



ASSESSING PROGRESS IN THE IMPLEMENTATION OF THE 2012 OECD RECOMMENDATION OF THE COUNCIL ON REGULATORY POLICY AND GOVERNANCE

5th Expert Meeting on Measuring Regulatory Performance

DISCUSSION NOTES FOR BREAKOUT SESSIONS

Stockholm

3-4 June 2013

TABLE OF CONTENTS

Principles 1, 3 and 6: Discussion Note	3
Principle 2: Discussion Note.....	13
Principles 4 and 9: Discussion Note	19
Principle 5: Discussion Note.....	28
Principles 10 and 11: Discussion Note	34
Principles 7 and 8: Discussion Note	42
Principle 12: Discussion Note.....	48

An Explicit Policy on Regulatory Quality, Regulatory Oversight, and Reviewing Performance of Regulatory Reform Programmes and Regulatory Policy

Principles 1, 3 and 6: Discussion Note

Authors: Gregory Bounds and Nick Malyshev, OECD Regulatory Policy Division

Plenary Session 3: June 3, 14h45-15h45

1. Importance of Principles 1, 3 and 6

1. The Recommendation on Regulatory Policy and Governance reflects a systemic application of regulatory reform. It is based on the application of governance processes to improve the performance of the regulatory system through ensuring that new regulation is targeted and effective and that existing regulation achieves its policy goals. As rule making powers are delegated throughout government, so should mechanisms for systemic improvements in regulatory policy be diffused across government so that they are implemented by a wide range of actors across the regulatory governance cycle, including Ministers and other parliamentarians, policy analysts and enforcement agencies.

2. The expression by governments of a clear and explicit policy on regulatory quality that has high level political support and spells out the role played by actors in the regulatory governance cycle is the foundation for successful implementation of systemic improvements to regulation. An explicit policy provides the framework setting out how all the elements of regulatory reform will be achieved and orients efforts to improve regulation. This includes assigning key institutional responsibilities and mandating the application of certain practices, such as: consultation, the use of Regulatory Impact assessment, ex post review and the achievement of targets for administrative burden reduction.

3. Systemic regulatory reform is undertaken with the aim of improving the efficiency and effectiveness of the regulatory system. It is therefore not aimed at deregulation, but with ensuring that the design and implementation of regulation operates to deliver the necessary level of public protection and that government has the strategic capability to consider and identify if regulatory interventions are needed and whether they will be effective. An emphasis on improving the regulatory quality of new and existing rules, the use of performance based regulations and the efficient use of market mechanisms, are all core elements of an explicit regulatory policy that underpin improving overall regulatory quality.

4. The appointment of responsibility for regulatory policy at the ministerial level helps to ensure the political commitment to the goals of the regulatory policy. However, the range of programme responsibilities within a system of regulatory management is complex and shared across government. These include portfolio and sector specific responsibilities for ensuring that regulatory quality measures are applied, such as for example, the application of Regulatory Impact Assessment (RIA), or simplification measures to the development of regulations in particular policy areas. Beyond the portfolio responsibilities, however, there is also a need to allocate the system wide responsibilities for monitoring and promoting the success of the government wide policy on regulatory reform.

5. A clear framework of accountability would identify the responsibilities of ministers to ensure that the requirements of the regulatory management system are implemented within their portfolio areas, as well as the allocation of system-wide responsibilities for regulatory policy and governance. System-wide responsibilities should be assigned to a specific ministerial role in cabinet to provide leadership and oversight of the regulatory governance process, and monitor and report on the co-ordination of regulatory reform activities across portfolios. The responsibility includes preparing a report on the performance of the regulatory management system, and identifying opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.

6. The creation of a central oversight body in charge of promoting regulatory quality is a key element to show the political commitment of government to spread awareness among the different actors involved in the regulatory process. The exact location of a regulatory oversight body within the structure of government is important to its effectiveness. Oversight bodies have been placed at the centre of government supervised by the head of state. There may be the need to locate a regulatory oversight body in a finance or economics-oriented ministry, especially if the centre of government lacks the institutional capacity and resources to carry out regulatory oversight. External oversight can also play a complementary role, for example, through the use of advisory groups representing business interests to monitor and report on the progress of government reform initiatives.

7. Regulatory oversight should be based on expertise, in the form of a trained professional staff capable of undertaking evaluation of regulatory proposals and options, as well as their impacts on business and society. Technical knowledge can reveal and make transparent the significant impacts, tradeoffs, and alternatives of regulatory choices – informing politicians and policy makers as well as the public of both the promise and pitfalls of regulation.

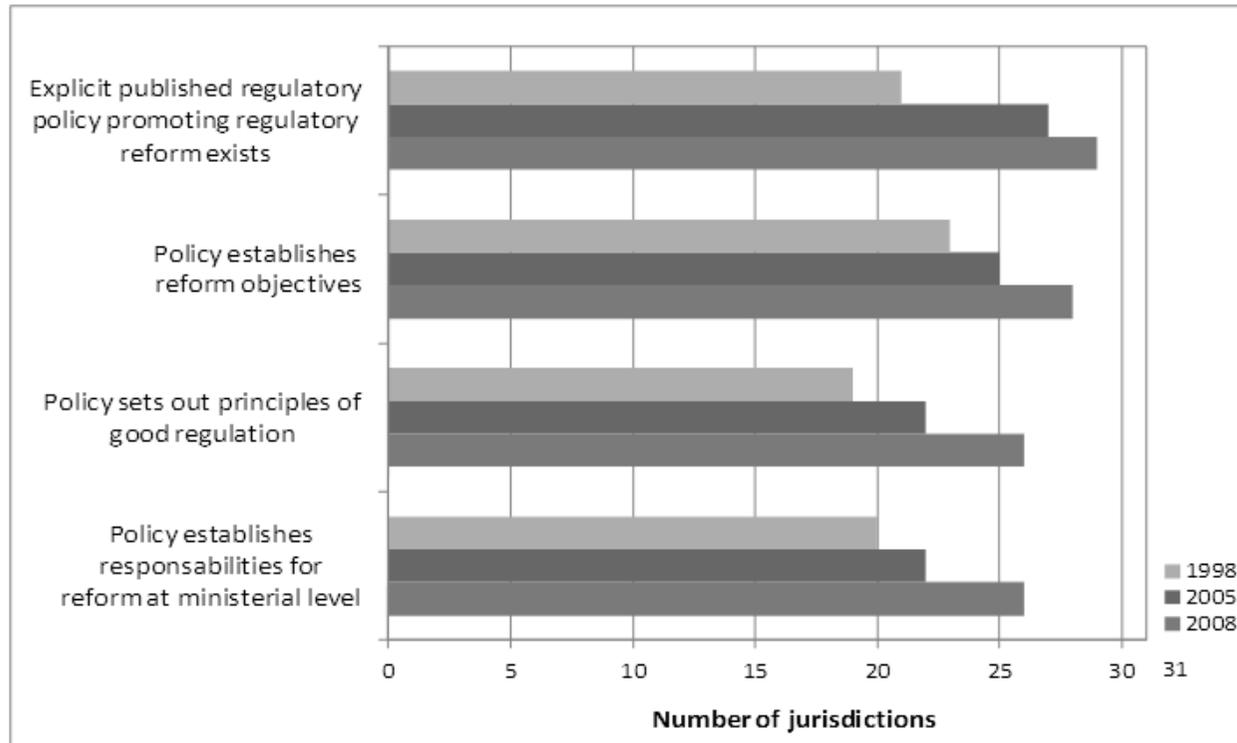
8. Information on the performance of regulatory reform programmes is necessary to identify and evaluate if regulatory policy is being implemented effectively and if reforms are having the desired impact. Regulatory performance measures can also provide a benchmark for improving compliance by agencies with the requirements of regulatory policy, such as, for example, reporting on the effective use of impact assessment, consultation, simplification measures and other practices.

