OECD Regulatory Policy Outlook 2015

Country profile

CANADA

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BETTER POLICIES FOR BETTER LIVES

Overview

In Canada the processes and requirements for developing primary laws (Acts) and subordinate regulations (regulations) differ significantly. Subordinate regulations typically elaborate on the general principles set in Acts and set out detailed requirements for regulated parties to meet. As such, the number of regulations made in a given year vastly outnumbers the number of Acts. The process for developing primary laws is outlined in the Cabinet Directive on Law-Making. The requirements for subordinate regulations are laid out in the Cabinet Directive on Regulatory Management (CDRM 2012). The Treasury Board of Canada Secretariat is responsible for providing oversight for subordinate regulations, playing a key role in helping to assure regulatory quality. For primary laws, Cabinet, supported by the Privy Council Office, is responsible for providing oversight in the areas of consultation and *ex post* analysis, and the quality of impact assessments are reviewed by the Privy Council Office.

When developing primary laws an assessment of impacts is presented to Cabinet. The full evidence and evaluation is not made publically available on a systematic basis prior to the regulation being put before parliament. As in other OECD countries, all primary laws are subject to parliamentary scrutiny. This normally includes a parliamentary committee study, where witnesses have an opportunity to publicly comment on the proposal. Some primary laws contain provisions to be periodically reviewed.

The processes for developing subordinate regulations are generally more detailed and transparent. A detailed RIA is mandatory for all subordinate regulations and all RIAs are made publically available on a central registry. Open consultation is conducted for all subordinate regulations and regulators must indicate how comments from the public have been addressed (unless the regulatory proposal is exempted from pre-publication). All subordinate regulations are subject to evaluation requirements, in accordance with the Treasury Board Policy on Evaluation.
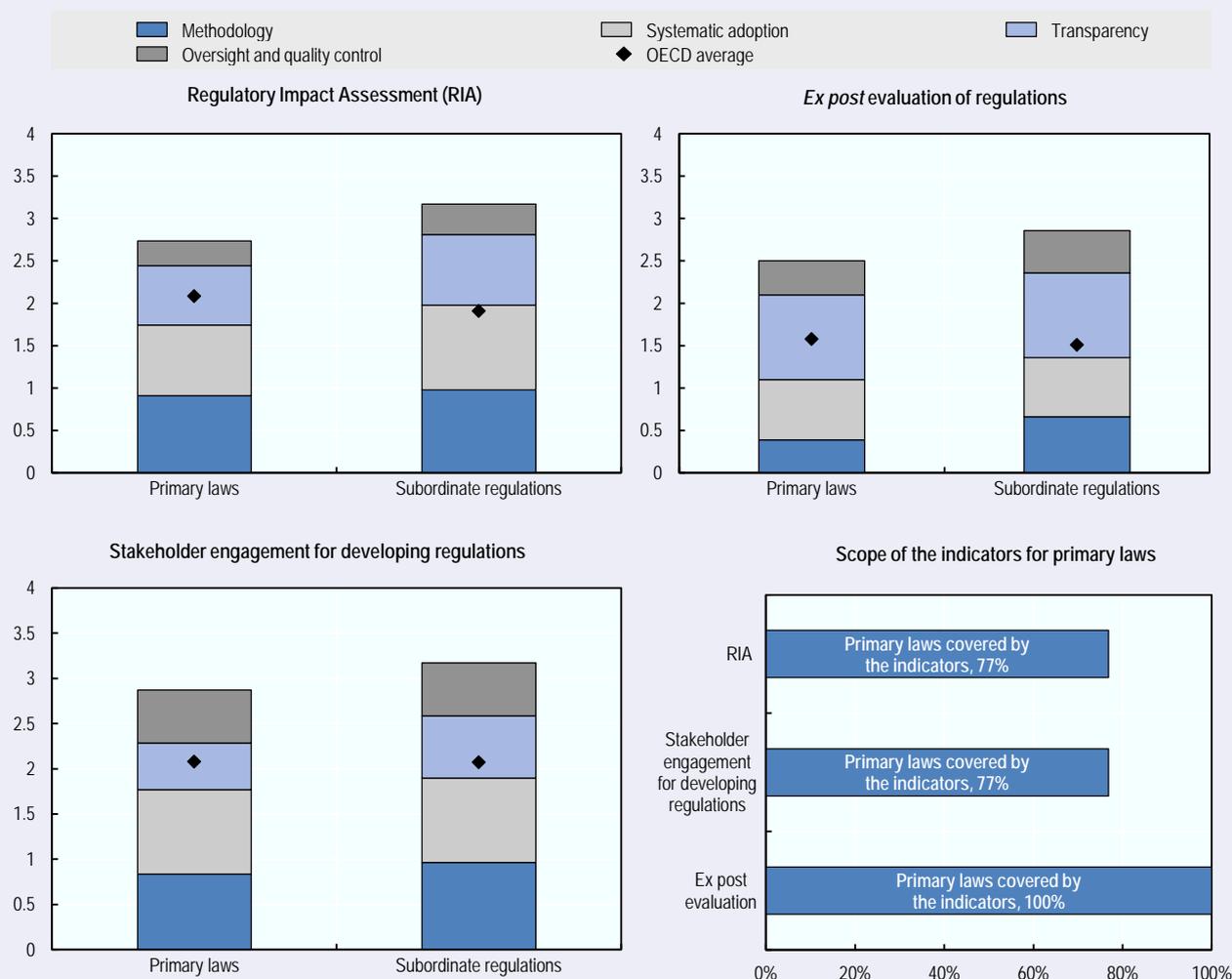
The Treasury Board has recently published an annual Scorecard Report on the reduction of administrative burdens and the results achieved in implementing systemic reforms under the government's Red Tape Reduction Action Plan. Similar reports regarding the quality of other areas of regulatory policy such as the functioning of the RIA system could support the existing strong oversight mechanisms.

