attended by multiple associations.

In the face of operators initially hesitant to share their network data, ARCEP needed a legal mandate for data collection. The operators are now aware that both their staff and the consumers need them in order to take on the environmental challenge.

The only negative response was the sense, in some players, that ARCEP might be underestimating the impact of the digital sector on the environment. Of course It is difficult to capture all the impacts, from the positive to the rebound effect and beyond, but that's our goal.

Anne Yvrande-Billon

All three speakers attested to how forward-looking regulators are and pointed out the importance of this long-term outlook, given the constraints of the day. Did you experience any problems retaining the talents you trained and, indirectly, made more attractive to higher-paying employers?

Richard Davis

Still in the growth phase, OFCOM continues to recruit and has not reached the stage in the cycle where an employee would move on quickly to another organisation. Coming from the banking industry, I am familiar with this sequence. OFCOM is currently able to promote the new online safety regime as an exciting opportunity for newly-arriving workers to take on an issue that clearly needs to be addressed and help the society in which they live. According to our most recent surveys, less than 10% of employees are looking to move on.

Ricardo Quesada Oré

Although the staff turnover rate has been low in recent years, this could also be linked to the economic situation. But, given that salary caps have been frozen at their 2006 levels, it could be said that the public sector has lost its ability to attract and retain many trained professionals.

Round Table 2 : Trans-Sectoral Experiences

Moderator : Dominique Jamme | President of the Club of Regulators and Managing Director, French Energy Regulator, CRE

Dominique Jamme

As important as it is to be agile, by adjusting structures, resources and management methods in times of crisis, it is also essential to be able to maintain continuity of normal operations. For the CRE, this translates into keeping network tariffs under control in the immediate future, while also preparing the future with renewable energies.

The new responsibilities placed on regulators – in the CRE's case, protecting end-users from the extremely high wholesale prices on energy – must also come with additional resources from the State budget. To manage this multi-billion euro issue, it is thus seeking five to ten supplementary staff members.

Lastly, agility, while important, must not dwarf all other concerns, and above all, should not place organisations above the law. The CRE was reminded of this recently when, in its haste to protect consumers, it changed a rule without complying with its obligation to consult the end-user: its decision was cancelled by the French Council of State.

Contributions

Sophie Nerbonne | Director of Economic Co-Regulations, National Commission for Information Technology and Civil Liberties/CNIL, Franceen

In contrast to other economic regulators, the CNIL's rules deal not only with players and market conditions, but also fundamental rights enshrined in the European Charter. It thus naturally interacts with all economic regulators to apply the rules for the protection of personal data in networked sectors. In particular, it joined forces with CRE to build a compliance package on smart grids, and is building a compliance club on geolocalisation. It has developed a compliance package on connected cars, maintains compliance clubs with the banking and insurance sectors, and is developing a code of conduct for water.

The strength of the GDPR lies in the possibility it provides to supplement and adjust practices on multiple aspects and thus makes it possible to remain agile by enriching the enactments, offering very different ways of complementing and clarifying the rules, including in terms of procedures. The CNIL has thus devised different processes and strong governance regarding procedures for accompanying public economic players as well as dissuasive actions.

For the sake of time, the focus will be kept here on resources. CNIL is part of an independent authority, and is thus not a mere executive branch of the French Administration. Operating solely on public funds approved by the Parliament, it makes sure to actively involve itself during budget discussions with the executive and closely follows the process in Parliament.

In its recent report, the French Council of State stated that the CNIL remains one of the most modest data protection regulators, whether in absolute terms or comparing its resources with the size of the country. After the adoption of the GDPR, Great Britain doubled the staff of the ICO; CNIL would like to reach half the size of the ICO's staffing, but is far from doing so.

Nonetheless, the CNIL benefits from a meaningful budgetary effort.

- Its current budget of Ð26 million in 2023 exceeds that of 2022 by 2 million, while its staff has increased by 18, reaching 245 employees.

- Over a period of 10 years, the staff has grown by nearly 70%. No approval is required from the executive to hire new staff.

- This effort was granted following a study comparing the CNIL's operating costs with the sanctions and penalties it enables the State to reap for its budget.

Furthermore, it is the shared opinion that the need for higher data security and in particular protection from foreign interference is greater than ever. The CNIL has a prominent place in the field of cybersecurity in view of the resurgence of cyberattacks targeting not only large companies or hospitals, but also public administrations and SMEs, with some data more sensitive than other, such as health data, and some more sensitive audiences, such as minors.