9. Transparency is an important feature for ensuring the effectiveness of the information. This depends on the public release of reviews and of performance data to allow external stakeholders to consider and comment on performance information, and to provide incentives to agencies to improve their practices.

2. Implementation of Principles 1, 3 and 6 in OECD countries

10. There are important synergies in the application of the three elements of the Recommendation that address an explicit policy on regulatory quality, the institutional role of oversight and the systematic review of the performance of regulatory policy and programmes. The three aspects interact in terms of program design, implementation and assessment. Taken together, the prescriptions within these three principles provide a strong starting point for identifying and discussing the design of a country's regulatory policy framework.

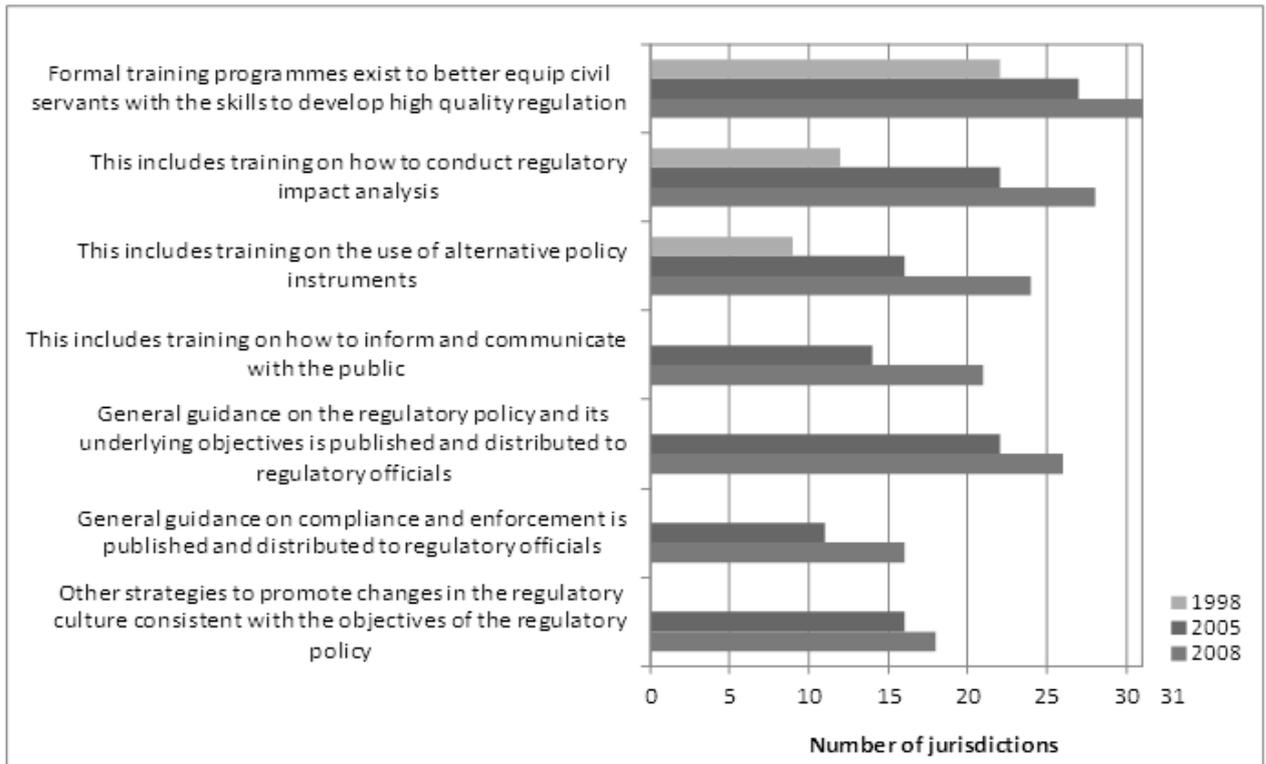
Figure 1: Explicit regulatory policy promoting government wide regulatory reform



Note: The sample includes 31 jurisdictions for 2008 and 2005. For 1998, 27 jurisdictions are included as no data were available for the EU, Luxembourg, Poland and Slovak Republic

Source: Question 1 a),ai),aii),aiii), 2008 OECD Indicators Questionnaire.

Figure 3: Training in regulatory quality skills



Notes: The sample includes 31 jurisdictions for 2008 and 2005. For 1998, 27 jurisdictions are included as no data were available for the EU, Luxembourg, Poland and Slovak Republic.

Source: See Question 13 a), a(i), a(ii), a(iii), b(i), b(ii), c)/ 2008 OECD Regulatory Indicators Questionnaire.

