

Regulatory Reform in Ireland

Enhancing Market Openness through
Regulatory Reform



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Enhancing Market Openness through Regulatory Reform* analyses the institutional set-up and use of policy instruments in Ireland. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Ireland* published in 2001. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was by Denis Audet, Administrator of the Trade Directorate with the participation of Didier Campion. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Ireland. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Executive Summary

Background Report on Enhancing Market Openness through Regulatory Reform

Ireland's stellar growth performance in recent years reflects an array of policy reforms and in particular Ireland's commitments in the context of ongoing integration within the European Union, through the Single European Market Programme and the Economic and Monetary Union. Large and sustained foreign investment in skilled-labour-intensive and export-oriented sectors was a major driver of its economic success and has transformed the Irish production capacity and broadened its trading interest beyond the EU market. Despite the scope and depth of the EU integration process, Ireland increasingly trades with non-EU Member States, taking advantage of competitive input sourcing on a world basis and further re-enforcing the competitiveness of Irish production capacity.

Efforts were recently made to improve the process of elaborating domestic laws and regulations through the use of more rules-based procedures fostering transparency, public consultation and the use of the Quality Regulation Checklist (QRC). Despite positive changes, there are several deficiencies in the enforcement system. The regulatory approach relies only on qualitative criteria and ignores quantitative criteria, such as cost and benefit analysis. Departments have considerable discretionary power for carrying out the public consultation process in terms of the duration of the consultation and the selection of the interested parties that are consulted. It lacks an independent assessment body that would verify the compliance of the completed QRC with the required criteria and lacks guidelines and training for policy makers to assist them in completing the necessary requirements.

Interested parties have no access to the QRC. Improved availability of this regulatory tool to the public would add transparency to the process and act as a powerful way to formalise public consultation and, simultaneously, enhancing the quality of the QRC. These enforcement lacunae raise considerable doubts about the uniformity of application among Departments and the effectiveness of the QRC as a useful regulatory tool to assist policy makers in making the best policy and regulatory choice.

Efforts are made to reduce the role of government in economic activities by exposing previously sheltered sectors to competition forces. Similarly, systemic changes in regulatory functions are occurring through the transferring of regulatory responsibilities for certain infrastructure utility sectors from Departments to newly established independent sectoral regulators. Although the Irish Government is committed to market-based and liberal approaches, the incumbent state-owned enterprises still hold dominant positions in the energy sector and in the telecommunications sector, the former state-owned enterprise is still a significant market participant. Therefore concerns remain about the potential abuse of their dominant positions.

Ongoing economic successes are leading to capacity constraints and are threatening the sustainability of future economic performance. There is a need for balancing growth objectives with sound competitive conditions for ensuring efficient use of resources, labour in particular. Continuing focus on market openness through import competition will contribute to reduce inflationary pressures in wages and costs of building materials and of services. Import competition can play a crucial role in government procurement activities in facilitating the completion of projects on time and keeping downward cost pressures on goods and services purchased. Facilitating labour mobility within the EU and from abroad through the recognition of professional qualifications will be instrumental in improving the availability of required skills and for easing inflationary pressures, particularly in services-related sectors.

Ireland has gained commensurate benefits in pursuing trade liberalisation, welcoming foreign-owned firms and integrating in the world economy. Nevertheless, the recent economic expansion has overshadowed the need to put in place a more rules-based regulatory regime that fosters economic efficiency, minimises obstacles to growth and promotes sound competitive conditions. Ireland would be able to deal more effectively with eventual external shocks and a less favourable global economic environment if it were to strengthen its regulatory approaches. Ireland would maximise the return of its market openness approach by pursuing additional efforts to apply a set of efficient regulation principles as discussed in this review.

1. MARKET OPENNESS AND REGULATION: THE POLICY ENVIRONMENT IN IRELAND

Ireland achieved spectacular growth performance between 1994 and 1999 with an average annual growth rate in real GDP of 8.5%, far outstripping the OECD average of 2.9%, and bringing the cumulative increase to over 50% during this period.¹ An array of factors have contributed to this economic expansion, in particular Ireland's commitments in the context of ongoing integration within the European Union (EU), through the Single European Market Programme and the Economic and Monetary Union. Favourable demographic changes, due to a relatively late baby boom, compounded by qualitative components through human capital accumulation, have also been instrumental for its economic performance – 66% of the population in the 25 to 34 age group had completed at least upper secondary education in 1996. Foreign investors, partly lured by generous incentives, have recognised the attractiveness of Ireland and made significant investment in skilled-labour-intensive and export-oriented sectors that have transformed Irish production capacity and broadened Ireland's trading interest beyond the EU market.

Ireland acceded to the European Economic Communities (EEC) in 1973, ten years after its initial application to join was withdrawn when the simultaneous application by the United Kingdom was rejected. The setback and the search for alternative trade arrangements led to a series of unilateral across-the-board tariff cuts in 1963 and 1964 and the Anglo-Irish Free Trade Agreement in December 1965, which provided for a gradual phase out of reciprocal tariff protection over a ten-year period. Closer economic integration with its main trading partners, through market openness, was considered a necessary policy to improve its economic prosperity and to curb a long-term trend of emigration – in the 1950s, around 1.5% of the population in net terms was departing every year.²

With its EU membership, Ireland has foregone the right to follow an independent trade policy but in return it has gained improved market access to other EU member markets and a voice in the process of elaborating the EU's common external trade policy. Accession meant that it had to assume all prevailing EU rights and obligations, the "*acquis communautaire*", some of it immediately upon accession and the rest over a transitional period. These reforms rapidly brought positive results with higher economic growth and lower unemployment.

However, the economic progress was eroded and Ireland became almost bankrupt when it pursued a policy of budget deficits during the high interest rate period of the late 1970s and early 1980s. Economic growth resumed in 1987 following broader social consensus for a macroeconomic stability programme based on government deficit reductions.

As EU member countries agreed to further their integration process, Ireland was required to provide free movement in the areas of goods, services, capital and people – the four freedoms – to other EU member countries in return for similar commitments. The Single European Market Programme (SEM), aimed at eliminating internal obstacles to trade within the EU, has acted as a strong policy anchor and was instrumental in the Irish success in attracting foreign investment in projects designed to serve the EU-wide market and beyond. The SEM Directives have had wide spread effects as they put downward pressure on costs and prices and encouraged rationalisation in several sectors. It was estimated that Ireland has grown at about one percentage point faster per year than it would otherwise have done.³

Since 1989, Ireland has considerably benefited from the EU structural and cohesion funds aimed at reducing economic and social disparities among EU country members. The annual transfers to Ireland from the Community Structural Funds was estimated at 2.8% of GDP between 1989 and 1993, the level declined afterwards, but still amounted to 2.25% in 1997 and 1998 (Barry *et al.*, 1997). More than half of

these transfers was allocated to human resource development and physical infrastructure projects, which enhanced productive potential without adding budgetary pressure. Although Ireland's success has brought its per capita GDP above the EU average, its eligibility under the EU Community Support Framework will continue for the period 2000-2006, but on a different basis than previously, with eligibility criteria now varying depending on the regional location of projects.

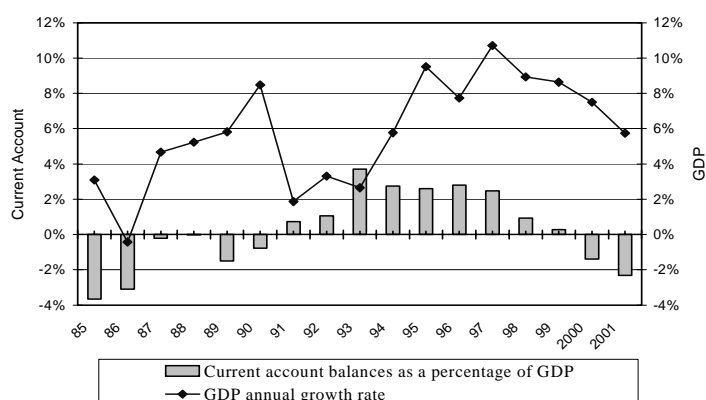
With a population of about 3.7 million, the lowest among OECD countries after Iceland and Luxembourg, trade is increasingly important to the Irish economy, with total merchandise trade amounting to 125.1% of GDP in 1999 and up from 102.4% in 1993 (Table 1). This ratio is about twice higher than corresponding ratios for other OECD countries with small population – New Zealand (44.1%), Norway (54.8%), Portugal (58.2%), Finland (60.2%) and Sweden (65.2%). This high ratio reflects the strong and growing integration of Ireland within the world economy with an increasing share of its total trade carried out with non-EU countries (Table 4). In terms of tariff protection, the average nominal rate of duty was estimated at 25% in 1966 and reduced to 5% in 1976 due to various market openness initiatives (O'Malley).⁴ In 2001, once all EU tariff reduction commitments undertaken during the Uruguay Round are fully implemented, the average unweighted tariff rate on industrial products is scheduled to be 3.7% (3.0% taking account of tariff elimination commitments of the WTO Information Technology Agreement).⁵ Another indicator of market openness is the ratio of customs receipts to merchandise imports which was estimated at 20% in 1960, 13% in 1970 and 0.9% in 1990 (Ó Gráda).⁶

Table 1. **Merchandise trade in Ireland**

Trade (% of GDP)	1993	1995	1999
Exports	58.5%	67.2%	75.4%
Imports	43.9%	49.8%	49.7%
Export + Imports	102.4%	117.0%	125.1%

Source: Ireland's Central Statistics Office.

Figure 1. Ireland real GDP growth rates and current account balances



Note: Data are estimated for 1999 and projected for 2000-2001.

Source: OECD Economic Outlook (1999), December.

Ireland has long made efforts to enhance its attractiveness as a host country for foreign direct investment (FDI): several restrictions on foreign ownership were removed as early as 1958 and various programmes were set up to encourage FDI. More recently, several factors have been instrumental in Ireland's success in attracting greenfield investments in skilled-labour-intensive and export-oriented sectors, such as information and communications technologies, financial services, healthcare and pharmaceuticals. Among the explanatory factors for its success are: access to the EU-wide market, the availability of high skilled labour at a reasonable cost, a preferential tax system, an industrial agglomeration in electronics and pharmaceuticals, and a linguistic/cultural affinity with US investors. Irish programmes to attract foreign investment have caused some controversy and EU Member States have complained about the competition-distorting impact of the Irish preferential tax system. Prior to 1995, FDI originating from the United States accounted for about half of total FDI and this share has exceeded three-quarters in the period 1995-1998 (Table 2). Reflecting the relative attractiveness of Ireland among OECD countries, Ireland's share of total OECD inward FDI increased by a factor of six during the 1988-1998 period (Table 2).

Table 2. Foreign Direct Investment, Inflows

FDI	1988	1990	1995	1996	1997	1998
Direct Investment (Million Irish Pounds)	169	125	235	360	383	415
Origins (% of total)						
Europe	41%	36%	12%	13%	13%	21%
USA	51%	52%	78%	83%	84%	78%
Others	6%	12%	10%	3%	1%	1%
Ireland/Total OECD	0.07%	0.14%	0.27%	0.78%	0.58%	0.48%

Source: OECD, International Direct Investment Statistics Yearbook, 1999.

Foreign-owned firms have profoundly modified the structure of the Irish economy and were responsible for two-thirds of the manufacturing employment and more than three-quarters of its imports and exports in 1996 (Table 3). Ireland, together with Hungary, has the highest shares of both production and trade accounted for by foreign affiliated firms among all OECD countries. The presence of foreign affiliates has brought tangible linkages and spin-offs to the Irish economy, in terms of improved human skills in high value-added activities, improved access to the world marketing networks of these firms and diversified export destinations (Table 4).

Table 3. **Foreign affiliates operating in Ireland**

(% of total)	1992	1993	1994	1995	1996
Employees	44.0%	44.4%	46.6%	47.1%	47.0%
Manufacturing prod.	55.0%	58.3%	61.6%	65.2%	66.4%
Exports	76.7%	77.3%	80.0%	82.3%	83.9%
Imports	69.2%	72.8%	74.1%	77.8%	75.4%

Source: OECD (1999), *Measuring Globalisation, the Role of Multinationals in OECD Economies*.

Despite the scope and depth of the EU integration process, the EU's share of Ireland's imports and exports has dropped between 1988 and 1998, with a corresponding increase in exports to the United States and larger imports from Singapore and the rest of the World (Table 4). The Irish trade pattern suggests that the Irish integration process within the EU has not been detrimental to non-EU trading partners. It also highlights that Ireland has gained commensurate benefits in pursuing integration within the world economy on a world-wide basis.

Table 4. **Regional composition of Irish trade**
(US\$ million and Percentages)

Year	1985	1990	1995	1999
Total Exports	10 383	23 713	43 763	69 823
OECD (29)	89.7%	93.1%	89.5%	89.5%
EU (15)	72.0%	78.0%	72.3%	64.3%
UK	33.0%	33.7%	25.4%	21.5%
USA	9.8%	8.2%	8.3%	15.6%
Japan	1.6%	1.8%	3.0%	2.9%
Rest of the World	10.3%	6.9%	10.5%	10.5%
Total Imports	10 050	20 624	32 312	45 645
OECD (29)	93.3%	93.2%	83.6%	82.2%
EU (15)	69.1%	69.4%	56.1%	54.1%
UK	42.7%	42.2%	35.6%	32.2%
USA	17.0%	14.6%	17.7%	16.8%
Japan	3.5%	5.6%	5.3%	5.8%
Singapore	0.3%	0.5%	4.8%	4.9%
Rest of the World	6.4%	6.3%	11.6%	12.9%

Source: OECD, Foreign Trade Statistics.

Changes in the product composition of foreign trade usually provide potentially interesting indications about the relative competitiveness of sectors of the country concerned. In the case of Ireland, the share of manufactured goods in total exports increased from 18.3 to 34.1% between 1988 and 1998, with corresponding reductions in the shares of other categories, *i.e.* agriculture and food, oil and mineral products, and textiles, clothing and footwear. Among the semi-manufactured goods, exports of organic chemicals and pharmaceutical products accounted for almost a quarter of total exports in 1998.

Table 5. **Product composition of Irish trade**

Composition of Trade (% of Total)	Imports		Exports	
	1988	1998	1988	1998
Agriculture and Food	12.6%	7.4%	26.3%	10.4%
Mineral Products	6.4%	3.1%	1.6%	0.4%
Textiles, Clothing & Footwear	9.8%	5.0%	6.1%	2.1%
Semi-manufactured Goods	21.6%	16.7%	18.3%	34.1%
Manufactured Goods	49.6%	67.8%	47.8%	53.0%

Source: OECD, Foreign Trade Statistics.

