



The African Forum for Utility Regulators (AFUR) is an initiative established on the basis of Clause 110 of the Framework Document of the New Partnership for Africa's Development (NEPAD). AFUR was officially launched in November 2002 with its own constitution as a voluntary organisation of regulators on the continent. AFUR aims to establish and foster co-operation amongst utility regulators on the African continent in support of Africa's growth and socio-economic development. AFUR's primary focus is on issues pertaining to the regulation of infrastructure (energy, communications, water and sanitation as well as transport sectors). Another principal objective of AFUR is to fast-track the development of a standardised effective utility regulatory framework in Africa as this will facilitate infrastructure development and regional integration of the continent. AFUR pursues its mission by facilitating cooperation and information-sharing amongst its members, as well as through the development of regulatory capacity building initiatives.

Context:

Cross-cutting issues are topics or themes that are identified as important and that affect and cut across most or all aspects of the regulatory framework. These topics should therefore be integrated and mainstreamed throughout all stages of development from policy design, to implementation, evaluation and learning.

The ultimate aims of the Cross Cutting Issues are to:

- i. Help improve the quality and quantity of regulatory framework;
- ii. Provide credible analyses based on common principles that can be used by regulatory member countries and the wider international community
- iii. Enable member countries to share experiences, identify good practices and improve co-ordination.

In this paper, four thematic areas shall be dealt with, viz viz;

- i. Regulatory good practice on Procurement
- ii. How to increase regulatory efficiency and effectiveness
- iii. Capacity building, and
- iv. Funding for Regulators

1. Regulatory Good Practice in Procurement

Regulatory Agencies are at different stages of development, be it in implementing modern technology, developing new capabilities, or in adapting their operating models. The procurement agenda, for every regulatory agency must include the following three aspects;

- i. Improving procurement processes through simplified, empowering decision-making processes that take into account calculated risk-taking, digital processes, and streamlined governance,
- ii. Elevating the role of procurement business decision making processes within regulatory agencies,
- iii. Enhancing third-party risk management capabilities across a broader range of risk exposures, going deeper into the levels of the supply chain, and continuous risk monitoring throughout the supplier life cycle.

2. Regulatory efficiency and Effectiveness

There are five main characteristics of good regulatory systems: **Responsive, Outcome-oriented, Predictability, Risk-proportionate, and Independence.**

Of particular concern is independence and predictability, which merits special mention.

Independence:

Observing high standards of governance and transparency in decision-making to maintain confidence in impartiality and integrity. Where a regulator is part of a government department, how it can overcome any barriers arising from a lack of independence, such as powers, non-executive challenge and public reporting.

Predictability:

In many areas of regulation (in particular, economic regulators or others that use licensing or authorisation), standard good practice is to ensure an appropriate level of predictability and consistency for regulated entities, in order to sustain stability and confidence for investors and stakeholders.

Consistency is also important more widely in regulatory decision-making, particularly when regulators have to make complex judgements. We have found that the choice of regulatory approach can affect the extent to which this consistency is achieved.

In general, we expect to see the following:

A clear and consistent overall approach to rule-making and intervention that is understood by regulated entities and stakeholders.

- i. Where consistency and predictability is particularly important, a 'no surprises' approach to provide a stable environment for investment and stakeholders that is reflected in regulatory plans and interventions.
- ii. Where changes or rapid responses are required, the rationale for these changes is communicated with regulated entities and stakeholders as early as possible.

3. Funding for Regulators – Determining a funding Model

It is generally accepted that the way that regulation is funded can have a substantial impact on its effectiveness. Government and Parliament typically intend for regulators to have a funding model that is sufficient to regulate effectively, adaptable to changing risks, and fair to citizens and businesses. Where the funding comes from – for example, fees on regulated entities or general taxation – may also affect a regulator's actual or perceived independence from industry or ministers.

In general, we expect to see the following:

- i. Overall funding levels that are adequate to enable a regulator, operating efficiently, to fulfil effectively the objectives set by government.
- ii. Funding processes that are transparent, efficient and straightforward, and all funding activities contribute directly to a regulator's objectives.
- iii. A funding model that allows regulators to respond to new or changing risks, for example by reprioritising work or recovering costs of additional work (such as new investigations or unanticipated court actions in the public interest).

4. Capacity Building

To be effective, it is important for regulators to have sufficient capacity and skills to identify and respond to problems and challenges in the areas they regulate. We have found from our work that where regulators identify a need to secure the resources to build suitable expertise, it is important that they work with policymakers to assess and address needs, and keep it under regular review in light of external developments.

In general, we expect to see the following:

- i. A meaningful and up-to-date analysis of the work needed by regulators to achieve their aims, and the skills and resources needed to do this work effectively.
- ii. An identification of gaps in capacity and capability, or mismatches between regulatory capacity and that of regulated entities (for example, it is generally agreed that this can be a challenge for some professional skills or in complex regulated sectors).
- iii. A clear plan to address any deficiencies identified in organisational skills and capabilities which are likely to impact on the ability to achieve regulatory objectives.

Considerations for policymakers:

Policy makers must therefore engage proactively with regulators on skills and funding needs and any gaps or deficiencies, and working with them to resolve any issues. Where appropriate, this may benefit from external advice on different approaches to bridging the capacity gaps and helping regulators meet their objectives.

Consideration for Regulators

What regulatory and other activities are needed to discharge their duties effectively now and in the near future, and keeping capacity and capability under review in light of this to identify any issues.

Where shortfalls are identified that regulators cannot resolve on their own, working with government to agree what is needed and secure the necessary resources.