Draft results from the 2012 OECD survey on regulatory policy evaluation

Do you publish performance reports...	on RIA on draft regulations	on consultation practices on draft regulations	on ex-post analysis (reviews) of existing regulations in terms of their economic and social and/or environmental impact	on administrative simplification and burden reduction programmes
Australia	●	●	●	○
Austria	○	○	○	●
Belgium	●	○	○	●
Canada	○	○	○	○
Chile	●	○	○	○
Czech Republic	●	●	○	○
Denmark	○	○	○	●
Estonia	●	○	○	○
EU	●	●	●	●
Finland	●	○	○	●
France	○	○	○	○
Germany	○	○	○	●
Greece	○	○	○	○
Hungary	○	○	○	○
Iceland	○	○	○	●
Ireland	●	○	○	○
Israel	○	○	○	○
Italy	●	○	○	●
Japan	●	●	○	○
Korea	○	○	○	○
Luxembourg	○	●	○	○
Mexico	●	●	●	●
Netherlands	○	●	○	●
New Zealand	●	○	○	●
Norway	●	○	○	○
Poland	○	○	○	●
Portugal	○	○	○	○
Slovak Republic	●	○	○	○
Slovenia	●	●	○	●
Spain	○	○	○	○
Sweden	●	○	○	●
Switzerland	●	●	○	○
Turkey	○	○	○	○
United Kingdom	●	○	●	●
United States	○	○	○	●
OECD34+EU	18	9	4	16

○ Yes.

○ No.

This table represents adjusted data that has not been verified yet and is subject to change.

3. Organisational Information and Questions for Discussion

The purpose of this plenary session is to introduce participants to a discussion of the principles in the Recommendation

- identify effective country practices in systematically implementing principles in the Recommendation
- identify priorities for implementation and
- discuss obstacles and ways to overcome them

Schedule for the Breakout session

- Introduction to principles by OECD staff
- Presentation of OECD experience
- Discussion: What practices reflect a systematic implementation of the Recommendation?
- Discussion: Which of these practices merit a more systematic adoption in OECD countries in the next five years?
- Discussion: What obstacles could you face in implementing practices like this, and how can these obstacles be overcome?
- Wrap-up/conclusion

BIBLIOGRAPHY

Cordova-Novion, C. and S. Jacobzone (2011), "[Strengthening the Institutional Setting for Regulatory Reform: The Experience from OECD Countries](#)", *OECD Working Papers on Public Governance*, No. 19, OECD Publishing.

OECD (2011), [Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest](#), OECD Publishing.

OECD (2009a), [Indicators of Regulatory Management Systems, 2009 Report](#), OECD Publishing.

Annex - Text of Principles 1, 3 and 6 in the Recommendation

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, distributional effects are considered and the net benefits are maximised.

1.1 Regulatory policy defines the process by which government, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision-making. An explicit policy to ensure that regulations and regulatory frameworks serve the public interest should commit governments to:

- Adopt a continuous policy cycle for regulatory decision-making, from identifying policy objectives to regulatory design to evaluation;
- Use regulation when appropriate to achieve policy objectives, applying the Recommendation of the Council on Improving the Quality of Government Regulation [C(95)21/FINAL];
- Maintain a regulatory management system, including both *ex ante* impact assessment and *ex post* evaluation as key parts of evidence-based decision making;
- Articulate regulatory policy goals, strategies and benefits clearly;
- Systematically review the stock of regulations periodically to identify and eliminate or replace those which are obsolete, insufficient or inefficient;
- Develop, implement and evaluate a communications strategy to secure ongoing support for the goals of regulatory quality.

1.2 To achieve results, governments should:

- Adopt an integrated approach, which considers policies, institutions and tools as a whole, at all levels of government and across sectors, including the role of the legislature in ensuring the quality of laws;

- Recognise that specific components such as impact assessment and administrative simplification are important but do not substitute for a comprehensive programme;
 - Consider the impacts of regulation on competitiveness and economic growth;
 - Commit to apply regulatory policy principles when preparing regulations that implement sectoral policies, and strive to ensure that regulations serve the public interest in promoting and benefitting from trade, competition and innovation while reducing system risk to the extent practicable;
 - Monitor the impact of regulations and regulatory processes;
 - Develop programmes to reduce the administrative and compliance costs of regulation without compromising legitimate regulatory objectives.
- 1.3 Governments should develop and maintain a strategic capacity to ensure that regulatory policy remains relevant and effective and can adjust and respond to emerging challenges. It is a core function of government to ensure that existing regulations are delivering the necessary level of public protection including having the strategic capacity to consider and identify if regulatory intervention is necessary and will be effective.
- 1.4 Governments should issue a formal and binding policy statement underpinning regulatory reform including guidelines for the use of regulatory policy tools and procedures. The design of institutional frameworks and resources necessary to implement regulatory policy including the enforcement of regulation should be assessed to ensure that they are adequate and address regulatory gaps.
- 1.5 Regulatory policy should include a preference for performance-based regulation, and should facilitate the efficient functioning of the market.
- 1.6 The regulatory policy should clearly identify the responsibilities of ministers for putting regulatory policy into effect within their respective portfolios. In addition, governments should consider assigning a specific Minister with political responsibility for maintaining and improving the operation of the whole-of-government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process. The role of such Minister could include:
- Monitoring and reporting on the co-ordination of regulatory reform activities across portfolios;
 - Reporting on the performance of the regulatory management system against the intended outcomes;
 - Identifying opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.

3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.

- 3.1 A standing body charged with regulatory oversight should be established close to the centre of government, to ensure that regulation serves whole-of-government policy. The specific institutional solution must be adapted to each system of governance.
- 3.2 The authority of the regulatory oversight body should be set forth in mandate, such as statute or executive order. In the performance of its technical functions of assessing and advising on the quality of impact assessments, the oversight body should be independent from political influence.

3.3 The regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision making. These tasks should include:

- Quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate;
- Examining the potential for regulation to be more effective including promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary;
- Contributing to the systematic improvement of the application of regulatory policy;
- Co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods;
- Providing training and guidance on impact assessment and strategies for improving regulatory performance.

3.4 The performance of the oversight body, including its review of impact assessments should be periodically assessed.

6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice.

6.1 Review the effectiveness of programmes to improve the delivery of regulation inside government to ensure that they are effective and efficient and meet clearly identified objectives for public service delivery.

6.2 Design and assess data collection and information management strategies to ensure that the necessary high-quality information is available for the preparation of reports while avoiding the imposition of unnecessary administrative burdens.

6.3 Promote an external review function, including input by stakeholders and civil society. The assessment of RIA by the regulatory oversight body should be periodically evaluated by an independent third party, such as, for example, the National Audit Authority.

6.4 Simplification and reform programmes should be evaluated for the public value they deliver based on the resources required. Evaluation should focus primarily on the outcomes and effects for society ahead of the quantification of administrative burdens reduced.