Along with economic growth, Ireland maintained between 1994 and 1999 an average annual rate of employment creation of 5.1%, outstripping the OECD average of 1.16%, and bringing its unemployment rate to 3.7% in October 2000 – down from 15.7% in 1993. Employment grew by 10.2% in 1998 supported by a net migration flow of 22 800 persons in the year to April 1998 and a further 18 500 by April 1999. A large proportion of the immigrants is composed of Irish nationals that have lived abroad and other people of Irish origin. Immigrants are heavily concentrated in the 15 to 44 age group. To ease labour shortages, firms are recruiting on a world-wide basis making use of the EU internal labour mobility provisions and a new work visa that was established to make it easier for people originating from outside the European Economic Area to take up employment in Ireland. As labour shortages are spreading throughout the whole economy, wage and residential cost pressures are creeping up and are gradually eroding some of the perceived Irish comparative advantages. The consumer price index reached 6.2% in the year to July 2000, outstripping the EU average of 2.2%.

In conjunction with a market openness policy that brought foreign-owned firms to a predominant position in the economy, the Irish Government maintains what is referred to as “a pragmatic rather than a theoretical approach” regarding the privatisation of state-sponsored bodies (SSBs). Irish SSBs engaged in primarily commercial operations, such as transport, energy, communications, banking, insurance, hotels and peat moss, employed about 5.4% of total employment in 1995. The main privatisation initiatives that occurred since then were in the telecommunications sector.

Ireland has large budgetary surpluses, so the ongoing debate about the privatisation of SSBs is not driven by fiscal considerations. The privatisation debate is subdued and overshadowed by the ongoing reform in major infrastructure utility sectors, with the setting up of sectoral regulators whose independence is balanced with accountability. Government objectives regarding SSBs are wide ranging and their activities need to be assessed against clear economic benchmarks and subject to appropriate accountability requirements to ensure that a sound resource allocation is achieved.

Various reviews and measures were launched to complement policies aimed at improving regulation and competition in Ireland. These include an action programme of regulatory reform, a review of competition and mergers policy, a public consultation on governance and accountability in the regulatory framework, and the adoption of a public private partnership approach to the funding of certain public capital projects. The Government also released the National Development Plan for 2000-2006, which aims to raise the quality of Ireland’s physical, educational and social infrastructure to continental European standards.

Ireland has gained commensurable benefits by pursuing trade liberalisation, welcoming foreign-owned firms and integrating in the world economy. Nevertheless, the recent economic expansion has overshadowed the need to put in place a more rules-based regulatory regime that fosters economic efficiency, minimises obstacles to growth and promotes sound competitive conditions. Ireland would deal more effectively with eventual external shocks and a less favourable global economic environment if it were to strengthen its regulatory approaches. Ireland, being a small open economy, is more vulnerable to external shocks than larger economies.

2. THE POLICY FRAMEWORK FOR MARKET OPENNESS: THE SIX “EFFICIENT REGULATION PRINCIPLES”

An important step in ensuring that regulations do not unnecessarily reduce market openness is to build the “efficient regulation” principles into the domestic regulatory process for social and economic regulations, as well as for administrative practices. “Market openness” here refers to the ability of foreign

suppliers to compete in a national market without encountering discriminatory, excessively burdensome or restrictive conditions. These principles, which have been described in the 1997 OECD *Report on Regulatory Reform* and developed further in the Trade Committee, are:

- Transparency and openness of decision making;
- Non-discrimination;
- Avoidance of unnecessary trade restrictiveness;
- Use of internationally harmonised measures;
- Recognition of equivalence of other countries' regulatory measures; and
- Application of competition principles.

They have been identified by trade policy makers as key to market-oriented and trade and investment-friendly regulations. They reflect the basic principles underpinning the multilateral trading system, concerning which countries have undertaken certain obligations in the WTO and other contexts. The intention in the OECD country reviews of regulatory reform is not to judge the extent to which any country may have undertaken and lived up to international commitments relating directly or indirectly to these principles, but rather to assess whether and how domestic instruments, procedures and practices give effect to the principles and successfully contribute to market openness. Similarly, the OECD country reviews are not concerned with an assessment of trade policies and practices in Member countries.

In sum, this report considers whether and how Irish regulatory procedures and content affect the quality of market access and presence in Ireland. An important reverse scenario – whether and how trade and investment affect the fulfilment of legitimate policy objectives reflected in social regulation – is beyond the scope of the present discussion. This latter issue has been extensively debated within and beyond the OECD from a range of policy perspectives. To date, however, OECD deliberations have found no evidence to suggest that trade and investment *per se* impact negatively on the pursuit and attainment of domestic policy goals through regulation or other means.⁷

2.1. Transparency and openness of decision-making

To ensure international market openness, foreign firms and individuals seeking access to a market (or expanding activities in a given market) must have adequate information on new or revised regulations so that they can base their decisions on an accurate assessment of potential costs, risks, and market opportunities. Regulations need to be transparent to foreign traders and investors. Regulatory transparency at both domestic and international levels can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force, use of electronic means to share information (such as the Internet), well-timed opportunities for public comment, and rigorous mechanisms for ensuring that such comments are given due consideration prior to the adoption of a final regulation.⁸ Market participants wishing to voice concerns about the application of existing regulations should have appropriate access to appeal procedures. This sub-section discusses the above transparency and transparency-related considerations in Ireland and how they are met.

2.1.1 Transparency in the elaboration of Irish regulations

An important aspect of transparency arises from the administrative procedures put into place for the elaboration and adoption of domestic regulations. It is therefore essential to review some of the key steps involved in order to assess the transparency-friendliness of these procedures. Background report to Chapter 2 provides a detailed discussion of the Irish process for elaborating new regulations and offers detailed recommendations for improving the transparency of the process and the institutional setting.

Recent institutional reforms

Ireland's administrative procedures were reformed in recent years pursuant to the *Strategic Management Initiative* (SMI) launched in 1994, set up to review the government decision-making infrastructure and to recommend proposals for modernising the systems and practices. Many of the SMI objectives have materialised through formal legislation, such as the *Public Service Management Act, 1997*, the *Freedom of Information Act, 1997* and the *Committee of the Houses of the Oireachtas (Compellability, Privilege and Immunity of Witnesses) Act, 1997*.

The work of the *Regulatory Reform Working Group* established in 1996 resulted in recommendations for an action programme that was adopted by the government in July 1999 and referred to as "*Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland*". It sets out new requirements for deepening public consultation with departments' customers and other interested parties. It also modified the elaboration process of new legislation and regulations by requiring the preparation of a *Quality Regulation Checklist*.

As a means to promote transparency of government information relating to individuals, the Freedom of Information Act came into force in April 1998. It asserts the right of members of the public to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy of individuals. Within its purview, each person has a right to access to government records, to correct personal information, where it is inaccurate, incomplete or misleading, and to obtain reasons for decisions affecting oneself. The Act sets out a series of exemptions to protect sensitive information where its disclosure may damage key interests of the State or of third parties. The Act also provides for appeal procedures, via an independent review by the Information Commissioner.

Systemic changes in regulatory functions are also occurring through the ongoing process of transferring regulatory responsibilities over certain infrastructure utility sectors from government Departments to newly established independent bodies. In June 1997, regulatory functions for the telecommunications sector were transferred to a new independent regulator, the *Director of Telecommunications Regulation*. In July 1999, the *Commission for Electricity Regulation* (CER) was established. In late 1999, a Commissioner-Designate for Aviation Regulation was appointed pending enactment of legislation. In March 2000, the Minister for Public Enterprise published a policy paper "*Governance and Accountability in the Regulatory Process: Policy Proposals*". The proposals are now reflected in the various legislation documents that the Minister has recently brought forward for the regulation of individual sectors. In September 2000, the regulation of postal services was assigned to the telecommunications regulator. Regulatory arrangements for gas and for surface transport are under consideration at present.

Rule-making procedures

The elaboration process of new legislation begins with a memorandum seeking the authority to proceed with specific legislative proposals. The memorandum prepared by the sponsoring Department outlines the principal objectives and intended results of the proposed legislation, referred to as *the Heads of the Bill*. These are transmitted to the Office of the Attorney General (OAG) where consistency with the Constitution and the general principles of law is verified. Other Departments directly concerned with the proposal are also consulted. The final decision to proceed with the legislation is taken by the Government. The sponsoring Department prepares a Cabinet memorandum, containing the final draft legislation, and “as appropriate” the accompanying Quality Regulatory Checklist (QRC) (Box 3), together with six statements of impact assessment covering: relations and co-operation between Ireland and Britain, employment, women, persons in poverty, industry and small business costs, and exchequer costs and staffing implications. The eventual enactment will follow a multiple stage process, including the publication of the draft legislation and subsequently the final legislation in the Irish Official Journal (*Iris Oifigiúil*).

Ireland, unlike most OECD countries, does not have a specific law setting out procedures for the legislative drafting process. Before 1998, procedures were elaborated in a government manual “Government Procedure Instructions”. Since 1998, the Prime Minister’s Office (*the Department of the Taoiseach*) has published a Cabinet Handbook that details the required procedures to present proposals for approval by the government and it is regularly updated to reflect recent modifications to the administrative procedures. The Cabinet Handbook is now available on the Internet (www.irlgov.ie/taoiseach/publication/cabinethandbook).

The preparation of regulations, orders, rules and bye-laws, generally referred to as secondary legislation, follows the principles laid down in the Cabinet Handbook. Ministers have responsibility to prepare them in accordance to the relevant Act and they usually involve the OAG in the process. Notice of making of regulations is published in the Irish Official Journal and, in many cases, notice is also published in national newspapers. Not all draft regulations are considered by the Parliament but, when they are, resolutions can be submitted to annul them during a period of 21 days after being presented.

Public consultations

Irish Departments are now required to carry out public consultations with interested parties in accordance with the relevant provision of the QRC, which sets out a series of considerations for justifying legislative proposals. Public consultations on regulatory matters were not specifically codified in the law before recent institutional reforms but were nevertheless carried out with social partners on the basis of informal practices. Ireland, being a small economy, the informality of the process was perceived by many as a flexible means for facilitating the emergence of social consensus. Easy accessibility to government information, senior decision-makers and Irish Ministers contributed to this informality, characteristics that are less likely to occur in large size economies. Although informality underpins flexibility and quick responsiveness, it is often mirrored by procedures lacking in transparency with inevitable risks of regulatory capture.

The QRC formalises in some ways the public consultation process by requiring consultation with interested parties and outlining their views in the Cabinet memorandum. However, it is left to each Department to determine whether consultation with outside persons/bodies is necessary, the modalities of the consultation process in terms of the duration and the moment, the selection of the interested parties and the information supplied to them. Interested parties have also no access to the QRC. There are no

common criteria for evaluating the quality of either the consultation or the decisions taken by the regulators on the selected consultation mechanism. There are also no specific requirements to ensure that the views of foreign parties are sought and taken into consideration during the process. In one particular case, industry representatives have expressed concerns about the short consultation period assigned for the auctioning of the “virtual independent power producer contracts”.

Although Departments rely on an array of advisory bodies, *e.g.* the Tax Administration Liaison Committee and the Small Business and Services Forum (abolished in July 2000), these formal and ad hoc bodies may not be adequate to deal with a rapidly changing society. A pro-competitive stance should require a re-balancing of power between the views of producers and those of consumers, more broadly the civil society. Economic and social developments also mean that new interest groups can become increasingly effective and thus require further transparency and accountability safeguards to avoid potential risks of regulatory capture.

2.1.2. *Transparency in the elaboration of technical regulations*

Transparency in the area of technical regulations, *i.e.* mandatory product specifications set in regulations, and of standards, *i.e.* specifications established by standardisation bodies for which compliance is not mandatory, has been strengthened by regional and international discipline mechanisms. As divergent national product regulations are considered as major obstacles to access to domestic markets, information in this area is essential to firms as it reduces uncertainties over applicable requirements and more generally facilitates the understanding of market conditions. As part of its notification obligations to the European Commission and the WTO, Ireland provides information to its trading partners on the making process of national technical regulations and standards, and gives them opportunity to comment.

In all EU Member States, when draft technical regulations are not pure transpositions of EU harmonising directives, they must be notified to the European Commission.⁹ The obligation gives the European Commission and other EU Member States the opportunity to comment on new or modified national rules for a period of three months, which may be extended for an additional three or twelve months depending on the circumstances. They can, for example, raise questions of interpretation, ask for further details, or challenge the conformity of prospective rules with Community law while they are still at the drafting stage. Failure to notify or to respond to comments can result in the Commission launching an infringement procedure. The National Standards Authority of Ireland (NSAI) is the Irish notifying body under EU directives.

Although first directed at Member States, the procedure benefits the private sector in the EU by opening a window on national regulatory activities. The European Commission publishes regularly the titles of draft national technical regulations in the Official Journal of the European Communities and since 1999 this information is available on the Internet. Any individual or firm interested in a notified draft can obtain further information by contacting the Commission or the relevant contact point in any Member State. This mechanism promotes the awareness of all interested parties, whether European or not, as regard national regulatory activities within the EU.

Box 1. EU Notification Requirements

**Provision of information in the field of technical regulation
in the European Union**

To avoid erecting new barriers to the free movement of goods, which could arise from the adoption of technical regulations at the national level, EU Member States are required by Directive 98/34 (which has codified Directive 83/189) to notify all draft technical regulations on products, to the extent that these are not a transposition of European harmonised directives. This notification obligation covers all regulations at the national or regional level, which introduce technical specifications, the observance of which is compulsory in the case of marketing or use; but also fiscal and financial measures to encourage compliance with such specifications, and voluntary agreements to which a public authority is a party. Directive 98/48 recently extended the scope of the notification obligation to rules on information-society services. Notified texts are further communicated by the Commission to the other Member States and are in principle not regarded as confidential, unless explicitly designated as such.

Following the notification, the concerned Member State must refrain from adopting the draft regulations for a period of three months during which the Commission and other Member States vet the effects of these regulations on the Single Market. If the Commission or a Member State emit a detailed opinion arguing that the proposed regulation constitutes a barrier to trade, the standstill period is extended for another three months. Furthermore, if the preparation of new legislation in the same area is undertaken at the European Union level, the Commission can extend the standstill for another twelve months. An infringement procedure may be engaged in case of failure to notify or if the Member State concerned ignores a detailed opinion.

Similarly, as far as standards are concerned, Directive 94/34 provides for an exchange of information concerning the initiatives of the National Standardisation Organisations (NSOs) and, upon request, the working programmes, thus enhancing transparency and promoting co-operation among NSOs. The direct beneficiaries of the notification obligation of draft standards are the Member States, their NSOs and the European Standardisation Bodies (CEN, CENELEC and ETSI). Private parties can indirectly become part of the standardisation procedures in countries other than their own, through their country's NSOs, which are ensured the possibility of taking an active or passive role in the standardisation work of other NSOs.

The notification procedure has enhanced the transparency of the regulatory decision making process all over the European Union, thus reducing the risks of regulatory capture. Since its inception in 1985, the procedure has helped build the principle of transparency into the regulatory practices of European countries as far as the technical rules are concerned. The incentive of countries to notify, and thus the efficiency of the system, has been strongly reinforced by the 1996 "Securitel" decision by the European Court of Justice.¹⁰ The decision established the principle that failure to comply with the notification obligation results in the technical regulations concerned being inapplicable, so that they are unenforceable against individuals.