CNIL likewise holds a prominent place in the growing use of artificial intelligence. Though it has already worked extensively on this aspect with facial recognition, augmented cameras, etc., it must – as the French Council of State emphasised – upscale its financial and human resources, and above all, be the regulator helping development and supporting innovation and respecting the fundamental rights of those concerned. It must be a facilitator of innovation technology, serving society.

For this purpose, the Council of State offered a number of solutions:

- a change in name to symbolically mark the change in scope;

- an adjustment of the structure of the college in introducing specialists in artificial intelligence systems and innovation players;

- and diversification of staff profiles to help the adaptation of the CNIL in the construction of its doctrine (i.e., a good mix of junior versus senior staff, and permanent versus temporary).

CNIL too experiences difficulties in recruiting senior profiles, which raises the question of budgetary resources. As CNIL employees are driven first and foremost by their sense of purpose, the organisation is working specifically on means of showcasing this and developing tools with which to equip its players.

Vera Sopeña Blanco | Presidency Chief of Staff, Comision nacional de los mercados y la competencia/Commission for Markets and Competition/CNMC, Spain

The Spanish National Competition and Markets Authority is an integrated authority created in 2013. Like its counterparts in the Netherlands and Australia, it is expected to combine supervision of competition with the regulation and supervision of the following sectors: electronic and analogue communication, energy markets, postal services, airport charges and railway.

Inherent constraints

When the bodies respectively in charge of these sectors were merged in 2013, **the CNMC inherited the management regime of the competition authority**, created in 2007, with all its rules and constraints. Before that, the competition authority was part of the Ministry of Economy. The other regulatory bodies before the 2013 merger for energy and telecoms, in contrast, had been left independent, with significant budgetary expenditure and complete flexibility to make use of it. The result has been great difficulty for all, particularly the workers and management methods from the former regulatory bodies, to comply with the new rules.

The CNMC faces three main types of constraints, all interlocking: human resources, budgetary and organisational.

- With 502 staff members, it struggles to cope with all its functions in all sectors and competition enforcement. Common divisions (legal service, cabinet, human and economic resources management division, etc.) also suffer staff constraints. Where there were seven presidents, seven chiefs of staff, seven legal services and seven secretaries general, there are now only one of each.

- It is particularly difficult to work within these constraints when all the hiring decisions depend on the executive. Each year, it must explain its hiring needs and draw up a proposal with description for the Ministry of the Economy, which in turn must negotiate with the Treasury and Secretary to have that proposal authorised. Most frequently, its initial request is adjusted downward. Similarly, multi-stage authorisation processes lasting up to one year are required for promotions, careers and rollouts of new hierarchical levels.

- These requirements have been all the more challenging in the past several months, as the authority has been assigned supplementary tasks (gasoline prices, levies on energy companies and financial entities), not all of which are related to its traditional remit. It must thus retrain individuals, as well as develop specific information technology.

Addressing the specificities of its staff

The CNMC employs **two types of staff**:

- traditional public servants under the normal labour regime that enter the CNMC through a competitive exam process;

- and State civil servants having entered their functions through competitive state exams.

To hire the latter, the Commission must compete with other ministries, albeit without the benefit of financial advantages. It has, to this end, implemented:

- remote working and flexible working hours;

- objective-setting by the civil servants themselves;

- and training opportunities, in particular in digital.

Any reorganisation of the authority to add subdivisions must be approved by the executive. While this process is also cumbersome, it is a necessary condition for adapting to new market and regulatory processes and giving enough hierarchical entity to emerging units. Work is ongoing with the Ministry and executive to set up a structure adapted to the authority's needs.

Janis Mikelsons | Executive Director, Public Utilities Commission/PUC, Latvia

The PUC is a multi-sector regulator responsible for: energy (electricity, gas and heating); communication and postal services; and water supply, sewage and waste management.

Since its institution in 2001, the regulator has enjoyed a **high degree of independence.** Its Board of Directors composed of five members is appointed by and reports directly to Parliament; its decisions cannot be challenged elsewhere than through the court system. Its budget is derived from the operators, which pay 0.2% of the annual net turnover of regulated services. As such, this fee can fluctuate significantly depending on market conditions, as was evidenced in 2022.

As an independent institution, the regulator has its own budget programme in which the Government may not intervene, though it is required to respond to any questions which the latter may raise. The resources paid to the programme for regulatory funding may not be used for any other purposes. Any excess must be returned to the sector via a reduction in the effective rate for the year. Within the multi-sectoral framework, it is usually possible to balance out variations in prices in one by acting on another.