Communication, Consultation and Engagement

Principle 2: Discussion Note

Authors: Daniel Trnka and Céline Kauffmann, OECD Regulatory Policy Division

Breakout Group 1: June 3, 16h15-18h00

1. Importance of Principle 2

11. Regulatory Policy should consider the beneficiaries from regulatory protection as well as those that incur regulatory obligations. Persons concerned with and affected by regulation include citizens, businesses, consumers, and employees, the public sector, non-governmental organisations, international trading partners and other stakeholders. It is not always possible to define public interest as the sum of interests of individual stakeholders; however adopting a user-oriented perspective on regulatory policy should be a goal of government to assess the design and implementation of regulation and identify opportunities for improvement.

12. A process of communication, consultation and engagement which allows for public participation of stakeholders in the regulation-making process as well as in the revision of regulations can help governments understand citizens' and other stakeholders' needs and improve trust in government. Also, it can help governments collect more information and resources, increase compliance, and reduce uninformed opposition. It may enhance transparency and accountability as interested parties gain access to detailed information on potential effects of regulation on them. It also facilitates the goal of nondiscrimination, by supporting equal access and treatment for all citizens under the law.

13. A wide spectrum of consultation tools should be used to engage a broad diversity of stakeholders within the population. Modes of consultation need to reflect the fact that different legitimate interests do not have the same access to the resources and opportunities to express their views to government, and that a diversity of channels for the communication of these views should be created and maintained. Sufficient time must be provided to allow stakeholders the opportunity to consider proposed regulations and to participate in the regulation making process.

14. Collecting information on the impact of regulation on the public, including their perception of regulation helps governments to structure their policies to address perceived issues and better prioritise reforms to focus on those areas that may warrant regulation, or where regulation may be unnecessarily burdensome.

2. Implementation of Principle 2 in OECD countries

15. OECD countries are increasingly engaging citizens in both policy making as well as *ex post* reviews of their regulatory frameworks. The use of ICTs has enabled significant improvements in the accessibility of regulations and the consultations process.

16. Consultation processes differ widely across countries with respect to the timing, availability of guidelines and the degree of openness of the process. Most countries have some kind of formal mandatory consultation processes at for both primary laws and subordinate regulation. Some countries have developed guidance for consultations, such as Canada with a *Guide for Effective Regulatory Consultation*. A process for monitoring the quality of consultation processes exist to a varying extent in some jurisdictions. In Poland, for instance, the quality of the consultation process is monitored by the Chancellery of the Prime Minister, which provides opinions on the scope of consultation before proposals can be transmitted to inter-ministerial clearings. Most countries also publish the views of participants in the consultation process and granting access to any member of the public to participate in the consultations.

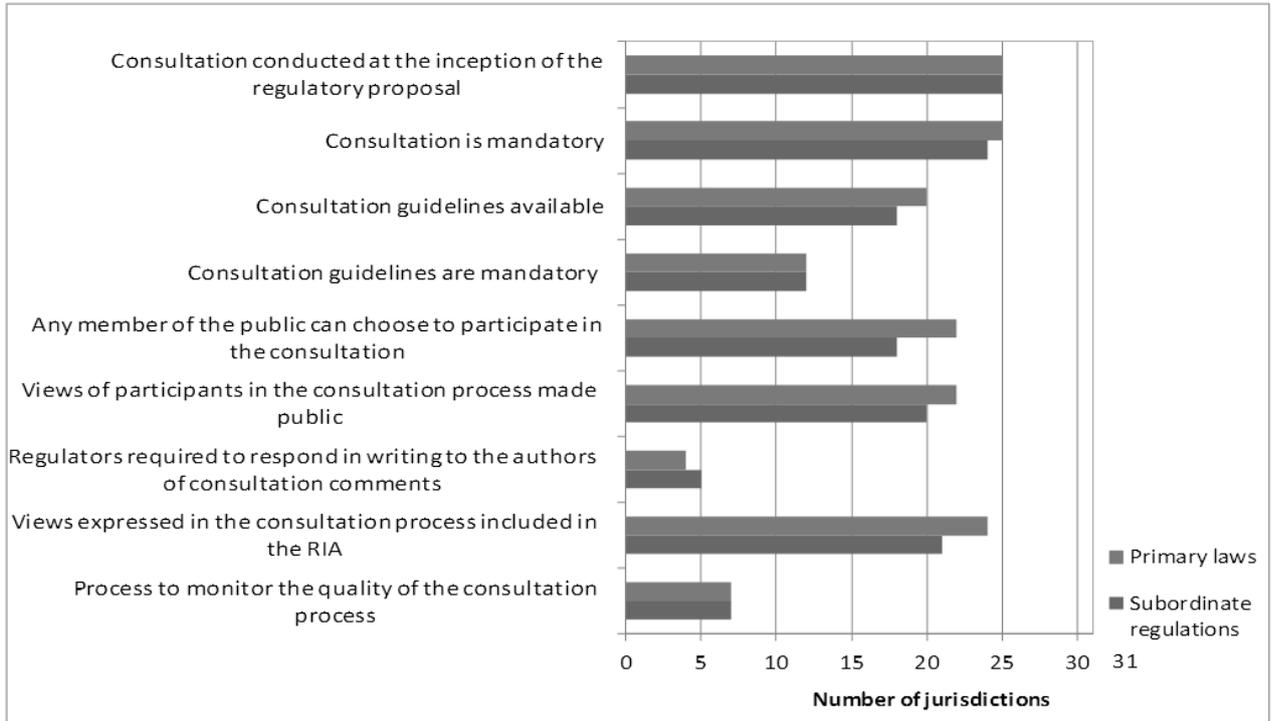
17. In practice, there are many different mechanisms for engaging the public in the development of regulations. While almost all countries routinely rely on informal consultation with selected groups, they also increasingly use more open and formal forms of consultation on a routine basis. In particular, countries are using Internet to publish proposals for consultation but also use public meetings and public notice and comments procedures increasingly. Many countries have also set a minimum period for public consultations.

18. While some tools are context specific, a number of elements that are considered to be general best practice may contribute to improving the openness and effectiveness of consultation systems in a number of countries. Countries may continue to make progress in the years ahead in broadening access to consultation, enhancing transparency about the process and improving its quality.

19. The efficient use of public consultation and engagement of stakeholders in the rule-making process still remains a challenge in many countries. Consultations are often conducted late in the process when a draft is ready and its substance cannot be significantly changed. Consultation process should be used to inform decision-making, however it is sometimes also perceived as a “box-ticking” exercise and an additional burden.