In the EU, the notification procedure has recently been complemented by a procedure requiring Member States to notify the Commission of national measures derogating from the principle of free movement of goods within the EU.¹¹ This procedure was established in view of persisting obstacles to the free movement of goods within the Single Market. Member States must notify any measure, other than a judicial decision, which prevents the free movement of products lawfully manufactured or marketed in another Member State for reasons relating in particular to safety, health or protection of the environment. For example, Member States must notify any measure which imposes a general ban, or requires a product to be modified or withdrawn from the market. Whereas the notification procedure for draft technical regulations mentioned above acts on the period preceding the adoption of technical regulations, this procedure deals with measures taken after the adoption of technical regulations. So far, the new procedure

has produced limited results. The general level of notifications remains very low (33 in 1997, 69 in 1998 and 26 in 1999) which, according to the European Commission, may indicate that the mechanism is under-used.¹²

To the extent that notified prospective regulations are not based on relevant international standards, the European Commission transmits the information to the WTO Secretariat and other WTO Members in accordance with the WTO Agreement on Technical Barriers to Trade (TBT). Similarly, notification required under other WTO provisions, such as the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), or regular notifications in the framework of WTO Agreements on Agriculture, Rules of Origin, Import Licensing, etc., is made to the WTO by the European Commission on behalf of Member States. WTO members may comment on the drafts and the notifying country has to react. If not, the case may be raised in the WTO system via the TBT Committee and if this does not lead to an acceptable solution, through the dispute settlement procedure. Following the TBT and SPS Agreements, an enquiry point about standards and technical regulations has been established in Ireland.

2.1.3. Transparency in the elaboration of standards

The National Standards Authority of Ireland (NSAI) is responsible for the transposition as Irish Standards of all standards published by European Standardisation Bodies, as well as for their diffusion, promotion and marketing. It is also responsible for managing the public consultation process in Ireland for standards and for preparing indigenous standards consistent with EU requirements under the Single European Market Programme.

NSAI elaborates Irish standards with the open participation of all interested parties, without any nationality-based discrimination. It is the Irish member of the European Committee for Standardisation (CEN), the European Institute of Telecommunications Standards (ETSI) and the International Standardisation Organisation (ISO). Through the Electro-Technical Council of Ireland, with which NSAI collaborates closely, it participates in the International Electrotechnical Commission (IEC) and the European Committee for Electrotechnical Standardisation (CENELEC). It has adopted the WTO TBT Code of Good Practice for the Preparation, Adoption and Application of Standards.

The creation of Irish standards or purely national standards referred to as “indigenous standards” takes place in one of NSAI’s 15 principal Consultative Committees (CC) in charge of developing standards in specific fields of activity. The CCs gather manufacturers, consumer associations, government representatives, testing laboratories and certification bodies, and other entities that can be affected by the development of standards. When a draft is under preparation, the firms and other interests, which are considered most affected by the project, are informed and are free to become involved in the work through one of the members of the relevant CC. CCs must consider the participation of other standardisation bodies, which are members of CEN/CENELEC. More broadly the participation of persons, including from outside the European Union, is not restricted. Any business or professional organisations, including any manufacturer or individual, can call for the creation of a standard on the basis of actual technical specifications. NSAI has the obligation to transpose European standards within the time period set by CEN, CENELEC or ETSI, usually six months and to withdraw conflicting national standards.

Once a draft standard is approved by the concerned CC, the public comment stage begins and any individuals and legal entities are invited to submit comments. The time period for public consultation is set on a case by case basis, typically two months. NSAI's publications, *Standards Bulletin and Catalogue*, provides regular information on draft technical regulations notified by all member States of the EU and EFTA and on the ongoing work programmes of CEN, CENELEC, ETSI, ISO and IEC. After examining the comments, the CC prepares a final proposal, which has to be approved by the NSAI governing bodies. Eventually, the finalised standard is notified in the Irish Official Journal and included in NSAI's Standards Catalogue. NSAI publishes a bimonthly *Standards Bulletin* and *Standards Factsheet*, which are available for subscribers on its Internet website (www.nsai.ie).

The European Commission has also taken further initiatives to promote transparency and facilitate the understanding by market participants of the rules governing the Single European Market and some key issues, such as standards or public procurement. It has created a one-stop Internet shop for business "Dialogue with Business".¹³ The site is linked to "Euro Info Centres", which are set up all over the European Union and specialise in standards. They can provide business with information on the application of standards, conformity assessment procedures, CE-marking or quality initiatives in Europe. The European Commission also operates a website in co-operation with the European standardisation bodies, which gives information on European New Approach directives and harmonised standards.¹⁴

Overall the elaboration process of Irish standards and EU standards are subject to a series of check and balance features that minimise the emergence of obstacles to the free movement of goods within the EU. The world community benefits directly from the application of the transparency and non-discrimination procedures and indirectly through the reduced risk of regulatory capture.

2.1.4. Government Procurement

In OECD countries, although government procurement procedures intend to be transparent, the cost of retrieving relevant information can be substantial for small-, medium-sized and foreign enterprises. There are perceptions that specifications with no obvious relationship to the nature of the contract involved can be used to disqualify bids. Appeal procedures may not be clearly established or may seem so burdensome that contractors will not even consider recourse to them in cases of alleged infringement of procedures. In this connection, foreign and domestic participants have legitimate expectations about the appropriate degree of transparency that domestic government procurement procedures should provide.

The Irish legal framework on government procurement procedures transposes the guiding principles provided for in the EU Government Procurement Framework, which is based on six substantive Directives.¹⁵ The substantive Directives apply to procurement procedures of all Member States and their regional and municipal administrations. They provide for the principles of transparency, non-discrimination and equal treatment, which altogether enhance competitive conditions and are mutually beneficial for concerned parties.

In May 2000, the European Commission adopted a package of amendments to simplify and modernise the public procurement Directives. The new legal framework proposes, *inter alia*, to consolidate three existing Directives into one more coherent text, to relax some of the award procedures that are considered too inflexible to achieve the objective of best value for money and to encourage public authorities to make greater use of electronic means. It also provides for the exclusion of former regulated sectors, *i.e.* telecommunications, electricity and water, from the scope of the Directives as these sectors are effectively being liberalised and opened up to real competition. The European Commission recommends that Member States implement the new legal framework by 2002.

Box 2. The EU government procurement framework

The transparency principle is applied concretely through various requirements. Contracting authorities must prepare an annual indicative notice of total procurement, by product area and exceeding an annual minimum threshold, which they envisage awarding during the subsequent 12-month period. The annual indicative list and any contract whose estimated value exceeds specific thresholds must be noticed in the Official Journal of the European Communities. Contracts must indicate which of the permissible award procedures is chosen (open, restricted or negotiated procedures) and they must use objective criteria in selecting candidates and tenders, which criteria must be known beforehand. Contracting authorities are also obliged to make known the result of contract procedures through a notice in the Official Journal of the European Communities.

Member States are also obliged to provide appropriate procedures for judicial review of decisions taken by contracting authorities that infringe Community laws or national implementing laws. In particular, they have to provide for the possibility of implementing interim measures, including the suspension of contract award procedures, for setting aside decisions taken unlawfully and for awarding damages to persons harmed by an infringement. The EU Directives require that these procedures shall be effectively and rapidly enforced. The appreciation of these qualitative criteria is likely to be a difficult task in practice due to the diversity of culture and judicial systems among EU Member States.

With respect to the twin principles of non-discrimination and equal treatment, the main requirements involve: the use of minimum periods for the bidding process; the use of recognised technical standards, with European standards taking precedence over national standards; and the prohibition against discrimination as provided under the Treaty of Rome. The latter prohibits any discrimination or restrictions in awarding of contracts on the grounds of nationality and prohibits the use of quantitative restrictions on imports or measures with equivalent effect. It also provides for the freedom of nationals of one Member State to establish themselves in the territory of another Member State and the freedom to provide services from any Member State. The EU Directives on mutual recognition of professional services and the New Approach for technical standards (see Box 5 in Section 2.4) further contribute to minimising potential incidences of discrimination.

Irish public authorities have diligently implemented the relevant EU Directives as illustrated by the near absence of infringement procedures being launched by the European Commission against Ireland for incorrect application of these Directives. The last infringement proceedings occurred in 1996 regarding irregularities dating back to 1994 with respect to the Directive on Public Supply Contracts by the Irish Forestry Board. A voluntary chapter of best practices on debriefing of suppliers was approved in 1999 by the Forum on Public Procurement in Ireland.¹⁶ It provides for common access to information and a common debriefing policy while ensuring the full respect of the confidential nature of information made available to contracting entities by suppliers.

In a study commissioned by the Department of Enterprise, Trade and Employment, the proportion of public sector procurement sourced from imports was estimated at 43.4% in 1998.¹⁷ Estimating the import share of total public procurement is an inherently complex task and is based on a certain set of assumptions. For a small open economy like Ireland, a high import share of total public procurement is an expected result, particularly in the current period of capacity constraints. The absence of similar studies for other countries does not permit making reliable country comparisons.

By virtue of the application of the transparency and non-discrimination principles, firms and individuals from EU Member States benefit in terms of opportunities to compete for public contracts from Irish awarding authorities. Non-EU firms and individuals also gain from the overall transparency of EU procurement rules and indirectly through the enhanced competitive conditions conferred by the openness of the Irish investment rules and the non-discrimination principle. The European Commission also undertook specific commitments in the context of the WTO Government Procurement Agreement (GPA), which lists the contracting authorities of each EU Member State, including Ireland, that is subject to the Agreement.

2.1.5. *Regions in Ireland*

In any country, the possibility exists for conflicting or inconsistent regulations between the central government and decentralised regulatory authorities, which may frustrate the free circulation of goods and services within the country. Ireland is a highly centralised country and its 114 local authorities, including 29 county councils, have a more limited range of powers in comparison to their counterparts in other European countries. Under the general supervision of the Department of Environment and Local Government, local governments provide public services such as social housing, water, waste removal and treatment, roads, fire services and recreational facilities for local communities. In recent years, a certain amount of regulatory responsibility has been decentralised in the areas of environment, urban renewal, housing and general development, while others responsibilities have been transferred to specialised agencies, such as health functions and primary environmental protection. Local governments have limited powers in fields of education, police, health and public transport, except taxis. Their involvement in social programmes is growing. In terms of regulatory powers, local authorities' competencies concentrate on licensing, *i.e.* land use, traffic, parking and control of nuisance and litter.

A number of semi-autonomous public regional bodies operate in the health, tourism promotion and fisheries areas, complementing the role of the local authorities. In the last decade, the government has made important efforts to improve the managerial capacities of local governments' administration. Based on SMI, the programme *Better Local Government* created new advisory bodies that seek to improve co-ordination and to reduce policy and service delivery fragmentation at local level. Within the EU, the Single Economic Market Directives apply to decentralised bodies and large cities of Ireland and contribute to minimise the potential risk of conflicting regulations that would impede the free circulation of goods and services within the country. Assessing the application of the efficient regulation principles by local and regional bodies necessitates resources that are beyond those currently available for this review. The central government should continue to promote the awareness and to encourage respect of the efficient regulation principles by local and regional communities. Background report to Chapter 2 provides more detailed information about the relationships among the various levels of government administration.

2.2. *Measures to ensure non-discrimination*

Application of non-discrimination principles aims to provide effective equality of competitive opportunities between like products and services irrespective of country of origin. Thus, the extent to which respect for two core principles of the multilateral trading system – Most-Favoured-Nation (MFN) and National Treatment (NT) – is actively promoted when developing and applying regulations is a helpful gauge of a country's overall efforts to promote trade and investment-friendly regulation.

The Irish Constitution does not include a general prohibition against this sort of discrimination. Through membership in the WTO and in the EU, Ireland subscribes to the MFN and national treatment principles. It falls upon the Market Access Division of DETE to act as an oversight agency to ensure that the implementation of non-discrimination and national treatment provisions stemming from the WTO and other international trade and trade-related investment agreements are effectively implemented. Within the WTO dispute settlement process, trading partners have the opportunity to request consultation with Ireland and/or the European Commission, depending on the area of competence, for alleged infringement of any WTO obligations including MFN or national treatment obligations. If the consultation does not lead to a mutually satisfactory outcome, trading partners have the right to request the establishment of panels which will examine the case and prepare a report on the compatibility of the alleged measures with WTO obligations.

2.2.1 *WTO consultations and dispute settlement*

In mid-2000, there were no outstanding consultations or panel deliberations directly targeting Irish policies. The United States has sought WTO consultations with Ireland on two issues since mid-1997, concerning a scheme for special tax rates in respect of trading income from export sale of goods manufactured in Ireland (Special Trading Houses Scheme) and the alleged failure to grant certain copyright and neighbouring rights under Irish intellectual property protection laws – obligations arising under the WTO TRIPs Agreement. The tax issue was solved in 1998 by the agreement to abolish the Special Trading Houses Scheme. Concerning the intellectual property right issues, Ireland undertook a lengthy review of its relevant law with a view to modernise its provisions and a legislative package was adopted in July 2000 and intended to comply with its WTO obligations. The new legislation came into force on 1 January 2001.

Given the European Commission competence on trade issues, there were several outstanding dispute settlement procedures in which trading partners are alleging infringement of WTO obligations by the EU. Since the European Commission acts on behalf of its Member States on trade policies, it is not possible to disassociate any Member State, including Ireland, from EU trade policy stances. The majority of the complaints involved the EU agricultural policies and its import regime for agricultural products.

2.2.2. *Corporate tax regime*

Favourable corporate income tax provisions combined with attractive incentive programmes have encouraged foreign investors to locate in Ireland but the European Commission and EU Member States have complained about the competition-distorting impact of the Irish preferential tax system. In July 1998, an agreement was reached between the European Commission and Ireland that removed the discriminatory provisions and addressed the concerns about the state aid aspects of the Irish corporation tax regime. At issue was the contrast between the standards corporate tax rate of 32% on profits of domestic income versus the preferential corporate rate of 10% on profits of trading income. A single corporation tax of 12.5% will be implemented as of January 2003. Transitional arrangements were also concluded to regulate the number of new investment projects that will gain access to the 10% tax rate applied until then. Irish Authority claims that the new 12.5% tax regime will be compatible with the EU Code of Conduct on business taxation which is designed to curb harmful tax measures within EU Member States.

2.2.3. *Preferential trade agreements*

While preferential agreements give more favourable treatment to specified countries and are thus inherent departures from the MFN and NT principles, the extent of a country's participation in preferential agreements is not in itself indicative of a lack of commitment to the principle of non-discrimination. In assessing such commitments, it is relevant to consider the attitudes of participating countries towards non-members in respect of transparency and the potential for discriminatory effects. Third countries need access to information about the content and operation of preferential agreements in order to make informed assessment of any impact on their commercial interests. In addition, substantive approaches to regulatory issues such as standards and conformity assessment can introduce the potential for discriminatory treatment of third countries if, for example, standards recognised by partners in a preferential agreement would be difficult to meet by third countries.

