

Regulators' Forum 6

Engaging with Stakeholders

One of the key ideas underpinning the notion of 'regulatory democracy' is that participation enhances both the quality of regulatory decision-making and the legitimacy of regulatory decisions. While there is very little disagreement about these basic ideas, how to ensure such participatory processes has proven far more difficult. There are issues about the timing of stakeholder engagement, about different rationales for engagement, about who the most relevant stakeholders are, about the appropriate technologies and venues for engagement, as well as about the extent to which regulators should be responsive to stakeholders' perspectives.

What is the rationale for stakeholder engagement and how are stakeholders identified?

Across regulators, there were a number of institutional venues that allowed for engagement with stakeholders. Some of them represent formal requirements. The purpose of engaging with stakeholders was to receive opinions on particular proposals, to disseminate information, and to facilitate support for regulatory strategies. Such processes could be quite formal, and it was important to engage early, but also to have a strategy and structure beforehand. Dealing with stakeholders was not always trouble free. At times, it was important to ensure that stakeholders understood that they were not setting the agendas of regulators. Stakeholder engagement could potentially lead to 'capture' and therefore any process of engaging stakeholders had to strike careful balances.

At the heart of engaging with stakeholders was the need for legitimacy. To be seen to be legitimate by the 'authorising environment' was essential and this need related to the ways in which regulators were seen as relevant and were respected. But it was always difficult to maintain such a position given the type of regulatory activities certain regulators were engaged in. Managing stakeholders was therefore also about managing expectations. There was always the risk of potentially over-reaching when seeking to appear responsive to particular stakeholders.

Stakeholders were also helpful in identifying developments elsewhere and in supporting regulators. For example, stakeholders could be identified to support EU-related processes. In other cases, it was felt that EU-related processes were not particularly adapted to regarding national regulators as essential stakeholders. It was very difficult to maintain an overview of these processes. In other regulatory arenas, it was important to build stakeholder coalitions. But regulators could also be at the receiving end of stakeholder processes; for example, when European Commission proposals were 're-opened' after a certain number of petitions had been received.

Ultimately, the kind of engagement depended on what the ends of the process were. These could be about receiving feedback and input into proposals, but also be about informing and education. For example, having an 'informed public' was important in terms of making them more informed users. In addition, having an

‘informed public’ was also about getting the public involved as part of the operational side of regulation. Depending on what ends one was pursuing, it was important to have a repertoire of different means of engaging with stakeholders.

How are stakeholders identified?

In order to avoid the problem of only dealing with the ‘usual suspects’, regulators regarded it as essential to identify diverse stakeholders. For example, it was essential to understand the interests of those who were being regulated, and those in whose interest one was regulating, namely those requiring protection. It was also important to understand how to allocate resources and attention carefully in managing different stakeholders.

Inherent tensions in stakeholder engagement processes were identified, such as that one always heard from the same people, thus developing some kind of ‘Stockholm syndrome’. It was important to support stakeholder diversity and sustain a two-way process - the process had to be a genuine conversation. One also needed to understand the changes that occurred in the wider economy. Another concern was that potentially one only heard from those with strong views on particular issues. Ultimately, a successful process was seen not to be about quantity of contacts, but about quality: a successful experience of stakeholder engagement was whether a process had led to the avoidance of flaws.

Face to face engagement was identified by regulators as critical. The issue was that one had to involve business that otherwise would not have the time to be engaged - this meant that one had to have developed certain proposals. It was important to identify the quieter voices in the industry.

Distinctions had to be made between different constituencies, for example, between those that were being regulated, and those for whom one was regulating. Some regulators distinguished between the public, educators, employers, professions, government and other parties. These different stakeholders did not always have good relationships among each other and it was therefore an issue how stakeholder engagement was organised. In other sectors, there were well-established relationships between different stakeholders and which were further supported by prescribed governance arrangements. At the same time, regulators were engaged with different kinds of stakeholders. Some were involved with a large number of individual operators that were not organised in any form of association. Other sectors had well-organised groups.

Further tension existed in that requirements to consult and engage extended to areas where regulators had limited discretion due to legislative requirements or other guidance. In other areas, the problem was one of setting objectives. Stressing the prioritising of consumers, for example, might always be accused of encouraging paternalism, while other regulatory objectives might not always be aligned to the type of activities that stakeholders or regulators themselves might deem to be important. At times one needed to weigh the importance of what other stakeholders wanted and what regulators themselves considered to be the ‘right thing’.

It was also potentially good to mix the different stakeholders so that they could understand each others’ viewpoints. At times, a stakeholder would find a regulator’s proposals more persuasive if they reflected the problems and demands of other stakeholders. Regulators also needed to be aware of the needs of different stakeholders - especially as the needs of particular stakeholders could not always be covered by the regulators’ jurisdiction. This raised particular issues about the definition of ‘consumers’ and what the consumer interest might involve.

The issue of timing was seen as critical for different types of engagement. There were the formal organisational engagement processes. There were, however, processes where it was important to receive input as early as possible. At the same time, engagement with regulation took many forms, and were not solely restricted to participatory and consultation processes. This related, for example, to those experiencing the regulated services as users. In other cases, stakeholder engagement involved consulting with those parties that were about to be inspected.

What kind of technologies for engaging with stakeholders are being employed?

Regulators relied on a variety of technologies to engage with stakeholders. One method was a survey of all licence-holders. One regulator had received a very high response rate. In other areas, regulators were looking at novel ways of attracting input among a large group of highly decentralised stakeholders. One such technology was crowdsourcing in order to support the development of operational processes. This process promoted idea-generation by conducting ‘campaigns’ over a limited time period. Stakeholders were posed particular challenges and then one could see what kind of ideas were emerging from these processes. Another method was to hold webinars - this facilitated a timely way of engaging with a large number of stakeholders.

Websites were potentially useful in engaging with stakeholders, but this required the appropriate design. The experience with social media was somewhat more mixed. An evaluation of an experience with Twitter had suggested that the information received was not useful in providing sufficient information. Twitter was therefore seen as being largely about a one-way communication.

Stakeholder engagement could also be used as an incentive. Those stakeholders that engaged with regulators could be viewed as those that were interested in compliance and in engaging constructively with the respective regulator. Some regulators had experience in developing stakeholder engagement in order to develop different kinds of inspection regimes which might be seen as some form of ‘earned recognition’. This had gone hand-in-hand with a focus on particular individuals, or leaders, in organisations. There had been a shift towards engaging with those within organisations who were likely to have the greatest impact on safety. Such individuals were not interested in small detail, but one had to provide them with the big story. However, such a strategy was more problematic when the regulated industry was far more decentralised.

How responsive are regulators to stakeholders?

One of the decisive issues in dealing with the input of stakeholders was to assess whether there was already any evidence that the concerns raised were critical. It was essential to have proper communication in order to find out what was important to stakeholders, and what the expectations were.

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