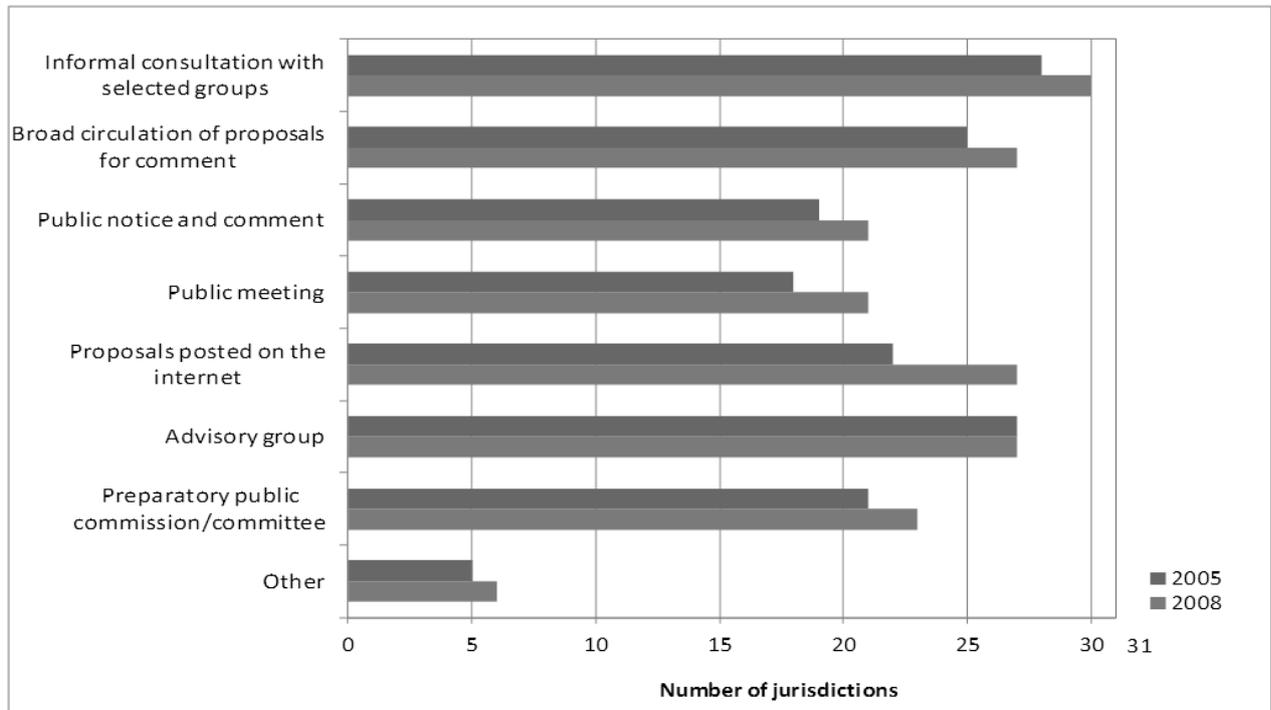
20. Stakeholders are also increasingly engaged in the process of reviews of regulatory frameworks. Countries that have invested a significant amount of energy into the administrative burden reduction programmes have found out that their perception by businesses and/or citizens sometimes varies. Better engagement of stakeholders in the simplification processes and the use of more qualitative methods in assessing administrative burdens is one of the possible responses to this issue. The Danish *Burden Hunters Project* is a good example. Civil servants visit businesses to get concrete and specific knowledge about how they experience the interaction with government authorities and the service provided. Another successful example of actively seeking input for *ex post* reviews of the regulatory framework is the UK *Red Tape Challenge* – a dedicated website where regulations affecting one specific sector or industry are published periodically. The general public is invited to comment with the aim to identify unnecessary regulatory burdens.

Figure 1: Characteristics of formal consultation processes used by central governments (2008)



Source: OECD Regulatory Management Systems' Indicators Survey 2008

Figure 2: Forms of public consultation used at the central government level: Primary laws (2008)



Source: OECD Regulatory Management Systems' Indicators Survey 2005 and 2008

3. Organisational Information and Questions for Discussion

Purpose of the Breakout session

21. The purpose of this interactive session is to:
- identify effective country practices in systematically implementing principles in the Recommendation
 - identify priorities for implementation and
 - discuss obstacles and ways to overcome them

Schedule for the Breakout session

- Introduction to the process of the session by the facilitator
- Introduction to principles by OECD staff
- Critical country reflections
- Discussion: What practices reflect a systematic implementation of the Recommendation?
- Discussion: Which of these practices merit a more systematic adoption in OECD countries in the next five years?
- Discussion: What obstacles could you face in implementing practices like this, and how can these obstacles be overcome?
- Wrap-up/conclusion

Organisation of the Breakout session

22. Participants will start directly in their breakout groups (10-20 participants each group) after the coffee break. Each breakout group will have a facilitator and a rapporteur. The role of the facilitator is to ensure that questions are understood, to stimulate the discussions, limit off-topic discussions, and ensure all questions are answered in time. The role of the rapporteur is to take notes and report answers to all the questions below back to the plenary in the form of 3-5 key points on each of the questions. About 10 minutes are planned in for reporting back on each breakout session in the corresponding plenary session.

The success of the breakout session depends on the participants. Participants are kindly asked to read the background readings before and reflect upon the questions for discussion.

BIBLIOGRAPHY

OECD (2011), User-Centered Regulation: Open Government and E-Rulemaking, GOV/RPC(2011)7.

OECD (2010), [Why is Administrative Simplification so Complicated? Looking Beyond 2010](#), Cutting Red Tape, OECD Publishing.

OECD (2009), [Focus on Citizens. Public Engagement for Better Policy and Services, OECD Studies on Public Engagement](#), OECD Publishing.

OECD (2001), [Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making](#), OECD Publishing.

Annex - Text of Principle 2 in the Recommendation

2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.

- 2.1 Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place.
- 2.2 Governments should co-operate with stakeholders on reviewing existing and developing new regulations by:
 - Actively engaging all relevant stakeholders during the regulation-making process and designing consultation processes to maximise the quality of the information received and its effectiveness.
 - Consulting on all aspects of impact assessment analysis and using, for example, impact assessments as part of the consultation process;
 - Making available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data;
 - Structuring reviews of regulations around the needs of those affected by regulation, co-operating with them through the design and conduct of reviews including prioritisation, assessment of regulations and drafting simplification proposals;
 - Evaluating the competitive effects of regulation on various economic players in the market.
- 2.3 Introduce regular performance assessments of regulations and regulatory systems, taking into account, among other things, the impacts on affected parties and how they are perceived. Communicate the results of these assessments to the public.
- 2.4 Make sure that policies and practices for inspections and enforcement respect the legitimate rights of those subject to the enforcement, are designed to maximise the net public benefits through compliance and enforcement and avoid unnecessary burdens on those subject to inspections.
- 2.5 All regulations should be easily accessible by the public. A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.
- 2.6 Governments should have a policy that requires regulatory texts to be drafted using plain language. They should also provide clear guidance on compliance with regulations, making sure that affected parties understand their rights and obligations.