Since its accession to the European Economic Communities in 1973, Ireland has *de jure* participated in all preferential trade agreements entered into by the EU. The most relevant ones are the free trade agreements (FTAs) with the European Economic Area (EEA), several European Agreements with Central and Eastern European Countries (CEECs), Mexico and several Euro-Mediterranean Agreements.¹⁸ The EU has entered into preferential non-reciprocal agreements with several Mediterranean countries, in the context of the Lomé Convention and the EU General System of Preferences (GSP) in favour of developing countries.

To the extent that the various FTAs are comprehensive in scope, the likelihood is that these will generate trade creation processes larger than the trade diversion inherent in any FTA. In the context of the increasing number of FTAs entered into by the EU, Ireland has gradually been exposed to incremental levels of increased competition and, conversely, gained preferential access to new markets.

The attitude of participating countries towards non-members may be assessed against their willingness to extend on a multilateral basis the benefits of their preferential agreements. In this connection, Ireland supports the European Commission's position for keeping the momentum of trade liberalisation with a comprehensive round of multilateral trade negotiations in the WTO. In particular, the European Commission favours a global approach for WTO negotiations that would seek to improve market access for industrial goods, agricultural products, services and improved multilateral rules in the areas of trade facilitation, government procurement, investment and competition dimensions.

2.2.4. *Trade in services*

In the context of the WTO General Agreement on Trade in Services (GATS), Ireland has undertaken international commitments in the field of services, including in the sectoral annexes to the GATS and more recently the Financial Services and Basic Telecommunications Agreements concluded in 1997. Under the GATS, specific commitments and the list of exemptions from MFN treatment are made according to four modes of supply for each services sector concerned (cross-border supply, consumption abroad, commercial presence, and presence of natural persons). For the then 12 EU Member States, a single schedule of specific commitments was decided at the EU level and submitted to the WTO on behalf of the EU. The specific commitments are composed of EU-wide commitments and exemptions as qualified by the additional restrictions attached by individual Member States.

To evaluate the extent to which foreign producers have effectively equal competitive opportunities in Ireland in services, it is necessary to examine the range of activities covered in each services sector and the limitations on market access and national treatment pertaining to the different modes of supply, including any specific additional limitations by Ireland. In addition, since the EU has tabled a list of MFN exemptions, this must be examined in order to assess the extent to which the Commission gives preferential treatment to, or discriminates against, one or more trading partners.

While it is not the purpose of this study to examine in detail the extent of EU and Irish commitments and exemptions under the GATS, the following gives some examples. The EU schedule shows that the EU undertook sector-specific commitments in a large number of sectors. However, it did not offer any commitments in the following sectors: postal services; courier services; audio-visual services; other education services; libraries, archives, museum and other cultural services; maritime transport; internal waterways transport; space transport and pipeline transport.

By mode, the EU limitations are mostly at Member State level for cross-border supply (*e.g.*, business and financial services sectors), while consumption abroad is mostly bound with no restrictions. The principal limitations to commercial presence arise from requirements on the legal form of the service provider at both EU and individual Member State level. Some of these are limitations on national treatment, as they apply only to third country providers. Movement of natural persons is subject to general limitations applying to all sectors, with some additional Member State limitations at the sectoral level (*e.g.* education services; professional services; financial services). The list of MFN exemptions tabled by the EU shows a number of sectoral exemptions, which apply in Ireland, including audiovisual services; road transportation services (passenger and freight); the marketing of air transport services; and direct non-life-insurance.

Ireland maintains few additional limitations concerning certain professional services, mainly relating to commercial presence. Market access is limited to partnerships for auditing services. For medical, dental and veterinary services market access is limited to partnerships or natural persons. Regarding cross-border supply, real estate services are unbound. For financial services, the right of establishment in Ireland does not cover the creation of representative offices for insurance companies.

2.3 *Measures to avoid unnecessary trade restrictiveness*

To attain a particular regulatory objective, policy makers should seek regulations that are not more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Examples of this approach would be to use performance-based, rather than design standards as the basis of a technical regulation, to use tariffs instead of quantitative restrictions requiring the allocation of import permits, or to consider taxes or tradable permits in lieu of regulations to achieve the same legitimate policy goal. At the procedural level, effective adherence to this principle entails consideration of the extent to which specific provisions require or encourage regulators to avoid unnecessary trade restrictiveness and the rationale for any exceptions, how the impact of new regulations on international trade and investment is assessed, the extent to which trade policy bodies as well as foreign traders and investors are consulted in the regulatory process, and means for ensuring access by foreign parties to dispute settlement.

2.3.1 *Regulatory impact assessment*

In Ireland, the principal tools for assessing the potential effects of legislative and subordinated regulatory proposals are the *Quality Regulation Checklist (QRC)* and the six statements of impact assessment (Section 2.1.1.2). The preparation of the QRC provides a structured approach for Irish policy makers to improve the quality of the information on which decisions are based and to integrate efficient regulatory principles into the decision making process of regulatory matters. The Irish QRC integrates many aspects of the *OECD Reference Checklist for Regulatory Decision-Making* for producing efficient, flexible and transparent regulations (OECD 1995).¹⁹ The new requirements are only required since July 1999, which is late compared to similar requirements put in place in most other OECD countries.

Box 3. Quality regulation checklist

1. Is the proposed legislation and/or regulation absolutely necessary? Is the problem correctly defined and can the objective be achieved by other means (*i.e.* improved information, voluntary schemes, codes of practice, self-regulation, procedural instructions)?
2. Will the legislation affect market entry, result in any restrictions on competition or increase the administrative burden?
3. Is the legislation compatible with developments in the Information Society, particularly as regards electronic Government and electronic commerce?
4. Outline the consideration which has been given to exemptions or simplified procedures for particular economic or social sectors which may be disproportionately burdened by the proposal, including the small business sector.
5. Outline the consideration which has been given to application of the following principles:
 - (a) Sunsetting, *i.e.* establishing a date by which the measure will expire unless renewed;
 - (b) Review date, *i.e.* a predetermined date on which the efficacy and impact of the proposed new measure will be reviewed;
 - (c) The “Replacement” principle, *i.e.* where the body of regulations/legislation in a particular area will not be added to without a corresponding reduction through repeal of an existing measure.
6. Outline the extent to which interested or affected parties have been consulted, including interest groups or representative bodies where such exist. A summary of the views of such parties should be provided.

The preparation of the QRC statement and the six statements of impact assessment altogether may be assimilated to a Regulatory Impact Analysis (RIA) in the sense of OECD best practices.²⁰ However, the regulatory approach relies only on qualitative criteria and thus completely ignore quantitative criteria, such as cost and benefit analysis that can be a useful tool for comparing the benefits to specific interest groups versus the costs born by society as a whole. There is an element of discretion with the QRC, which is required “as appropriate” and raises doubts as to whether it is systematically and uniformly applied throughout the administration. The deficiencies in the enforcement strategy are most notable by the absence of an independent assessment body or unit that would verify the compliance of the completed QRC with the required criteria and the absence of guidelines and training for completing the necessary requirements. The poor enforcement infrastructure raises considerable doubts about the effectiveness of the QRC as a useful regulatory tool to assist regulators that they have made the best policy choice.

In principle, the QRC calls upon an assessment of the competition impact of proposed regulations. The competition criteria could be given a wide interpretation by considering the least trade restrictiveness impact of regulations and to encourage regulators to select regulatory instruments that minimise negative impact on competitive conditions. In practice, some recent regulatory decisions regarding the licensing of taxis in the Dublin area and pubs suggest that the competition criterion has not been interpreted in the sense of minimising barriers to entry (see Section 2.6).²¹ Although the trade implication in these cases is somehow remote, they nevertheless illustrate that one of the key criteria of the QRC has been ignored in practice. These cases also raise a broader point about the competition criterion that regulators have no incentive to give it a wide interpretation to cover the least trade restrictiveness impact of proposed regulations that have more explicit trade implication.

Ireland should consider bringing together the QRC with the six statements of impact assessment and to complement them with quantitative criteria, such as a cost and benefit analysis. The merged criteria under a revamped QRC would provide a more coherent regulatory tool. Equally important, an independent unit should review compliance of the completed QRC with its guiding criteria. This would act as a major incentive for regulators to take seriously the preparation of the QRC and to better use the criteria as effective tools to guide their regulatory choices. Quantitative criteria should complement the qualitative criteria of the QRC. While it is recognised that the preparation of detailed cost and benefit analysis of proposed legislative and regulatory proposals is a resource-intensive undertaking, the setting up of *a priori* minimum threshold level could be envisaged to avoid making the regulatory process overly burdensome.

Currently there are no formal training programmes or guidelines to assist policy makers in preparing the QRC. Training should be a high priority to ensure more uniform practices and to contribute to put into place a culture of evaluating the impact of legislative and regulatory proposals. Ireland should consider making the QRC more widely available to the public during the consultation process. Improving the availability of this tool to the public would add transparency to the process. As experience will be gained in the preparation of QRC more uniform practices are likely to emerge and to contribute making the QRC an important regulatory tool for mobilising and directing regulatory actions government-wide. The experience with RIA among OECD suggests that an effective RIA programme is both a long-term and far-reaching enterprise, which can be implemented in stages as analytical skills and tools are improved.

The recent economic prosperity has somehow overshadowed the current weaknesses of the Irish regulatory approaches. Current capacity constraints and the emergence of “bottlenecks” in many sectors are undermining the sustainability of the economic expansion and are exposing the fragility of the Irish economic strategy, including its regulatory regime. By strengthening the Irish regulatory approaches based on the above recommendations, Ireland would be better positioned to deal more effectively with eventual external shocks and a less favourable global economic environment. Ireland, being a small open economy, is more exposed to external shocks than larger economies.

2.3.2. *Trade advocacy*

The Trade, Competition and Market Rights Division of the Department of Enterprise, Trade and Employment (DETE) oversees the implementation of transparency provisions relating to Irish obligations contained in the WTO and other trade agreements. This oversight concerns not only obligations regarding transparency but also those concerning non-discrimination and national treatment. The European Commission also plays a similar role at the EU level for subjects falling within its purview. With regard to the elaboration of domestic regulation, DETE has access to all draft regulations and can recommend modifications or deletion of any draft provision that interferes with Ireland’s trade and investment obligations.

The DETE also participates actively in the Inter-Departmental Co-ordination for WTO negotiations, which has two main functions. The first is to play a co-ordinating role for determining Irish positions concerning WTO trade negotiations. The second is a co-ordinating role in encouraging government-wide awareness of and respect for international obligations relating to domestic regulatory matters, such as the WTO/GATT Article III (national treatment on internal taxation and regulation) and regulatory commitments arising from other WTO Agreements, such as the Technical Barriers to Trade (TBT) and the Sanitary and Phytosanitary Measures (SPS). Units of the DETE act as the contact points for both the TBT and SPS Agreements.

Throughout 1999 and 2000, public consultations were carried out with representatives from the private sector, non-governmental organisations and civil society with a view to refining Ireland's position regarding a new round of multilateral trade negotiations in the WTO. Ireland supports the launch of a new round with a comprehensive negotiation agenda encompassing tariff reductions, trade-related investment and competition issues, genuine market openness measures for developing countries along with greater recognition for their needs.

2.3.3. *Business simplification initiatives*

As a business simplification measure pursued under the SMI programme, the process of consolidation of Company Law is under way following recommendations made in 1999 by the Working Party on Company Law Compliance and Enforcement. The aim is to consolidate into a single Act all the provisions and related regulations of the Companies Act enacted since 1963, including company regulations made under EU Acts. It is expected that the consolidated company law would contribute to greater transparency and facilitate compliance. The enactment of the Company law Consolidation Bill is expected for early 2002.

The European Commission is also pursuing various initiatives to simplify and improve the Internal Market rules to make cross-border transactions easier and improve competitiveness. In early 2000, the Commission estimated that the regulatory costs and red tape, mostly due to national and regional regulation rather than EC rules, was equivalent to 3-5% of the EU's GDP.²² One of these initiatives is the *Simpler Legislation for the Internal Market* (SLIM) project, which gathers national regulatory experts and recommends simplification suggestions. Government representatives from DETE will co-ordinate Irish participation in the new group of "better regulation" specialists which will operate under the auspices the EU Internal Market Advisory Committee.

2.3.4. *Trade Facilitation through Customs Procedures*

In any country, importers can incur significant cost overruns when shipments are held in customs warehouses as a result of inefficiencies in customs procedures. The corruption of Customs officials is also encouraged when regulations provide them with wide discretionary powers. As customs tariffs are generally low within OECD countries, cumbersome customs procedures are increasingly perceived by traders as major trade obstacles and are often assimilated as non-tariff barriers. Lack of transparency or uneven application of customs regulations and procedures between various ports of entry can encourage traders to engage in port shopping to find out which entry ports will provide them more favourable conditions. Inconsistency and lack of transparency undermine the trade policy framework and provide competitive advantages to traders that have benefited from more favourable treatment. Trade flows may then be diverted from entry ports for reasons other than transportation efficiency.

Box 4. The EU customs procedures

There are over 3 000 Customs entry ports within the European Union distributed within its 15 Member States to respond to air, sea and land border crossing points. EU Customs procedures are carried out in the eleven official languages. Customs officials are not only responsible for the administration of trade policy measures, including customs duties, rules of origin and tariff-quotas, but also for the application of respective national value-added taxes, excise taxes, and a whole range of country-specific national regulations, covering pornography, weapons, health and sanitary protection. In total, EU Customs authorities estimate that they are responsible for the application of over 4 different regulatory measures. The task of managing in a coherent way which ensures an even application of EU customs procedures throughout the 15 different national administrations is therefore colossal, by any standards.

Within the EU, the administration of customs procedures is decentralised among the Member States and the Commission assumes a co-ordinating role. Harmonisation of customs procedures is provided by the application of the Community Customs Code for all Member States and a structure of EU committees is set up for ensuring a proper cohesion. One of these committees is the EU Customs Code Committee, which examines necessary amendments to the Customs Code. The latter contains over 250 Articles and some 900 amendments were approved since 1996. Customs-related legal documents and forms can be retrieved on the Internet (www.europa.eu.int/eur-lex and www.revenue.ie).

Amendments to the Customs Code must be properly notified in the Official Journal of the European Communities before they are enforced. Keeping track of EU amendments is the day-to-day reality for professional customs brokers and their ignorance can imply significant transaction cost overruns and additional administrative burdens on them or their clients.

The implementation of the Single Market in 1993, abolishing all customs checks at the internal borders for the movement of goods, has stretched the limits of the EU paper-based transit procedures and exposed its weaknesses.²³ A temporary Committee of Inquiry was established in December 1995 by the European Parliament to examine the alleged problems with the Community transit system. The four-volume report of the Committee concluded that transit procedures were indispensable for the functioning of the Single Market and recommended a series of recommendations, including the adoption of a comprehensive computerised transit system and the reform of the guarantee system.²⁴

The European Commission is pursuing further its efforts to safeguard the uniform application of Community customs law and common trade policy through the ongoing action programme: Customs 2002. This consolidation programme recognises that the abolition of internal borders requires an efficient high-quality control of the external borders to avoid operational divergences in customs matters at national level. It provides for strengthened measures to combat frauds, further developments of common training programmes and more extended computerised procedures at the Union level, including a new computerised transit system.