Spotlight: Cabinet Directive on Regulatory Management

The recently introduced Cabinet Directive on Regulatory Management (CDRM 2012) sets out the roles and responsibilities for federal regulators in developing subordinate regulations. Key requirements include: early identification of a potential public policy issue; conducting strong and evidence-based analysis both in an preliminary triage statement of expected impacts and a detailed RIA; conducting widespread and meaningful stakeholder engagement; international regulatory co-operation; planning for implementation, issues of compliance and enforcement; and measuring, evaluating and reviewing regulation. The Treasury Board Secretariat plays a challenge function throughout this process and ensures that all key steps are followed, providing support and advice to regulators on all analytical requirements. The CDRM incorporates the regulatory reforms outlined in the Red Tape Reduction Action Plan (RTRAP). The cornerstone of the RTRAP, the one-for-one rule, controls both the number of regulations and the growth of the administrative burden on businesses. The rule requires regulators to reduce existing regulatory administrative burden on business equal to any new burden imposed. Also, each time a brand new regulation that imposes administrative burden is introduced, an existing regulation must be removed.

Indicators of Regulatory Policy and Governance 2015

Legend:
- Methodology
- Oversight and quality control
- Systematic adoption
- OECD average
- Transparency

Regulatory Impact Assessment (RIA)

Ex post evaluation of regulations

Stakeholder engagement for developing regulations

Scope of the indicators for primary laws

- RIA: Primary laws covered by the indicators, 77%
- Stakeholder engagement for developing regulations: Primary laws covered by the indicators, 77%
- Ex post evaluation: Primary laws covered by the indicators, 100%

1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.

2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in Canada approx. 77% of primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement cover approx. 77% of primary laws. There is no formal requirement in Canada for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. In the Canadian context, laws initiated by the executive are called Government Bills and laws initiated by parliament are called Private Members' Business. The percentage of primary laws initiated by parliament is an average between the years 2011 to 2013.

Source: 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Statlink: http://dx.doi.org/10.1787/888933263071

Indicators of Regulatory Policy and Governance (iREG)

The three composite indicators provide an overview of a country's practices in the areas of stakeholder engagement, Regulatory Impact Assessment (RIA) and *ex post* evaluation. Each indicator comprises four equally weighted categories:

- Systematic adoption which records formal requirements and how often these requirements are conducted in practice.

- Methodology which gathers information on the methods used in each area, e.g. the type of impacts assessed or how frequently different forms of consultation are used.

- Oversight and quality control records the role of oversight bodies and publically available evaluations.

- Transparency records information from the questions that relate to the principles of open government, e.g. whether government decisions are made publically available.

The composite indicators are based on the results of the *OECD 2014 Regulatory Indicators Survey*, which gathers information from all 34 OECD countries and the European Commission as of 31 December 2014. The survey focuses on regulatory policy practices as described in the 2012 *OECD Recommendation on Regulatory Policy and Governance*. The more of these practices a country has adopted, the higher its indicator score. Further information on the methodology is available online at www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Whilst the indicators provide an overview of a country's regulatory framework, they cannot fully capture the complex realities of its quality, use and impact. In-depth country reviews are therefore required to complement the indicators and to provide specific recommendations for reform.

OECD Regulatory Policy Outlook 2015

The *OECD Regulatory Policy Outlook* (www.oecd.org/publications/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm) provides the first evidence-based, cross-country analysis of the progress made by OECD countries in improving the way they regulate. Findings are based on the results of the *OECD 2014 Regulatory Indicators Survey*.

Key findings:

- Laws and regulations are essential instruments, together with taxes and spending, in attaining policy objectives such as economic growth, social welfare and environmental protection. OECD countries have generally committed at the highest political level to an explicit whole-of-government policy for regulatory quality and have established a standing body charged with regulatory oversight.

- Implementation of regulatory policy varies greatly in scope and form across countries. While RIA has been widely adopted, few countries systematically assess whether their laws and regulations achieve their objectives. Stakeholder engagement on rule making is widespread in OECD countries, taking place mostly in the final phase of developing regulation.

- The national executive government has made important progress over the last decade to improve the quality of regulations. Parliaments, regulatory agencies and sub-national and international levels of government need to be more engaged to ensure that there are evidence-based and efficient laws and regulations for stimulating economic activity and promoting well-being.

- The impact of regulatory policy could be further improved by addressing shortcomings in the implementation and enforcement of regulations and by considering new approaches to regulatory design and delivery such as those based on behavioural economics.

Contact information:

Christiane Arndt, Head of Programme, Measuring Regulatory Performance, christiane.arndt@oecd.org and Céline Kauffmann, Deputy Head of Division, Regulatory Policy, celine.kauffmann@oecd.org