Integrated Regulatory Impact Assessment and Risk and Regulation

Principles 4 and 9: Discussion Note

Authors: Gregory Bounds and Faisal Naru, OECD Regulatory Policy Division

Breakout Group 2: June 3, 16h15-18h00

1. Importance of Principles 4 and 9

23. The OECD has advocated the use of Regulatory Impact Assessment (RIA) for over two decades. It is the basis of the “OECD Reference Checklist for Regulatory Decision Making” which was endorsed by the 1995 *Recommendation of the Council on Improving the Quality of Government Regulation*, and directs policy makers to focus on a series of ten questions designed to identify if the need for government action is correctly defined, and whether regulation will be effective at achieving the policy aim.

24. RIA is both a tool and a decision process for informing political decisions makers on whether and how to regulate to achieve public policy goals by analysing the evidence for the costs and benefits of regulation and of alternative means of achieving policy goals to identify the approach that is likely to deliver the greatest net benefit to society. These two features, of tool and system, reflect the fact that for RIA to be effective it has to be integrated in the policy making process and supported by institutions within the government.

25. A comprehensive RIA incorporates an assessment of the economic, social and environmental impacts. Subject to some threshold, significant regulatory proposals should be examined for their direct and indirect costs, whether borne by business citizens or government. An evaluation of the likely effects of regulation on competitive markets is also necessary to identify if the objectives of regulation can be achieved more efficiently through alternative means.

26. The analytical methods of RIA are most effective when they becomes part of the policy making approach adopted by policy makers. As such ownership of RIA across government is necessary. But RIA requires resources, can be technically challenging and also exposes the potential rents inherent in regulation. There are therefore many opponents to RIA so it also requires political support and strong institutional oversight if it is to be successful and become part of the culture of policy making.

27. OECD experience demonstrates that the support of a well-resourced regulatory oversight function helps to integrate impact assessment in the policy and rule-making process, and to raise the quality of assessments. As identified in principle 3 of the *Recommendation on Regulatory Policy and Governance*, an oversight body should provide support and training in the analysis of regulation and review the quality of impact assessments.

28. Impact assessment processes are intended to promote transparency, including the choice of tradeoffs that may be made in designing regulation. RIA should therefore be closely linked with general consultation processes for the development of new regulations. An effective method is the use of roadmaps, giving early notice of possible regulatory initiatives and the use of a consultation stage RIA. The results of the consultations should be made publicly available online in order to ensure a high level of transparency and reduce the risks of regulatory capture.

29. As regulation is usually proposed as a measure to respond to a perceived risk, RIA should include an assessment of the estimated risk based on the best available knowledge and scientific principles. This should also include an examination of potential risk-risk tradeoffs, where a reduction in risk in one area may inadvertently give rise to an increased risk in another area.

30. While risk assessment, risk management and risk communication are all part of a cycle of responsive regulation, in practice this can prove very challenging and it is not aided by the fact that Governments are not generally very explicit about identifying what risks are to be managed and how. The starting point is for governments to develop a policy framework including guidance to support regulators and policy makers when identifying the risks that they are responsible for addressing. Guidance is also necessary to support and encourage regulatory agencies to assess their compliance and enforcement strategies against risk criteria to identify and allocate resources to the most critical risks. OECD experience suggests that there is considerable potential scope to access expertise from within individual regulators to promote a dialogue and cross learning about how to best identify and manage risks.

2. Implementation of Principles 4 and 9 in OECD countries

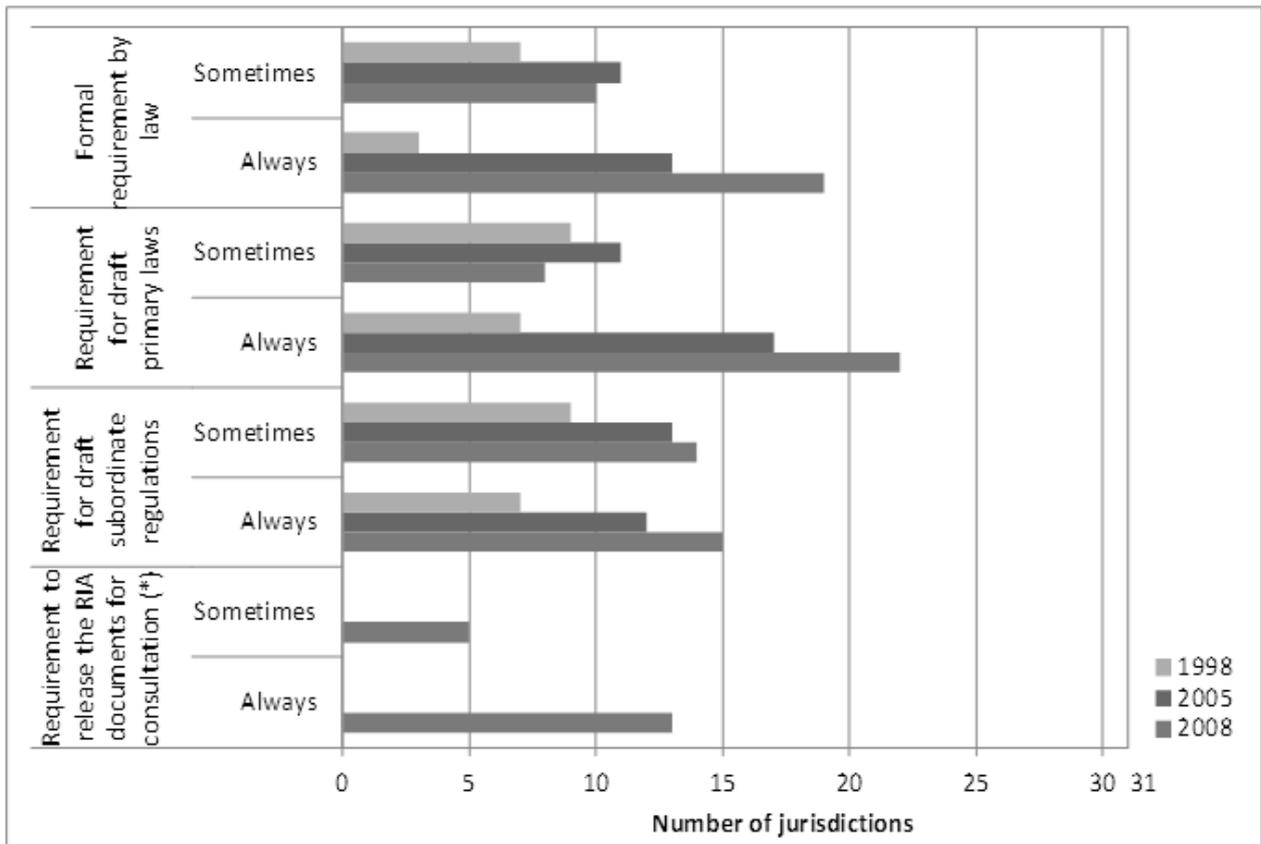
31. OECD country reviews of regulatory reform have focused on the effectiveness of the implementation of RIA based on an assessment of the following ten areas of practice: political commitment and support for RIA; allocation of the RIA programme elements; developing the analytical capacity of regulatory policy makers; use of a consistent but flexible analytical method; targeted use of RIA resources; strategic collection of evidence and data for policy making; early integration in the policy making process; communication and consultation; public involvement; applying RIA to the stock (ex post) as well as to new regulation (ex ante).