The Irish Customs authorities oversee 41 Customs entry ports distributed throughout the Irish territory. Beginning in 1991, a paper-less system through electronic exchanges was gradually introduced and was fully operational in May 1996.²⁵ The use of the EU Single Administrative Document (SAD) as a declaration form and electronic exchanges have enabled drastic reductions in the time required for goods to clear customs. Declarations can be customs cleared within a few seconds, instead of six to eight hours per transaction before 1991.

The utilisation rate of electronic declaration forms in Ireland grew from 81% to 92% of total import declarations between May 1996 and the end 2000, and from 23% to 80% of total export declarations during the same period. Reflecting its geographical situation, two thirds of total import and export declarations relate to air traffic, percentages that have grown by more than three percentage points between 1997 and 1999. The volume of total customs declarations has more than doubled between 1993 and 1999 reflecting the booming Irish economy.

2.4. *Use of internationally harmonised measures*

Compliance with different standards and regulations for like products in different markets often presents firms wishing to engage in international trade with significant and sometimes prohibitive costs. Thus, when appropriate and feasible, reliance on internationally harmonised measures (such as international standards) as the basis of domestic regulations can facilitate trade flows. National efforts to encourage the adoption of regulations based on harmonised measures, procedures for monitoring progress in the development and adoption of international standards, and incentives for regulatory authorities to seek out and apply appropriate international standards are thus important indicators of a country's commitment to efficient regulation.

As an EU Member State, Ireland takes part in the harmonisation process, which was launched in the field of technical regulations and standards to achieve the Single Market. Since 1985, harmonisation has been guided by the "New Approach" adopted by the European Council. Under the New Approach, EU technical regulations no longer seek to define detailed rules, but rather define the "essential requirements" which products placed on the EU market must meet if they are to benefit from free movement within the EU. This more flexible policy approach has replaced the previous guiding policy approach based on the harmonisation of detailed technical specifications for products.

Under the New Approach, manufacturers are free to use any technical specification they deem appropriate to meet the essential requirements defined by EU Directives. Following a mandate issued by the European Commission, the European standardisation bodies have the task of drawing up the technical specifications meeting those essential requirements (such specifications are referred to as "harmonised standards"). Compliance with harmonised standards is voluntary but it grants products a presumption of conformity with the essential requirements. The New Approach benefits European manufacturers, but also non-European manufacturers, as they too are not required to use specific technical rules, but simply have to demonstrate compliance with the essential requirements (for further details on the New Approach, see Box 5).

The notification requirement of national draft standards and technical regulations under EU law aims at ensuring the transparency of national initiatives, but it also plays a role in promoting the European harmonisation process. The notification procedure enables the Commission to propose the approximation of laws in areas where barriers are likely to appear and harmonisation is necessary. The Commission can thus intervene at an early stage and suggest harmonisation before barriers have actually emerged. It can impose a blockage of draft national regulation for twelve months when the regulation deals with a matter covered by a Commission's proposal. The Directive establishing the notification procedure also gives the Commission the possibility to mandate European standardisation bodies with the task of elaborating European standards in a given field. In such cases, standardisation bodies must observe a standstill period during which they cannot carry out any work on the mandated subject.

Box 5. The New and Global Approaches

The need to harmonise technical regulations when diverging rules from Member States impair the operation of the common market was recognised by the Treaty of Rome in Articles 100 to 102 on the approximation of laws. By 1985 it had become clear that relying only on the traditional harmonisation approach would not allow the achievement of the Single Market. As a matter of fact, this approach was encumbered by very detailed specifications which were difficult and time consuming to adopt at the political level, burdensome to control at the implementation level and requiring frequent updates to adapt to technical progress. The adoption of a new policy towards technical harmonisation and standardisation was thus necessary to actually ensure the free movement of goods instituted by the Single Market.

The way to achieve this was opened by the European Court of Justice, with its celebrated ruling on *Cassis de Dijon*,²⁶ which interpreted Article 30 of the EC Treaty. In effect, the ruling required that goods lawfully marketed in one Member State be accepted in other Member States, unless their national rules required a higher level of protection on one or more of a short list of overriding objectives. This opened the door to a policy based on mutual recognition of required levels of protection and to harmonisation focusing only on those levels, not the technical solution for meeting the level of protection.

In 1985 the Council adopted the “New Approach”, according to which harmonisation would no longer result in detailed technical rules, but would be limited to defining the essential health, safety and other²⁷ requirements which industrial products must meet before they can be marketed. This “New Approach” to harmonisation was supplemented in 1989 by the “Global Approach” which established conformity assessment procedures, criteria relating to the independence and quality of certification bodies, mutual recognition and accreditation.

The New Approach calls for essential requirements to be harmonised and made mandatory by directives. This approach is appropriate only where it is genuinely possible to distinguish between essential requirements and technical specifications; where a wide range of products is sufficiently homogenous or a horizontal risk identifiable to allow common essential requirements; and where the product area or risk concerned is suitable for standardisation. Furthermore, the New Approach has not been applied to sectors where Community legislation was well advanced prior to 1985.

On the basis of the New Approach manufacturers are only bound by essential requirements, which are written with a view to being generic, not requiring updating and not implying a unique technical solution. They are free to use any technical specification they deem appropriate to meet these requirements. Products, which conform, are allowed free circulation in the European market.

For the New Approach, detailed harmonised standards are not indispensable. However, they do offer a privileged route for demonstrating compliance with the essential requirements. The elaboration at European level of technical specifications which meet those requirements is no longer the responsibility of the EU government bodies but has been entrusted to three European standardisation bodies mandated by the Commission on the basis of General Orientations agreed between them and the Commission. The CEN (European Committee for Standardisation), CENELEC (European Committee for Electrotechnical Standards) and ETSI (European Telecommunications Standards Institute) are all signatories to the WTO TBT Code of Good Practice.

When harmonised standards produced by the CEN, CENELEC or ETSI are identified by the Commission, as corresponding to a specific set of essential requirements, the references are published in the Official Journal. They become effective as soon as one Member State has transposed them at the national level and retracted any conflicting national standards. These standards are not mandatory. However conformity with them confers a presumption of conformity with the essential requirements set by the New Approach Directives in all Member States.

The manufacturer can always choose to demonstrate conformity with the essential requirements by other means. This is clearly necessary where harmonised European standards are not (or not yet) available. Each New Approach directive specifies the conformity assessment procedures to be used. These are chosen among the list of equivalent procedures established by the Global Approach (the so-called “modules”), and respond to different needs in specific situations. They range from the supplier’s declaration of conformity, through third party type examination, to full product quality assurance.

National public authorities are responsible for identifying and notifying competent bodies, entitled to perform the conformity assessment, but do not themselves intervene in the conformity assessment. When third party intervention is required, suppliers may address any of the notified bodies within the European Union. Products which have successfully undergone the appropriate assessment procedures are then affixed the CE marking, which grants free circulation in all Member States, but also implies that the producer accepts full liability for the product.²⁸

The strength of the New Approach and the Global Approach lies in limiting legal requirements to what is essential and leaving to the producer the choice of the technical solution to meet this requirement. At the same time, by introducing EU-wide competition between notified bodies and by building confidence in their competence through accreditation, conformity assessment is distanced from national control. The standards system, rather than being a means of imposing government-decided requirements, is put at the service of industry to offer viable solutions to the need to meet essential requirements, which however are not in principle binding.

The success of the New and Global Approaches in creating a more flexible and efficient harmonised standardisation process in the European Union heavily depends on the reliability of the European standardisation and certification bodies and on the actual efficiency of control by Member States. First, European standardisation and certification bodies need to have a high degree of technical competence, impartiality and independence from vested interests, as well as to be able to elaborate the standards necessary for giving concrete expression to the essential requirements in an expeditious manner. Second, each Member State has the responsibility to ensure that the CE marking is respected and that only products conforming to the essential requirements are sold on its market. If tests carried out by a notified body are cast in doubt, the supervisory authorities of the Member State concerned should follow this up.

In Ireland, measures to encourage the use of measures harmonised at the international level are related to the country's membership in the European Union. Integration in the Single Market implies that Ireland adopts European directives, takes part in the harmonisation of technical regulations, and transposes European standards into its own set of standards. By promoting transparency and consultation processes, the EU notification procedures of technical rules provide for safeguards. They put a brake on the elaboration of specific technical rules by national authorities and prevent the emergence of barriers to trade, at least within the Single Market.

Reflecting the harmonisation effort in the EU, Irish indigenous standards account for less than 3% of total standards enforced and published in the NSAI's Catalogue – of about 9 600 standards, there are 286 indigenous standards concentrated in the construction and food sectors. The adoption of an indigenous standard by the NSAI is now a rare occasion, which occurs less than four times a year on average in recent years. These standards are approved only if it can be clearly demonstrated that there is a definite national need for it and that European standards do not exist in that area. New or modified indigenous standards are subject to the notification obligations set up under the EU Directive 98/34.

In addition, various initiatives have been developed to promote co-operation in standardisation at the international level. European standardisation bodies have signed co-operation agreements with international standardisation bodies in order to reach the highest possible degree of convergence between European and international standards, and to avoid duplication of standardisation work. In 1991, CEN concluded an agreement with the International Standardisation Organisation (ISO), usually referred to as the "Vienna Agreement". CENELEC and the International Electrotechnical Commission (IEC) have established a similar co-operation agreement (referred to as the "Dresden Agreement"), and ETSI is a party to various international co-operation agreements, notably with ISO, IEC and the International Telecommunication Unit (ITU).

The decline in the production of specific regulations is also reflected in the number of draft technical regulations notified to the European Commission as part of the provision of information in the field of technical standards and regulation (see Box 1 in Section 2.1.2). Since January 1993, Ireland notified 23 technical regulations to the European Commission, compared to a total number of 4 653 for all Member States during the same period. With only three technical regulations notified by Ireland in 1999, the harmonisation process of technical regulations and standards with the EU is almost total.

Overall, the harmonisation process of Irish technical regulations and standards with the EU is comprehensive. However, the latest Single Market Scoreboard released by the European Commission in November 2000 shows that Ireland stands close to the bottom end of the list of EU member states in terms of their score in transposing all Single Economic Market Directives, *i.e.* 12th position. The level of non-transposed Directives during the twelve-month period ending in November 2000 has fallen slightly to 3.6%, compared to 3.9% in May 2000 and 5.4% in November 1999. This reduction has been help by the adoption of the intellectual property legislation in July 2000 and which entered into force on 1 January 2001.

2.5. Recognition of equivalence of other countries' regulatory measures

In cases where the harmonisation of regulatory measures is not considered feasible or necessary, the recognition of other countries' regulatory measures in attaining the same regulatory objective may be the most appropriate avenue for reducing technical barriers related to regulatory divergence. Despite the development of global standards, there are still many specific national rules, which prevent manufacturers selling their products in different countries and from enjoying full economies of scale. Exporters are also increasingly required to demonstrate the compliance of their products with the rules of the country of import through independent testing and certification of the import country, giving rise to additional costs. Reducing trade barriers through recognition of other countries' regulatory measures can be achieved by accepting the equivalence of the standards and technical requirements applicable in other markets, and of conformity assessment results too.

2.5.1. Mutual recognition within the European Union

Within the European Union the principle of mutual recognition applies among Member States. In its ruling on *Cassis de Dijon*²⁹ of 1979, the European Court of Justice gave substance to the EU Treaty's principle of free circulation of goods by providing the key elements for mutual recognition. All products lawfully manufactured in one Member State must be accepted by the others even when they have been manufactured in accordance with technical regulations which differ from those laid down by existing national legislation, provided they meet the marketing conditions in the originating Member State. This benefits EU manufacturers and non-EU countries as well since any product, including a product originating from a third country, marketed in one of the EU countries, can circulate freely within the Community (for more details see Box 5 on the New and Global Approaches).

These benefits depend however on the effective implementation of the principle of mutual recognition in each Member State. During the 1996-98 period, the European Commission raised one infringement case against Ireland concerning mutual recognition in the area of products, out of 228 cases for the 15 Member States. Ireland stood in the second place among the Member States, after Luxembourg, for the lowest number of infringements.³⁰

2.5.2. Mutual recognition agreements with non-EU countries

As an EU Member, Ireland is involved in the Mutual Recognition Agreements (MRAs) negotiated by the European Commission with non-EU countries. Following the adoption of the Global Approach, when the Council stated the need for the Community “to promote international trade in regulated products, in particular by concluding recognition agreements,”³¹ the European Commission has engaged negotiation of MRAs in the field of conformity assessment with trading partners. These agreements intend to promote efficient, transparent and compatible regulatory systems, reduce costs and delays associated with obtaining product approvals in third country markets, and avoid duplication of testing procedures and unpredictability incurred in obtaining approvals.

Box 6. The EU Mutual Recognition Agreements

The EU has concluded MRAs with Australia, Canada, Israel, New Zealand, Switzerland and the United States and all these have entered into force, except the MRA with Switzerland which is underway.³² The Community has also launched negotiations on “Protocols on European Conformity Assessment” (PECAs) with the Central and Eastern European Countries (CEECs) in view of these countries’ eventual accession to the European Union. The main difference between these PECAs and other MRAs is that PECAs are based on the implementation of the *acquis communautaire* in the area of product regulations in these countries.

Each MRA includes a framework covering general principles and sectoral annexes, which contain provisions for facilitation of trade and the mutual recognition of mandatory conformity assessment procedures (for details on sectoral coverage, see Table 6). The framework agreements specify the conditions under which each party accepts the results of conformity assessment procedures issued by the other party’s conformity assessment bodies in accordance with the rules and regulations of the importing party. The results of conformity assessment procedures include studies and data, certificates and marks of conformity. The requirements covered by the agreement are specified on a sector-specific basis in the sectoral annexes.

Under these MRAs, there is no recognition between the parties of the equivalence of their respective regulatory requirements. However, if a conformity assessment body in the exporting country certifies that a product covered by a MRA is in conformity to the requirements set by the importing party, this certification has to be accepted as equivalent by the importing party. In the case of Good Manufacturing Practices and Good Laboratory Practices the parties recognise their manufacturing and laboratory practices respectively. Prospective agreements with the CEECs also provide for the alignment of their legislation with the European legislation to allow for their economic integration into the European Union.

