
OECD Going Digital Summit - Issues Note

Session 7B: Policy Making in the Digital Age

Many analogue policies are challenged by digital transformation

Digital transformation challenges the application or enforcement of policies in many domains, like trade and taxation, and in many sectors, including financial services, energy, health and transport. Digitally enabled and innovative products and business models often differ significantly from those in traditional markets, challenging the principles that underpin existing policy frameworks.

The Internet allows firms to compete in international markets without a physical presence, making policies based on physical presence requirements increasingly irrelevant. Similarly, firms that create value through intangible assets may employ few people or have relatively few tangible assets, which may make policies based on a certain minimum scale become less effective. Digital businesses that operate across traditional sectoral boundaries, like some platform businesses, may not easily fit into existing regulatory frameworks.

Existing regulations may also implicitly or explicitly favour incumbents and hinder experimentation with new ideas, technologies and business models. This can increase costs, reduce business dynamism and slow down the transition towards a digital economy and society. Moreover, slow adjustment in regulations across countries can contribute to a fragmented and inconsistent regulatory environment, which can create costs for firms providing services across borders, particularly SMEs.

However, even where policy frameworks are no longer appropriate, policy makers may have difficulty determining what should be put in their place. This challenge is exacerbated by the fast pace of digital transformation.

New approaches are needed for policy making in the digital age

Many governments have recognised the challenge of policymaking in the digital age, and have responded in a variety of ways, ranging from completely *laissez-faire* to bans of disruptive digital innovations. Others have experimented with new policy approaches.

Some have adopted **performance-based policies**, or so-called ‘lines of the road’. Such policies specify particular policy objectives, without specifying the means by which those objectives should be achieved, leaving actors free to innovate while remaining in the spirit of the law. Australia, for example, has adopted performance-based guidelines for the use of autonomous vehicles, moving towards the adoption of a primary safety duty for manufacturers without mandating how this should be achieved. In a fast-moving digital landscape, policy makers may prefer such approaches instead of narrow, specific regulations or rigid standards that may fast become obsolete.

Others have adopted **risk-based approaches**, using digital technologies to assess where risk may emerge and targeting policy action or regulatory oversight to those instances where there is a higher risk that public policy objectives will not be achieved. For example, the United States Food and Drug Administration is increasingly focussing its oversight on digital medical innovations that present higher risks to users, acknowledging that its

traditional approach is ‘not well-suited to the faster, iterative design and development’ of some software-based medical technologies.

Still other jurisdictions are enabling **policy flexibility**, particularly in the application or enforcement of some kinds of regulation. A popular example are ‘regulatory sandboxes’, which enable selected firms to test innovative products with minimal regulatory requirements while maintaining safeguards to achieve overarching objectives like consumer protection, safety and data governance. Regulatory sandboxes have emerged in the finance, health, transport, legal services, aviation and energy sectors.

In each case, policies in the digital age should aim to be **competitively and technically neutral**. Policy frameworks should aim to avoid giving implicit or explicit advantage to particular actors or behaviours, digital or otherwise. Similarly, policy frameworks should also be assessed to ensure that they do not favour a particular technology or approach, particularly if others have similar risk profiles or achieve the same objectives.

Policy and regulatory frameworks play an essential role in facilitating economic activity, but their quality and effectiveness is generally under-scrutinised. As digital transformation propels changes across economies and societies, regular policy evaluation may be increasingly necessary to ensure that they remain fit-for-purpose. Iterative and adaptive approaches may be needed to ensure that policies do not outlive their usefulness.

Digital technologies can be used to make and implement better policies

The use of digital technologies and the availability of more and better data can improve policymaking, implementation and evaluation. Digital technologies enable a new suite of more reactive and adaptive policies; for example, dynamic congestion pricing implemented through digital cameras that automatically register vehicle license plates. Constant streams of data enable automated and systematic monitoring of policy interventions and better evaluation of their effectiveness. Digital transformation also enables better and more effective government-citizen interaction and stakeholder engagement.

Governments will need to build or attract digital skills in order to realise this potential. Information communication technology and data specialists, data scientists and system architects may be necessary to make policies more digital by design. Executive leadership, like a Chief Technology Officer, may be required to develop an overarching vision and champion digital solutions. Finally, new cultures and attitudes may be needed to exploit the potential of digital technologies, including algorithms and artificial intelligence, and automation to redesign government processes, services and public policies.

Q1: What is your experience with policy making in the digital age? Which policy adjustments have been made; which approaches are proving effective?

Q2: How should governments balance the opportunities and challenges of digital transformation?

Q3: How can the use of digital technologies support the policy making process? What good practices are emerging?

Q4: How can the OECD help further in addressing these challenges?