32. Developed in 1997, these ten areas of practice continue to provide a reference against which the examination of institutional practices for RIA can be discussed. They have been the basis of indicators in the past. An issue to be alert to, however, is the problem commonly identified in country studies that the effective use of RIA by countries to improve the quality of laws, frequently falls short of the scope envisaged by formal administrative arrangements. This is an issue that deserves further discussion and elaboration in the break out session.

Maximising political commitment to RIA

- In the **United States**, the principal tool for measuring the effects of proposed federal regulations is RIA, which was pioneered beginning in 1974 with inclusion of benefit-cost analysis in Inflation Impact Assessments. In fact, the United States was the first country to adopt broad requirements for benefit-cost analysis for regulation. Full RIA has been required by executive order for all major social regulations from 1981, with the Office for Management and Budget (OMB) responsible for quality control. The value of RIA has been considerably enhanced by its full integration into the public consultation process. Political commitment to RIA has come from the highest political level in the United States. The obligation to carry out RIA has, since its inception in 1981, been through executive orders. Moreover, each president since 1981 has issued his own revision of RIA, ensuring that the commitment to this tool is reaffirmed.
- In **Mexico**, the use of RIA was formalised through amendments to the Federal Law of Administrative Procedure, in 2000. RIA became compulsory for all types of legal measures of general application that create compliance costs, from formats to major implementation rules. They have to be submitted to COFEMER, except for the subjects that the law explicitly excludes, like those of fiscal nature, or acts by sub-national administrations (states or municipalities). Ministries and regulatory agencies are responsible for elaborating RIAs, while COFEMER is responsible for reviewing them. RIAs include a discussion of objectives, obligations to be imposed, alternatives considered, potential costs and benefits, and the results of public consultation.

Figure 1: Requirements for RIA



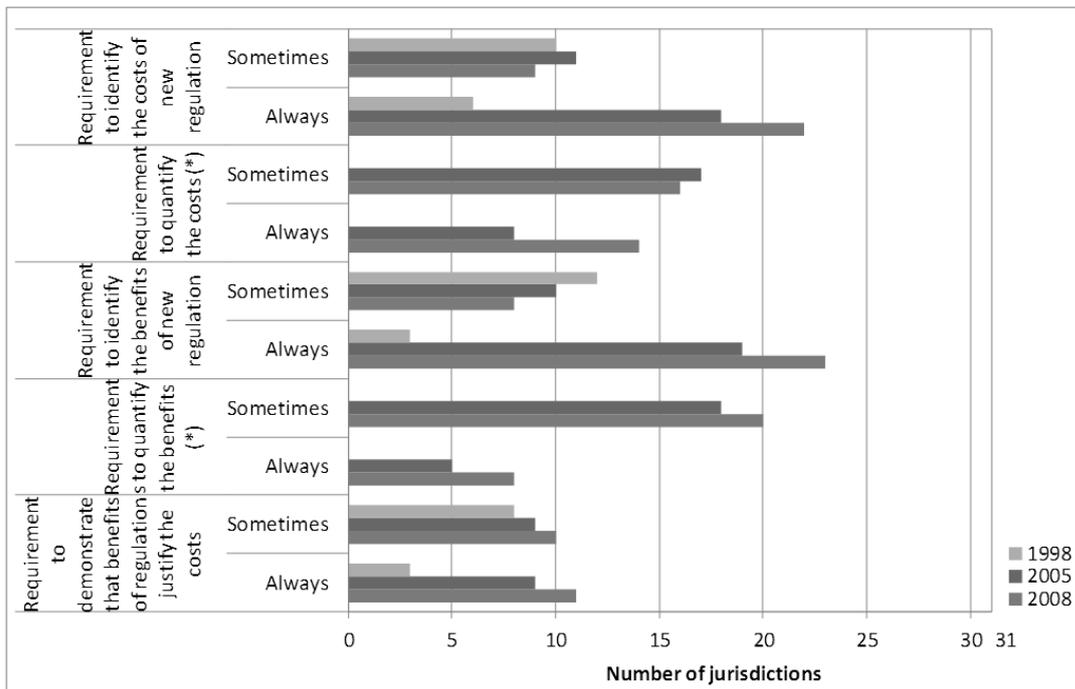
Notes: Data for 1998 are not available for the European Union, Luxembourg, Poland and the Slovak Republic. This means that this figure is based on data for 27 countries in 1998 and for 30 countries and the EU in 2005/2008.

(*) No data are available prior to 2008.

'Sometimes' corresponds to 'Only for major regulations' and 'In other selected cases'.

Source: OECD Regulatory Management Systems' Indicators Survey 1998, 2005 and 2008. www.oecd.org/regreform/indicators.