Table 6. Mutual Recognition Agreements concluded or under negotiation by the European Union

	Mutual Recognition Agreements							PECAs ^c			
	Australia	New Zealand	United States	Canada	Israel	Japan	Switzerland	Czech Republic	Hungary	Estonia	Latvia
Construction plant & equipment							✓				N
Chemical GLP ^a			✓	✓							
Pharmaceutical GMP ^b	✓	✓	✓	✓		✓	✓			N	N
Pharmaceutical GLP ^a					✓		✓			N	N
Medical devices	✓	✓	✓	✓		✓	✓		N		
Veterinary medicinal products			✓								
Low voltage electrical equipment	✓	✓	✓	✓			✓	N	N	N	N
Electromagnetic compatibility	✓	✓	✓	✓		✓	✓	N	N	N	N
Telecommunications terminal equipment	✓	✓	✓	✓			✓			N	
Pressure equipment	✓	✓				✓	✓	N			
Equipment & systems used in explosive atmosphere							✓	N			
Fasteners			✓								
Gas appliances & boilers							✓	N			
Machinery	✓	✓				✓	✓	N	N	N	N
Measuring instruments							✓				
Aircraft	✓	✓									
Agricultural & forestry tractors							✓				
Motor vehicles	✓						✓				
Personal protective equipment							✓	N	N		
Recreational craft			✓	✓							
Toys							✓				
Foodstuffs										N	N
Marine safety equipment			N	N							

✓ Concluded N Under negotiation.

a Good Laboratory Practices.

b Good Manufacturing Practices.

c Protocols on European Conformity Assessments. In July 2000, The European Commission signed agreements with Hungary, the Czech Republic and Latvia in the fields of mandatory approval procedures and mutual recognition of results of conformity assessment procedures. In February 1997 the European Commission signed an agreement with Poland regarding preparatory steps on conformity assessment, precursor for a real PECA.

Source: European Commission.

2.5.3. International co-operation in the field of accreditation

The National Accreditation Board of Ireland (NAB) is a member of the two European accreditation organisations: the European Co-operation for Accreditation of Laboratories (EAL) and the European Accreditation of Certification (EAC). These two organisations are now in process of amalgamation into the European Accreditation (EA). The task of the new body is to develop and promote criteria, which ensure equal performance of national accreditation bodies throughout the European Economic Area (EEA). This creates mutual confidence in, and acceptance of, accredited certifications, inspections and test reports. The need for multiple assessments is thereby reduced or eliminated, as a supplier will only need one certificate or report to satisfy several markets. This is laid down in multilateral Mutual Recognition Agreements (MRAs). EA-sponsored MRAs do not only include EEA countries, but also non-European countries, such as Australia, Hong Kong (China), New Zealand and South Africa.

NAB also participates in the International Laboratory Accreditation Co-operation (ILAC) and the International Accreditation Forum (IAF). Many countries throughout the world are represented in these bodies, including USA, Canada, Japan, China, Russia, Australia and New Zealand. These fora aim at promoting confidence in the accreditation systems and at reducing obstacles to trade by supporting the development and implementation of ISO/IEC standards and guides, exchanging information and establishing multilateral agreements on the equivalence of accreditation programmes operated by their members.

2.6. *Application of competition principles from an international perspective*

The benefits of market access may be reduced by regulatory action condoning anti-competitive conduct or by failure to correct anti-competitive private actions that have the same effect. It is therefore important that regulatory institutions make it possible for both domestic and foreign firms affected by anti-competitive practices to present their positions effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition by foreign firms, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective.

In Ireland, complaint about business practices that are perceived to restrict competition may be submitted to the Competition Authority (the Authority). This body was first established in 1991 when a new Competition Act was enacted representing a sea change in policy in that the Competition Act 1991 replaced the former Restrictive Practices Acts and Orders made under those Acts with legislation based by analogy on Articles 85 and 86 (as they then were) of the Treaty establishing the European Community. The new legislation, *inter alia*, prohibited restrictive agreements and abuse of dominance. However, the power to take enforcement action remained the sole responsibility of the (then) Minister of Industry and Commerce. Reflecting increasing concerns about the inability of the Competition Authority to deal effectively with enforcement issues, the Competition (Amendment) Act 1996 brought the enforcement power under its purview. This Act also made all violations of the law potentially criminal offences and set fines and imprisonment as available sanctions. In addition, the government concurrently appointed the “Competition and Mergers Review Group” (CMRG) to examine competition and Merger policy and enforcement processes. The final report of the CMRG was published in May 2000 and contained a series of recommendations concerning enforcement of competition law and the relationships between competition policy and other regulatory institutions. The Irish Government has now decided to draft consolidating Competition Legislation arising from the Report of the CMRG.

The DETE is responsible for policy issues related to the competition law and for consumer protection policy and enforcement. DETE also plays a policy advocacy role in the reviewing of legislative and administrative initiatives, *i.e.* privatisation and deregulation. Consideration of the competition impact of new law and regulation is also a shared responsibility for all departments under the “Strategic Management Initiative”. Each department is required “as appropriate” to complete the “quality regulation checklist” for legislative and subordinated regulation and to assess whether its proposals “will affect market entry, result in any restrictions on competition or increase the administrative burden”. Despite the pro-competition direction of this regulatory framework, DETE temporarily invoked the Drink Prices Order for a six-month period to regulate drink prices in Irish pubs, instead of eliminating the anti-competitive licensing controls against new entry.

The Irish competition law closely follows the competition policy provisions of the Treaty of Rome (now the Treaty of Amsterdam) and the EU competition law covers practices that affect trade between member States. The European Commission can take actions against practices that limit access of foreign firms to domestic markets. It has done so in several cases involving EU Member States in the past but there are no case involving Ireland. Although EU competition policy applies in Ireland, the Authority is currently hampered in dealing with international matters by constraints on sharing information with competition enforcement agencies of other countries. The European Commission has recently proposed wide-ranging changes in the way its competition policy would be implemented, which could ultimately require modifications in Irish procedures and those of other Member States.

The Authority obtained in 1996 an advocacy power to undertake on its own initiative studies of high priority problems. It initiated a study of the retail drinks market but the study of the bus and rail passenger industry was suspended due to resource constraints. It has also issued a series of discussion papers, one of which concerns the taxi industry. The Authority has no statutory power to initiate on its own a systematic review of, or comment on, legislative proposals. However, DETE may ask for the Authority's views on specific draft laws and regulations, which would be transmitted through DETE.

In this way, the Authority has commented on proposed retail planning guidelines, arguing that efforts to favour Irish firms over foreign competitors would violate EU competition principles. In another case concerning the proposed reform of the electricity supply industry, the Authority's comments emphasised that promoting competition could require separating the industry's operations vertically and limiting the amount of generating capacity under one firm's control. The Authority supported establishing a separate regulatory regime to deal with access charges and output prices, leaving other competition-related issues to be addressed under the general competition law. In 1998, the Authority submitted similar comments to the Department of Public Enterprise (DPE) about transmission and pricing issues in natural gas.³³

No concerns have been reported that foreign firms would not receive national treatment in the application of the competition procedures when they are seeking redress for perceived anti-competitive problems. One area of particular interest for foreign firms wishing to expand activities in Ireland relates to the Irish merger law. Due to overlapping notification requirements for merger agreements under the Mergers and Take-Overs Act, administered by DETE, and the Competition Act, administered by the Authority, parties are exposed to some legal uncertainty and risk. The CMRG has examined the situation and recommended that a simplified notification process be applied to all mergers over a defined threshold and that mergers no longer be treated as potentially restrictive agreements under the Competition Act. The CMRG also recommended that the provisions of the Competition Act dealing with abuse of dominance should continue to apply to mergers falling below the thresholds for merger notifications, with certain qualifications.

Deregulation initiatives in major infrastructure utility sectors may have created or strengthened the position of incumbents who might be able to impose strategic barriers that raise the cost of entry to foreign and domestic rivals. Furthermore, the advantage so gained in the domestic market may afford an unfair advantage in foreign markets where such firms compete against their foreign rivals. This might be a concern in network industries, such as telecommunications, electricity and airlines. Since 1996, the Authority, its own initiative, went to court for injunctive relief against abuse of dominance in network industries in several cases.

The Authority claimed, in an April 1999 lawsuit, that Telecom Eircom's refusal to grant unbundled access to the local loop constituted an abuse of a dominant position. This suit was intended in part to bridge an apparent jurisdictional lacuna in the rules applied by the independent

telecommunications regulator (ODTR) – this lacuna, which existed at the EU level as well, is now being addressed through a regulation on local loop unbundling. The proposed Communications (Regulation) Bill outlined in September 2000 includes provisions for clarifying the relationships between the Authority and the telecommunications regulator (to be renamed the Commission for Communications Regulation).

The Electricity Supply Board (ESB) had proposed a post-liberalisation pricing scheme for its larger customers, which would have given ESB the right to match any lower price offer from another supplier and to lock in customers for 6 months even if ESB did not match the lower price. The Authority's threat of enforcement action led to ESB removing the price matching right and reducing the notice period to 3 months. In 1997, the Authority communicated its concerns to *Bord Gais Eireann* (gas) about a power plant proposal that could have involved price discrimination among firms that competed at the downstream stage, and that favoured the incumbent supplier's own operations and those of firms in which it had an interest. In 2000, the Authority launched an investigation of the action taken by *Aer Lingus* in response to the competing service offered by Cityjet between Dublin and London City airports.

Deregulation initiatives in major infrastructure utility sectors have also highlighted the relationships between general competition policy and special sectoral regulators. Ireland has already established several independent regulators and additional regulators are under consideration. The Competition Authority's relationships with these sectoral regulators are still developing. Efficient sharing of responsibilities may be hampered by constraints on sharing information and the lack of clear means for one agency to defer to another about a particular complaint. The Competition Authority considers that these constraints have been addressed in the proposed Communications (Regulation) Bill issued in September 2000 for public consultation.

As these sectoral regulators have begun to proliferate, Ireland has engaged in a debate about the implications of regulatory independence and the relationship with competition policy. Most of these new regulators deal with sectors that are under the jurisdiction of DPE. In March 2000, policy proposals regarding governance and accountability arrangements in the regulated sectors, falling under the responsibility of the Minister of Public Enterprise, were released and are now reflected in specific regulatory measures.

Ireland has obtained commensurate benefits from the participation of foreign firms in its economy. It thus needs to be vigilant to ensure that foreign and domestic firms receive equivalent treatment in procedural and practical terms. It also needs to remain vigilant in applying competition policy to newly deregulated sectors and privatised enterprises to ensure that access and entry are not impeded. Background report to Chapter 3 discusses in greater detail competition and competition enforcement dimensions in Ireland and contains a set of recommendations to further the process of regulatory reform in this area.

3. ASSESSING RESULTS IN SELECTED SECTORS

This section examines the implications for international market openness arising from Irish regulations currently in place for four sectors: telecommunications equipment; telecommunications services; automobiles and components and electricity. For each sector, an attempt has been made to draw out the effects of sector-specific regulations on international trade and investment and the extent to which the six efficient regulation principles are explicitly or implicitly applied. Electricity and telecommunications are reviewed in greater detail in background reports to Chapter 5 and 6 respectively.

Particular attention is paid to product standards and conformity assessment procedures, where relevant. Other issues addressed here include efforts to adopt internationally harmonised product standards, use of voluntary product standards by regulatory authorities, and openness and flexibility of conformity assessment systems. In many respects, multilateral disciplines, notably the WTO TBT Agreement, provide a sound basis for reducing trade tensions by encouraging respect for fundamental principles of efficient regulation such as transparency, non-discrimination, and avoidance of unnecessary trade restrictiveness.

3.1. *Telecommunications services*

Since 1st December 1998, the Irish market is officially fully opened to competition, in conformity with relevant EU Directives.³⁴ In mid-2000, there were 70 telecommunications licence holders, of which 45 were operating in the Irish market, most having entered the market after December 1998. Several foreign competitors are now effectively established in the Irish market. Two foreign firms, KPN BV of the Netherlands and Telia AB of Sweden, together hold 35% of total shares of Eircom, the former state-monopoly. British Telecom is active in the mobile and fixed network sectors, through its fixed line subsidiary, OCEAN, and its recent acquisition of Esat Telecom and a shareholding in Esat Digifone. Meteor, the third holder of a mobile licence, is a partnership venture between Western Wireless Corporation of the USA, RF Communications of Ireland and the Walter Group of the USA. The Irish fixed line market is nevertheless still dominated by Eircom with a market share of about 85% (based on revenues) and its affiliated firm Eircell which controls two-thirds of the mobile market.

Ireland had initially negotiated a two year-grace period with respect to EU Directives to complete the liberalisation of national telecommunications markets by 1st January 2000. The delay was sought because of the high debt accumulated by Eircom in delivering universal service and to provide Eircom additional adjustment time to function more effectively within a fully liberalised market. In practice, the grace period was subsequently reduced to 11 months.³⁵ The completion of the liberalisation of the Irish market brought an end to the historical monopoly for fixed voice telephony by Eircom. Competition was introduced in 1994 for value-added services and in 1997 for mobile telephony when Esat Digifone began operating its GSM license and value-added service providers were allowed to put in place their own networks. The Eircom privatisation process began in 1995 and the government disposed of virtually all its remaining shareholding in July 1999 and furthermore in early 2000 – its remaining shareholding in Eircom is estimated to be below 0.5% in mid-2000.

Since full liberalisation, the Irish market has shown dynamic growth in terms of new market participants and investment and development of services. International telephone charges for both business and residential clients are significantly lower than the OECD averages but mobile prices are about 30% above the OECD average (Chapter 6) due to lack of competition exacerbated by delays in the issuance of a third mobile licence (see below). Despite impressive growth, Ireland still lags behind the OECD average in the number of telephone lines as shown in Table 7.

Table 7. **Access lines per 100 inhabitants**

Access Lines	1985	1990	1995	1997
Ireland	19.8	28.1	37.0	42.1
OECD average	32.9	39.1	45.6	48.9

Source: OECD (1999), *Communications Outlook 1999*, Paris.

The main legislative changes that brought the legal framework for the facilitation of the transition of the sector from a monopoly status to liberalisation, were the transposition of EU Directives into Irish law as well as the Telecommunications (Miscellaneous Provisions) Act of 1996. These regulatory adjustments enabled Ireland to comply with the 1997 WTO Agreement on Basic Telecommunications Services. The EU Directives require the promotion of competition among service operators, the equality of opportunities through the abolition of exclusive or special rights and the promotion of development and use of new services, networks and technologies. The European Commission has therefore played a major role in driving the regulatory reform in Ireland and in other EU Member States as well and it continues to be responsible for guarding against abuse of a dominant position and anti-competitive behaviour at the EU level.

The Department of Public Enterprise has traditionally assumed all regulatory responsibilities over the telecommunications and broadcasting transmission sectors, including the radio frequency spectrum. Pursuant to EU policy where Member States retain ownership of incumbent telecom operators and also carry out regulatory functions, regulatory responsibilities over the sector were transferred to an independent regulatory authority, namely *the Office of the Director of Telecommunications Regulation* (ODTR), which began its functions in July 1997. The scope of the regulatory functions transferred to ODTR is comprehensive and although its decisions and requests for information are binding, enforcement of some decisions has been controversial. The issuance of a third mobile licence to Meteor was appealed regarding the way in which the ODTR's responsibilities were carried out. In the Supreme Court, it was found that the ODTR had acted properly in the matter. However, because the ODTR's decision to grant the licence was suspended while the matter was under appeal, the legal proceedings had the effect of maintaining in the meantime a duopoly situation in the mobile telephony market. As of January 2001, Meteor was still not in operation. Since the introduction of new legal provisions in March 2000, decisions of the ODTR on licensing and interconnection matters, if appealed, can now be implemented by the Director unless the court decides to suspend the decision pending the outcome of the appeal.