In 2017, however, when multiple events hit the sectors concurrently, the decision was made to transfer some powers to a different regulator, causing the PUC to lose some fee revenues, further compounded by the downward adjustment of certain energy prices. **While still seeking out ways to move forward, the PUC underwent OECD performance review, the conclusions of which included recommendations to revise its fee-setting process and introduce a reserve fund, to carry fees over from one year to the next.** Intensive discussions ensued with the Ministry of Economics, responsible for any amendments to the regulatory law, large service providers, consumer organisations and employer associations.

The result was a draft law submitted to Parliament. The PUC was fortunate in that, at that time, political impetus was directed entirely towards securing Latvia's admission to the OECD, such that Parliament quickly adopted the bill. Since 2018, the specific legal articles necessary are thus in place and extra earnings can be retained from one year and carried on to the following. In essence, the regulatory fee is paid on turnover for the two previous years. The reserve fund may not exceed 25% of prospective regulatory turnover; should it exceed that level; the previous scheme would be re-enacted.

In the years following 2018, with the various restrictions arising from the pandemic, the PUC was able to enjoy quite favourable prices on its own energy exposures and thus posted savings. These nearly approached the limit set by law on the amount allowed for the **reserve fund**. The said fund has thus proved timely and is seen as a safety belt for the regulatory budget resource planning: where the PUC becomes aware that its resource requirements will exceed those forecastable based on turnover from regulated services, it submits such usage in the subsequent annual budget proposal, and is thus able to use the reserve from the previous years in a given target year.

In addition, if a drop in revenues occurs without having been foreseen, or if a company closes down, the PUC can seek permission from the Ministry of Finance to reallocate the reserve up to the limit approved in the annual budget. So long as the initially planned expenditures are not exceeded, no Parliamentary debate is required to cover shortfall using the reserve.

In 2021, a new circumstance arose: the **terms of several Board members came to a close,** without a reserve having been created or resources accumulated to pay them the departure compensation required by the law. However, the restrictions instituted in the previous year as a result of the pandemic left extra resources available to the PUC, enabling it to provide the said compensation without touching the reserve fund. Moreover, several of the sitting Board members were re-elected for a second term, making departure compensation a moot point.

This year, the regulatory fee will be calculated on the basis of 2020 turnover, the lowest in several years, due to recession, low energy prices and low demand in most sectors. A significant portion of the reserve fund will thus be used. Without that resource, the PUC would have had a very difficult time facing the current crisis, as are many of its regulatory counterparts. It is pleased to be able not only to cope with the existing workload and maintain all its staff, but also contemplate additional hires. The higher prices expected in the year to come will likely contribute to restoring that reserve fund.

Dominique Jamme

These systems are strikingly different yet all operating within the same European structure.

Éric Brousseau

Such is the structure of the European Union, which makes cooperation between national and sometimes supranational agencies necessary.

Conclusion

Martha Baxter | Senior Policy Analyst (acting), Regulatory Policy Division, Directorate for Public Governance, OECD

Today's workshop provided useful insights into the constraints that regulators face with regards to staff and funding arrangements, as well as examples of practical strategies and best practices to support agility.

Far from a purely technical matter, resourcing arrangements can have considerable implications on autonomy, accountability – and agility.

The emphasis on becoming agile is the logical consequence of the profound changes in regulated sectors and regulatory scopes. Digitalisation has been identified as one of the megatrends driving this change. Regulators are also in some cases responding to challenges that weren't previously focusing on, such as climate change. **While the only constant is indeed change, the current pace of change is unprecedented**, fuelled in the past few years by the Covid-19 pandemic and, more recently, the energy crisis.

Called upon to take up new mandates, regulators have had to recruit new skills, sometimes very rapidly, and are competing with industry and big tech for talent. Some selected response strategies have included:

- programmes targeting recent graduates or underprivileged groups;

- training for those early in their careers to secure talent;

- navigating around traditional government structures to train and leverage existing skills

They noted the rigidity there can sometimes be in public sector rules that create challenges for timely recruitment or the ability to change the structure of the organisation, which can be particularly challenging when new functions are added. This illustrates the mismatch there can be between demands placed on regulators and the flexibility of the resourcing arrangements.

Agility is one of the hallmarks of a world-class regulator. It is important to ensure that resourcing arrangements help rather than hinder it, so that regulators can adapt to their new roles and tackle the challenges of today and tomorrow. At a broader level, success in this respect will furthermore strengthen trust in public institutions as a whole.