

M6 920 8193v

Risk and Regulatory Policy

IMPROVING THE GOVERNANCE OF RISK

Table of Contents

List of Abbreviations	9
Executive Summary	11
Chapter 1. Challenges to Designing Regulatory Policy Frameworks to Manage Risks	15
Introduction	16
1.1. Challenges to a coherent risk policy	20
1.2. Steps towards the development of better risk assessment processes	23
1.3. Challenges to the co-ordination of risk-based regulation	27
1.4. Improving the design of risk-based approaches: implications for regulatory policy	30
Conclusion	33
Notes	35
Bibliography	35
Annex 1.A1. Framing Risk in the Public Sector	37
Annex 1.A2. Risk Policy in Practice	41
Chapter 2. Risk Regulatory Concepts and the Law	45
Introduction	46
2.1. Risk regulatory concepts and the regulating of public administration	47
2.2. The different areas in which risk regulatory concepts are being used	50
2.3. Defining risk regulatory concepts	52
2.4. Why have risk regulatory concepts been criticised?	55
2.5. Risk regulatory concepts and the role of law: a descriptive account	60
2.6. Law is a form of legal culture	62
2.7. Law and the constituting and limiting of public administration	66
2.8. Accountability mechanisms and the challenging of decisions	73
2.9. A framework for a critical and contextual approach to risk regulatory concepts	77
Conclusion	81
Notes	82
Bibliography	85

Chapter 3. Strategic Issues in Risk Regulation and Risk Management	93
Introduction	94
3.1. The implications of regulatory science for risk management	96
3.2. Regulatory science and trans-science: scientific analysis versus popular perception	99
3.3. Towards procedural rationality when facing uncertainty	100
3.4. The core concepts of risk analysis and management: risk, uncertainty, and probability	102
3.5. Decision rules when deciding under uncertainty	104
3.6. The precautionary approach: an idea-in search of a definition	106
3.7. The precautionary principle: policy implications	109
3.8. The lessons for risk analysis and management	113
3.9. Institutional implications: avoiding separating risk assessment and risk management	119
3.10. Differences in risk perceptions and in regulatory regimes	121
Conclusion	125
Notes	126
Bibliography	127
Annex 3.A1. Recent Trends in the Theory of Decision Making: Towards Procedural Rationality	129
Chapter 4. Risk Regulation and Governance Institutions	133
Introduction	134
4.1. The challenge of risk	135
4.2. Institutions to assess and manage risk	138
4.3. Risk regulation through the policy cycle	140
4.4. The challenge of interconnectedness	151
Conclusion	153
Notes	154
Bibliography	156
Chapter 5. Management-based Regulation: Implications for Public Policy	159
Introduction	160
5.1. Management-based regulation in the regulatory toolkit	161
5.2. Conditions for the use of management-based regulation	166
5.3. Does management-based regulation work – and why?	170
5.4. Designing effective management-based regulation	174
5.5. Regulatory impact analysis and management-based regulation	176
5.6. Implementing management-based regulation: a changing government role?	179
Conclusion	180
Bibliography	181

Chapter 6. Risk-based Regulation: Choices, Practices and Lessons Being Learnt	185
Introduction	186
6.1. What is risk-based regulation?	187
6.2. Designing risk-based frameworks	192
6.3. Risk assessment in practice	203
6.4. Evaluation of risk-based frameworks	217
Conclusion	221
Bibliography	223
Annex 6.A1. Methodology	225
Annex 6.A2. Questionnaire Used for Semi-structured Interviews	226
Annex 6.A3. Outline of the Different Risk-based Inspection Systems Included in the Research	228
Chapter 7. Why Governments Need Guidelines for Risk Assessment and Management	237
Introduction	238
7.1. Zero risk is not an option: toward an optimal portfolio of risks	239
7.2. Making risk assessment formal and explicit	240
7.3. Consideration of full distribution of outcomes, and of controversies on evidence	240
7.4. Addressing gaps in knowledge	242
7.5. Weighing costs and benefits of risk management	243
7.6. Transparent decisions, based on consultation	243
7.7. A whole-of-government approach	244
7.8. Open government builds trust	244
7.9. Stakeholder participation, especially to cope with innovation	245
7.10. Improving the capacities of governments for the systematic assessment, management, and communication of risk	245
Conclusion	246
Bibliography	246
Boxes	
1.1. The IRGC risk governance framework	20
1.2. What are the organisational structures for effective risk management?	29
1.3. Risk-based approaches to regulation	32
1.A1.1. Risk and the role of government	38
1.A1.2. Categorising state sector risks	39
1.A1.3. Co-ordinating public and private responses to risk	40
3.1. An early example: the Saccharin case	95
3.2. Links between life time response and dose levels	98
3.3. Concrete examples	104
3.4. The policy principle through concrete examples	109