Pursuant to the EU Directives on Open Network Provision, ODTR has designated Eircom as having *Significant Market Power* (SMP) in the specified telecommunications markets and imposed obligations, such as offering interconnection on a cost-oriented and non-discriminatory basis for controlling the exercise of their market power. Eircom is a SMP operator in three markets, namely: fixed public telecommunications networks and services, leased line services, and the national interconnection market. Its subsidiary, Eircell, is an SMP operator in the public mobile market and the interconnection market. Esat Telecom's affiliate Esat Digifone was also designated as a SMP operator in the public mobile market. All SMP designations are subject to an annual review by ODTR. Eircom currently has thirteen interconnection agreements with other fixed operators.

In July 2000, the European Commission, following a comprehensive review, published proposals for reforming the telecommunications regulatory framework to accelerate the benefits of competition and enable Europe to reap the benefits of the information society. The plan is that the new regulatory framework will be in place in Member States during 2002. The Irish Government has already outlined legislative proposals to put into effect the new EU regulatory framework in recognition of the expected advantage to be derived from a highly competitive communications sector. Public consultations were launched in September 2000 on the provisions of the proposed legislation.

The proposed Communications Bill also includes provisions to replace the current single Director position with a three-person Commission for Communications Regulation (the Commission). This will help ensure a broad range of expertise and experience at the top level of the regulatory structure and will also make the Commission less vulnerable to any possible future claims of regulatory capture. The powers of the new Commission would be broadened to enable *ex-ante* regulation to be imposed on

specific areas likely to be subject to market distortion and to facilitate dispute resolution. The Bill would also implement several policy proposals pursuant to the March 2000 policy proposals on the *Governance and Accountability in the Regulatory Process*, including the co-ordination of responsibility between the Commission and the Competition Authority.

3.2. Telecommunications Equipment

Exports of communications-related equipment from Ireland have tripled in value between 1996 and 1999 (Table 8) and Ireland maintains a sizeable trade surplus in this sector. Imports have doubled during the same period and were instrumental for the vitality and competitiveness of the Irish communications sector.

With respect to the elaboration of technical standards for most radio equipment and telecommunications terminal equipment, the EU Directive (99/5/EC) provides for harmonised European standards and mutual recognition of their conformity. The 99/5/EC Directive replaces the 98/13/EC Directive to account, *inter alia*, for the rapid pace of technical development in this field and that 98/13/EC did not cover a substantial proportion of radio equipment. CEN, CENELEC or ETSI develops these technical standards. As indicated in Section 2.1.3, NSAI must transpose as Irish standards all European standards elaborated by CEN and CENELEC. It is also responsible for managing the public consultation process in Ireland and for adopting ETSI standards. With respect to the elaboration of technical standards for other telecommunications equipment, there are no telecommunications-specific procedures. The generic elaboration procedures for technical regulations and standards, including indigenous standards, apply and are subject to the EU notification requirements (see Section 2.1.2) and EU harmonisation as guided by the New Approach (see Section 2.4). At the international level, NSAI is the Irish member of the International Standardisation Organisation (ISO) and of the International Electrotechnical Commission (IEC). A number of mutual recognition agreements are also applicable to telecommunications equipment (see Table 6).

Table 8. Irish trade in communications equipment

Communications equipment (in US\$)	HS Numbers	Imports		Exports	
		1996	1999	1996	1999
Telephone equipment					
Telephone sets	85.17.11+19	20 463 637	55 008 473	48 850 781	63 114 933
Switching equipment	85.17.30	09 516 903	16 629 804	39 534 762	24 480 889
Other equipment	85.17.80+90	207 821 369	640 164 664	331 468 463	1782 124 439
Radio, Telephony, Broadcasting					
Transmission apparatus	85.25.10.+20	53 373 908	89 801 761	184 038 357	135 194 321
Receivers (radio/tel/broad)	85.27	56 936 948	32 529 664	117 660 998	26 545 242
Television receivers	85.28	66 173 586	67 528 444	05 127 439	77 905 934
Other equipment	85.29	141 291 121	84 538 773	30 461 966	120 124 633
Total		555 577 472	986 201 583	757 142 766	2229 490 391

Source OECD, Foreign Trade Statistics, Harmonised System of Classification.

3.3. *Automobiles and components*

Due to the historic dynamism of global economic activity in the sector and traditionally interventionist policies of some governments aimed at protecting domestic automotive industries, trade tensions related to domestic regulatory issues in general and standards and certification procedures in particular have long figured on bilateral and regional trade agendas. This reflects the fact that automobiles remain among the most highly regulated products in the world, primarily for reasons relating to safety, energy conservation and the environment. Divergent national approaches to the achievement of legitimate domestic objectives in these key policy areas are therefore likely to remain a significant source of trade tension as global demand for automobiles continues to rise.

The Irish motor vehicle industry is virtually non-existent with no domestic production or assembly plants. Harmonised EU safety standards for motor vehicles based on a type approval system and, more recently, the mutual recognition of certification of conformity procedures among EU Member States, have been instrumental for implementing the EU Single Market in automobiles. Buoyant consumer confidence spurred by rapid economic expansion is illustrated by a 40% growth in new motor vehicle registrations in Ireland for the first six-month period in 2000 relative to the same period in 1999 (Table 9).

Table 9 **Motor vehicle registrations in Ireland**

New Registrations	1990	1995	1998	1999	2000 (1/2)
Units	109 492	103 303	177 106	212 876	210 380

Source: OICA, Statistical Yearbook for 1990-98 and the Society of the Irish Motor Industry for 1999-2000.

Within the EU, technical requirements for motor vehicles have been fully harmonised since 1993 – they are not elaborated on the basis of the New Approach (Box 5). Detailed technical requirements are specified in various EU Directives and applicable throughout the EU and EFTA countries. Draft Directives or amendments are submitted by the Commission and published in the Official Journal. During a consultation period, the Commission consults a Working Party on Motor Vehicles composed of representatives of Member States and the EU industry. Following the consultation, the Commission proposes the new Directive or an amendment to the EU Council for approval. The new Directive comes into effect after it is published in the Official Journal.

The certification of these requirements is done through a system of type-approval of motor vehicles. Each vehicle type, whether domestically produced or imported, must be brought to a Regulatory Body testing facility, tested and certified that it meets relevant technical regulations. Each Member State grants the type-approval to any vehicle, which meets the technical requirements of the 54 separate basic Directives for passenger cars. There are also some 100 modifications to the basic Directives. In its Framework Directive (70/156) as amended, the EU has deemed several UN-ECE Regulations to be equivalent to relevant EU technical Directives – in 1999 35 UN-ECE Regulations are recognised as equivalent as well as those listed in Annex II of Directive 97/836.

Since 1996, the conformity of the type-approval certificate for a passenger vehicle delivered in one Member State is valid in all other Member States and the vehicle can be registered or permitted for sale in all EU States. Since 1998, mutual recognition of EU certification of conformity is extended to all vehicles belonging to category M1, including passenger and light commercial vehicles.

Box 7. Global technical regulations for wheeled vehicles

In recent years, support was voiced for strengthening the legal and administrative capacity of the 1958 Agreement of Working Party 29 of the United Nations - Economic Commission for Europe (UN-ECE) as the principal body for common development of technical standards and regulatory requirements for motor vehicles. A new Agreement was concluded in June 1998 on Global Technical Regulations for Wheeled Vehicles, which shall facilitate the full participation of countries operating either the type-approval or the self-declaration systems of conformity of standards. The UN-ECE Global Agreement is entitled "Agreement concerning the establishment of global technical regulations for wheeled vehicles, equipment and parts, which can be fitted and/or be used on wheeled vehicles". The 1998 Agreement opens up the possibility for establishing "global technical regulations" proposed by its contracting parties and which must be approved by consensus. The new Agreement was ratified by the eight countries or regional organisations, including the EU, the USA, Japan, Canada and the Russian Federation, and entered into force on 25 August 2000.

Within the EU, motor vehicle distribution must conform to specific legislation as a condition of its exemption from anti-competitive proceedings. The Regulation is known as the block exemption Regulation on the Selective and Exclusive Distribution of Cars, which was renewed in 1995 and extended until September 2002.³⁶ This Regulation seeks to safeguard consumers' access to vehicle and parts supply in any EU Member State at favourable terms. It provides dealers with enhanced freedom to acquire additional franchises and to resist the imposition of sales targets by manufacturers. Although the franchise agreement can provide for exclusive geographical zones, it is prohibited for dealers to reject sales to a consumer who is a resident of another EU Member State, the so-called prohibition against parallel imports.

The European Commission has sanctioned and imposed hefty fines against Volkswagen in January 1998 (90 million Euro) and the Dutch importer of Opel cars in July 2000 (43 million Euro) for serious infringement of the competition law for having obstructed the proper operation of the Single Market. In July 2000, the fine against Volkswagen, although reduced, was upheld by a decision of the European Court of First Instance.

As a competition enhancement measure, Directorate-General IV (Competition) carries out and publishes a survey of pre-tax retail prices for 73 models applied in each EU Member States. The survey shows the price of individual models in local currencies, in Euro and price indices relative to the country with the lowest price (the lowest price has the reference index of 100%). The last survey carried out 1 May 2000 shows that price differentials among Member States generally vary within an average of 20%. Pre-tax car prices in Ireland are moderate within the EU – 8 models are the referenced cheapest EU prices and two-thirds of the models surveyed are within a 10% price range above to the cheapest EU prices.

Irish consumers are subject to a hefty vehicle registration tax regime under which percentage rates vary depending on the size of the engine (from 22.5 to 30%), plus the regular value-added-tax of 21%. Vehicles in Ireland are right-hand drive, hence Irish consumers have few opportunities outside Ireland and the United Kingdom for testing and ordering their vehicles. Since the UK pre-tax prices are among the highest in the EU, Irish consumers currently have no incentives to buy cars in the UK.

Harmonised EU safety standards for motor vehicles and the mutual recognition of certification of conformity procedures among EU Member States are instrumental in the implementation of the EU Single Market for motor vehicles and contribute to minimise price differential within the EU due to regulatory factors. While significant price differentials still persist, the European Commission closely monitors these and actually sanctions car manufacturers that infringe on the relevant EU competition law. Ireland only has consumer interests to protect in the automobile sector. It should continue supporting EU initiatives eliminating regulatory obstacles and sanctioning anti-competitive practices in this sector.

3.4. Electricity

Reforming the Irish electricity sector has been on the government's agenda for some time and focuses on the multiple policy objectives of ensuring security, reliability, competitiveness and efficiency in energy supplies while meeting sustainable development and environmental objectives. The reform of the electricity and gas sectors is analysed in detail in the background report to Chapter 5 in this volume. The EU Electricity and Gas Single Market Directives have also been instrumental in reassessing the regulatory framework in a broader context of EU-wide competition conditions and consumer needs. The Irish energy sector remains dominated by the activities of four state-owned enterprises: Electricity Supply Board (ESB) (electricity), *Bord Gáis Éireann* (BGE) (gas), *Bord na Móna* (peat) and the Irish National Petroleum Corporation (INPC) (oil) which owns and operates the only refinery on the island. With regard to oil, 65% of the market is accounted for by private sector oil companies, with the INPC accounting for the remaining 35%.

The Electricity Regulation Act of 1999 brought the legislative changes to implement the necessary minimum provisions of the EU Electricity Directive before the transposition deadline of February 2000, one year after most other EU Member States. The Commission for Electricity Regulation (the Regulator) was established to exercise regulatory functions for granting and revoking licences, authorising the construction of new generating stations, approving access charges to the transmission and distribution systems and resolving disputes. It is estimated that 31% of total electricity demand was liberalised in February 2000. Although the EU Electricity Directive requires that 33% of respective national electricity market be opened up in 2003, Ireland has announced that the Irish electricity market will be fully opened by 2005.

Ireland has also transposed through various legislative measures and administrative requirements the EU Gas Directive which implementation deadline was set for 10 August 2000. Additional legislative changes are in the offing that would provide for the transfer of gas regulatory functions from the Department of Public Enterprises to the existing Commission for Electricity Regulation by mid-2001 and the transformation of BGE into a public limited company. A consolidated Gas Bill might be considered in late 2001. Since 1995, large gas customer consuming more than 25 million cubic metres per year have been able to choose their supplier which is equivalent to 75% of total Irish gas demand. With the implementation of the EU Gas Directive, choice was extended all gas-fired power generators and free choice for all consumers will be gradually implemented up to 2008, although full market liberalisation by 2005 is under consideration.

Electricity consumption has increased by more than 50% in the 1990s as the economy expanded rapidly. Ireland has few indigenous sources of energy supplies and it relies on imports for about three-quarters of its total energy needs. With the recent determination of commercial viability of the Corrib offshore gas discovery in the West Coast, the reliance on imported energy supply is expected to decline. The development and construction of the connecting pipelines to shore and onshore to the existing network will require considerable investment and is unlikely to be completed before 2003.

With 17% of the country occupied by peatland, peat is used as energy source in five power stations and the electricity produced accounts for about 7% of total electricity production in 1999. A new peat plant came into commercial operation in December 2000 and is operated by the Finnish group, Fortum. ESB also plans to construct two new peat stations, in line with the orderly closure of ESB's existing stations within the next few years. Security of supply and socio-economic factors have been prominent factors in the policy decisions to begin and maintain peat-related operations. The International Energy Agency (IEA) estimates that the cost of generating electricity from peat exceeds by more than 50% the cost of generating electricity from alternative fuel (IEA, 1999).³⁷ With high oil prices throughout 2000, the estimated excess cost would be lower.

Another indigenous source of energy for electricity generation is the gas production from the Kinsale and Ballycotton fields, whose reserves may be exhausted for commercial purposes after 2005. ESB consumes about 50% of total gas demand and it is the largest single consumer of BGE. Since 1993, gas is increasingly imported through a gas interconnector from Scotland with a capacity of 17 million standard cubic metres per day to be achieved by October 2001. Given the strength of electricity and gas demand, total gas demand is soon expected to exceed the interconnector capacity. The Irish electricity transmission system is linked to the Northern Ireland system but net imports account for less than 2% of total electricity supply in 2000. Except for Northern Ireland, there are no possibilities for interconnecting the Irish electricity grid on a commercial basis due to the geographical location of the island. Hence, further developing the interconnection with Northern Ireland offers possibilities for realising added efficiency gains in electricity generation, transportation and distribution on the island.

Table 10. **Electricity production by fuel sources**

Fuels	1995	2010
Gas	29%	64%
Peat	11%	5%
Coal	39%	17%
Renewables	5%	8%
Oil	16%	6%

Source: International Energy Agency (1999), Electricity Supply Board, p. 56.

The Irish electricity market is small by EU standards and the prospect for entry of new competitors in the Irish electricity market is linked to the lifting of prevailing market uncertainties about the future sources of gas supply that will be required to meet the expected demand growth. In the meantime, the dominant position of the incumbent state-owned enterprises is likely to remain. Decisions about the timing and magnitude of the potential commercial development of the Corrib gas reserves will influence the consideration of alternative supply sources. With the determination of commercial viability of the Corrib reserves, authorisation and construction of a new supply pipe will be rapidly required.

The Commission for Electricity Regulation, supported by an adequate staff and resources, has a crucial role to play for developing the trading mechanisms needed to encourage and to protect new competitors, particularly small investors, in electricity generation and supply assets. Concerns still remain about the potential abuse of dominant positions by the incumbent state-owned enterprises in the Irish energy sector.

4. CONCLUSIONS AND POLICY OPTIONS FOR REFORM

4.1. *General assessment of current strengths and weaknesses*

Ireland's stellar growth performance in recent years reflects an array of policy and sectoral reforms, in particular Ireland's commitments in the context of the ongoing EU integration process with the Single European Market Programme and the Economic and Monetary Union. Efforts were made to improve the education level of the baby boom generation that entered the labour market in the 90s. Large and sustained foreign investment, partly lured by generous incentives, has transformed Ireland's production capacity and broadened its trading interests beyond the EU market. However, economic prosperity has overshadowed the current weaknesses of the Irish regulatory approaches. Current capacity constraints and the emergence of "bottlenecks" in many sectors are undermining the sustainability of the

economic expansion and are exposing the fragility of the Irish economic strategy, in particular its regulatory regime. Ireland would deal more effectively with eventual external shocks and a less favourable global economic environment if it were to strengthen its regulatory approaches.

Not all of the six efficient regulation principles examined in this review are expressly codified in Irish administrative and regulatory oversight procedures to the same degree. However, the weight of available evidence suggests that the principles of non-discrimination, use of international standards and recognition of equivalence are given ample expression in practice. Integration in the EU implies that Ireland adopts EU Directives and takes part in the harmonisation of technical regulations.

The content of the Strategic Management Initiatives (SMI) and the ensuing action plan for regulatory reform are broadly in line with regulatory standards in place across the OECD area, albeit there were more recently put into place. The policy fosters transparency and accountability by stressing the need for consultation and rules-based procedures. Although public consultations on regulatory matters have lost a great deal of its informality, it remains that each government Department has discretionary power for carrying out the public consultation process in terms of the duration and the moment of the consultation and the selection of the interested parties. There are no common criteria for evaluating the quality of either the consultation or the decisions taken by the regulators on the selected consultation mechanism. A pro-competitive stance calls for a more formalised public consultation process encompassing the broad range of civil society interests, particularly consumer interests.

The requirement to complete the Quality Regulatory Checklist (QRC) provides a more structured approach for Irish policy makers to improve the quality of the information on which decisions are based and to integrate some of the efficient regulatory principles into the decision making process of regulatory matters. However, the regulatory approach relies only on qualitative criteria and completely ignores quantitative criteria, such as cost and benefit analysis that can be a useful tool for comparing the benefits to specific interest groups versus the costs born by society as a whole.

There is an element of discretion with the QRC, which is required “as appropriate” and raises doubts as to whether it is systematically and uniformly applied throughout the administration. There are several deficiencies in the enforcement system. It lacks an independent assessment body or unit that would verify the compliance of the completed QRC with the required criteria, and lacks guidelines and training for policy makers to assist them in completing the necessary requirements. The poor enforcement infrastructure raises considerable doubts on the effectiveness of the QRC as a useful regulatory tool to assist policy makers that they have made the best policy and regulatory choice.

Although the QRC requires consideration of the competition impact of proposed regulations, some recent regulatory decisions regarding the licensing of taxis in the Dublin (a decision subject to an appeal) and pubs suggest that this competition criteria has not been interpreted in the sense of minimising barriers to entry. These cases highlight the need for strengthened enforcement mechanisms to review the quality of the assessment.

Ireland should consider bringing together the QRC with the six statements of impact assessment and to complement them with quantitative criteria. The merged criteria under a revamped QRC would provide a more coherent regulatory tool. The QRC should be made available to the public during the consultation process. Improving the availability of this tool to the public would add transparency to the process and act as a powerful way to formalise public consultation and, simultaneously, improving the quality of the QRC. As experience will be gained in the preparation of this regulatory tool more uniform practices will emerge and contribute making it an important regulatory tool for mobilising and directing regulatory actions government-wide.

Considerable efforts have been made to reduce the role of government in economic activities in exposing previously sheltered firms to competition forces. An institutional competition infrastructure has been established through the Competition Authority and two independent regulators, for the telecommunications and the electricity sectors respectively. Although the Irish Government is committed to liberalising these two sectors, two large players hold dominant positions in the telecommunications sector and state-owned enterprises still dominate the energy sector. Concerns remain about the potential abuse of their dominant position in these sectors.

4.2. *The dynamic view: the pace and direction of change*

Ireland has gained commensurable benefits by pursuing trade liberalisation, welcoming foreign-owned firms and integrating in the world economy. Ongoing economic successes are leading to capacity constraints and are threatening the sustainability of its future economic performance. There is a need for balancing growth objectives with sound competitive conditions for ensuring efficient use of resources, labour in particular. Continuing focus on market openness through import competition will contribute to reduce inflationary pressures in wages and costs of building materials and of services. Import competition can play a crucial role in government procurement by facilitating the completion of projects on time and keeping downward cost pressure on goods and services purchased. Facilitating labour mobility within the EU and from abroad through the recognition of professional qualifications will be instrumental in improving the availability of required skills and for easing inflationary pressures, particularly in services-related sectors where demand is expected to remain strong in the foreseeable future.

The recent economic expansion has overshadowed the need to put in place a more rules-based regulatory regime that fosters economic efficiency, minimise obstacles to growth and promote sound competitive conditions. Ireland would deal more effectively with eventual external shocks and a less favourable global economic environment if it were to strengthen its regulatory approaches. Ireland, being a small open economy, is more vulnerable to external shocks than larger economies.

One policy consequence for Ireland and other EU qualified members under the European Monetary Union is that they no longer have the option of devaluing domestic currencies as a policy instrument to improve the international competitiveness of their domestic firms. However, Ireland remains particularly vulnerable, unlike any other EU Member States, to large fluctuations in the external value of the Euro since its largest trading partners are not Euro-members. The United Kingdom and the United States together account for more than a third of total exports and almost half of total imports. In this context, the importance of establishing a sound regulatory framework that minimises domestic obstacles to growth and maximises competitive conditions is more crucial than ever. Ireland would maximise the return of its market openness approach by pursuing additional efforts in applying a set of efficient regulation principles as discussed in this review.

4.3. *Policy options for consideration*

This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in OECD countries, are likely to be beneficial to improving regulation in Ireland. They are based on the recommendations and policy framework in 1997 OECD Report to Ministers on Regulatory Reform.

1. *Enhance transparency through the publication in the Official Journal of the text of draft regulations, with information about the period of public consultation; and through the availability of draft regulations on the Internet.*

These steps would contribute to improving the transparency of the elaboration process of new regulations by providing information more rapidly to all potentially affected parties, thereby widening the basis for consultation.

2. *Merge together the Quality Regulation Checklist with the six statements of impact assessment and complement the qualitative criteria with quantitative ones, such as a cost and benefit analysis;*

Adapt the QRC to include explicit references to the “efficient regulation principles”;

Set up a priori minimum threshold level below it the cost and benefit analysis would not required to avoid making the regulatory process overly burdensome;

Establish an independent unit to review compliance of the QRC with its provisions, and establish appropriate guidelines and training programmes to ensure a more uniform application of the QRC;

Make the QRC widely available to consulted parties, possibly through the Internet.

A revamped QRC would provide a more coherent regulatory tool to assist regulators in the exercise of the regulatory choices. Current deficiencies in enforcement of the QRC are undermining its effectiveness as a useful regulatory tool.

3. *Heighten awareness of and encourage respect for the efficient regulation principles by the county councils, regional bodies and large cities in their regulatory activities affecting international trade and investment.*

Through the co-operation institutions between the central government and sub-central bodies, the central government should promote the awareness and encourage respect of efficient regulation principles.

4. *Continue to encourage the use of international standards as a basis for national standardisation activities and to promote international harmonisation in the European and international fora.*

A strong commitment to an efficient and reliable standardisation system not only enhances market opportunities for Irish firms but also greatly contributes to the consolidation world-wide of efficient and transparent markets for industry and consumers.

5. *Continue to support EU initiatives seeking the elimination of regulatory obstacles in the automobile sector and sanctioning automobile distribution practices that are obstructing the proper operation of the Single Market in the automobile sector.*
6. *Encourage a strengthened enforcement of competition policy recognising its increasing importance for market openness; and implement the measures recommended in Chapter 3, including an increase in the professional staff for the Competition Authority to support the Authority's independent advocacy function.*

With the potential privatisation of several state-owned enterprises and sectoral reforms exposing previously sheltered sectors to competition forces, concerns remain about potential anti-competitive practices, including the potential abuse of dominant positions. Therefore, strong enforcement of competition policy is needed to prevent regulatory or private actions that would impair market access and effective competition by foreign firms.

NOTES

1. Due to a significant level of overseas involvement in the Irish economy, the Gross National Product (GNP) is probably a better indicator of economic prosperity in Ireland than the GDP. However, for country comparison purposes, the GDP indicator is more appropriate.
2. The cumulative total of net emigration from Ireland in the 110 years up to 1991 was 2.8 million persons. OECD (1999) *Economic Surveys: Ireland*, Paris, p. 36.
3. Barry, Frank *et al.* (1997).
4. O'Malley, Eoin (1980), pp. 6-8.
5. In 1997, the EU simple average tariff rate across all products stood at 10%. The average rate for agricultural products (HS 1-24) stood at 20.8% in 1997. See, WTO (1997), pp. 44-45.
6. Ó Gráda, Cormac (1997), pp. 45-55.
7. See, in particular OECD (1998); OECD (1994) and OECD (1995*a*).
8. See related discussion in OECD (1997*a*), Chapter 2: "Regulatory Quality and Public Sector Reform".
9. As provided by Directive 98/34/EC of 22 June 1998. The Directive codified and replaced Directive 83/189/EEC which had established the procedure and had been subsequently amended.
10. "CIA Security International *vs.* Signalson SA and Securitel SPRL", Decision of the European Court of Justice of 30 April 1996 (Case C-194/94).
11. The procedure was established by a December 1995 Decision of the EU's Council of Ministers and the European Parliament (3052/95) and came into effect on 1 January 1997.
12. European Commission (2000).
13. <http://europa.eu.int/business/en/index.html>.
14. <http://www.newapproach.org>.
15. The Public Supplies Directive (93/36/EEC); the Public Works Directive (93/37/EEC); the Public Services Directive (92/50/EEC); the Public Remedies Directive (89/665/EEC); the Utilities Directive (93/38/EEC); and the Remedies Utilities Directive (92/13/EEC).
16. See the Forum on Public Procurement's website <http://www.fpp.ie>.
17. See *Small Firms and Public Procurement in Ireland*, a Summary for the Study Prepared for the Department of Enterprise, Trade and Employment, Networks Resources Limited, July 1999.
18. In early 1998, the EU had the following free trade agreements: Europe Agreements with Hungary, Poland, Czech Republic, Slovakia, Romania, Bulgaria, Romania, Estonia, Latvia, Lithuania, Slovenia; and Euro-Mediterranean Agreements with Cyprus, Malta, Israel, Tunisia, Morocco and Palestinian Authority.
19. See OECD (1995*b*).

20. See OECD (1997b), *Regulatory Impact Analysis — Best Practices in OECD Countries*, Paris.
21. To deal with a constant problem of long waiting times, poor services and monopolistic behaviour reflected by the increasing value of a taxicab licence, the Minister of the Environment and Local Government adopted a secondary legislation in late 1999. It provides for the replacement of current licences for new licences to existing holders and 500 new licences would be made available favouring co-drivers under existing licences. The new regulation was challenged in the Irish High Court. The Court found (delivered on 13 October 2000) that the Minister was not empowered under the Road Traffic Act to make a regulation. The Judge also stated that regulation may indirectly discriminate against EU Member States in a manner which is prohibited under the EU obligation – the great majority of existing licence holders are Irish nationals, thus precluding nationals of other EU Member States from becoming the owners of new taxi licences.
22. See The European Commission, Up Date on the Single Market, Commission moves to simplify single market legislation, 6 march 2000, (www.europa.eu.int/comm/internal_market).
23. The transit procedures aim at facilitating trade within a given customs territory or between separate customs territories. Its essence is to allow the temporary suspension of customs duties, excise and VAT payable on goods originating from and/or destined for a third country while under transport across the territory of a defined customs area.
24. For more details, see Committee of Inquiry into the Community Transit System, Final Report and Recommendations, February 1997, European Parliament, PE 220.895.
25. The computerised system is based on the United Nations Electronic Data Interchange Protocol and harmonised data-set (UN/EDIFACT) and it enables users to submit their import and/or export declarations to Customs authorities and to receive customs permissions through electronic exchange.
26. Decision of 20 February 1979, Cassis de Dijon, Case 120/78, ECR p. 649.
27. Energy-efficiency, labelling, environment, noise.
28. See the Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the liability for defective products.
29. Decision of the European Court of Justice of 20 February 1979, Cassis de Dijon, Case 120/78.
30. See European Commission (1999).
31. See European Council (1989), 90/C 10/01.
32. The MRA with Canada entered into force on 1 November 1998, the MRA with the United States on 1 December 1998 and the MRA with Australia and New Zealand on 1 January 1999.
33. See, Competition Authority (1998).
34. The EU Directives are composed of: Terminal Equipment Directive (88/301/EEC); Services Directive (90/388/EEC); ONP Framework Directive (90/387/EEC) and ONP Leased Lines Directive (92/44/EEC). Other EC Directives include: Satellite Directive (94/46/EC); Cable Directive (95/51/EC); Mobile Directive (96/2/EC); Full Competition Directive (96/19/EC) and Licensing Directive (97/13/EC). Finally ONP Interconnection Directive (97/33/EC); ONP Amending Directive (97/51/EC); Telecom Data Protection Directive (97/66/EC); ONP Voice Telephony Directive (98/10/EC).

35. Extension periods were also accorded to Luxembourg (1 July 1998), Portugal (1 January 2000), Greece (31 December 2000) and Spain (1 January 2003 but full liberalisation effectively occurred on 1 December 1998).
36. The Commission Regulation (EC) No. 1475/95 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements was adopted in June 1995 and applies until September 2002.
37. International Energy Agency (1999).

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