Figure 2: Requirements for RIA: costs and benefits



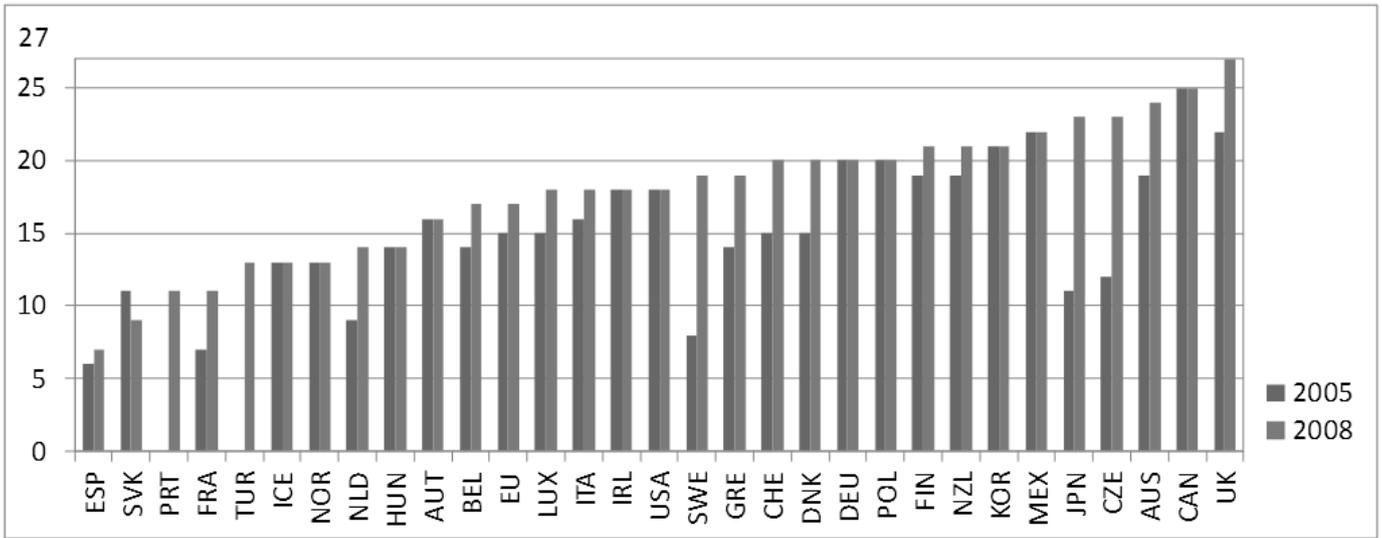
Notes: Data for 1998 are not available for the European Union, Luxembourg, Poland and the Slovak Republic. This means that this figure is based on data for 27 countries in 1998 and for 30 countries and the EU in 2005/2008.

(*) No data are available prior to 2005.

'Sometimes' corresponds to 'Only for major regulations' and 'In other selected cases'.

Source: OECD Regulatory Management Systems' Indicators Survey 1998, 2005 and 2008, www.oecd.org/regreform/indicators.

Figure 3: Requirements for RIA processes used by central governments



Note: This figure summarises information about the existence of key elements of RIA processes in OECD member countries. It does not offer information on the quality of specific RIAs.

Source: OECD Regulatory Management Systems' Indicators Survey 2005 and 2008. www.oecd.org/regreform/indicators

Underlying questions:

- a) Is regulatory impact analysis (RIA) carried out before new regulation is adopted?
- c) Is a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of the RIA?
- e) Is there a clear "threshold" for applying RIA to new regulatory proposals?
- h(i) Is RIA required by law or by a similarly strictly binding administrative instrument?
- h(ii) Is RIA required for draft primary laws?
- h(iii) Is RIA required for draft subordinate regulations?
- h(iv) Are regulators required to identify the costs of new regulation?
If yes:
Is the impact analysis required to include the quantification of the costs?
- h(v) Are regulators required to identify the benefits of new regulation?
If yes:
Is the impact analysis required to include the quantification of the benefits?
- h(vi) Does the RIA require regulators to demonstrate that the benefits of new regulation justify the costs?
- h(vii) Are RIA documents required to be publicly released for consultation with the general public?
- k) Are *ex post* comparisons of the actual vs predicted impacts of regulations made?
- l) Is there an assessment of the effectiveness of RIA in leading to modifications of initial regulatory proposals undertaken?

Weights:

- a) if no=0, in some cases=1, always=2
- c) if yes, weight=3
- e) if yes, weight=2
- h(i) to h(vii):
if no=0,
in other selected cases=1,
only for major regulation=1,
always=2
- k) if yes, weight=1
- l) if yes, weight=1

3. Organisational Information and Questions for Discussion

Purpose of the Breakout session

33. The purpose of this interactive session is to:
- identify effective country practices in systematically implementing principles in the Recommendation
 - identify priorities for implementation and
 - discuss obstacles and ways to overcome them

Schedule for the Breakout session

- Introduction to the process of the session by the facilitator
- Introduction to principles by OECD staff
- Critical country reflections
- Another country will comment on the reflections
- Discussion: What practices reflect a systematic implementation of the Recommendation?
- Discussion: Which of these practices merit a more systematic adoption in OECD countries in the next five years?
- Discussion: What obstacles could you face in implementing practices like this, and how can these obstacles be overcome?
- Wrap-up/conclusion

Organisation of the Breakout session

34. Participants will start directly in their breakout groups (10-20 participants each group) after the coffee break. Each breakout group will have a facilitator and a rapporteur. The role of the facilitator is to ensure that questions are understood, to stimulate the discussions, limit off-topic discussions, and ensure all questions are answered in time. The role of the rapporteur is to take notes and report answers to all the questions below back to the plenary in the form of 3-5 key points on each of the questions. About 10 minutes are planned in for reporting back on each breakout session in the corresponding plenary session.

The success of the breakout session depends on the participants. Participants are kindly asked to read the background readings before and reflect upon the questions for discussion.

BIBLIOGRAPHY

OECD (2011), [Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest](#), OECD Publishing.

OECD (2010), [Risk and Regulatory Policy: Improving the Governance of Risk](#), OECD Publishing.

OECD (2009a), [Indicators of Regulatory Management Systems, 2009 Report](#), OECD Publishing. OECD (2009b), [Regulatory Impact Analysis: A Tool for Policy Coherence](#), OECD Publishing.

Annex - Text of Principles 4 and 9 in the Recommendation

4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.

- 4.1 Adopt *ex ante* impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.
- 4.2 *Ex ante* assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.
- 4.3 *Ex ante* assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. *Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.
- 4.4 When regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. *Ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects.
- 4.5 Regulatory Impact Analysis should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process.
- 4.6. *Ex ante* assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means.

4.7 When carrying out an assessment, officials should:

- Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects;
- Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets;
- Evaluate the impact on small to medium sized enterprises and demonstrate how administrative and compliance costs are minimised.

4.8 RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.

9.1 Governments should include their strategy on risk and regulation in their public statement underpinning regulatory reform. They should develop and regularly update guidance on the methodologies for risk assessment, management and communication concerning the use of regulation to achieve public and environmental protection.

9.2 Regulators should build an accountable system for review of risk assessments accompanying major regulatory proposals that present significant or novel scientific issues, for example through expert peer review.

9.3 Evaluate the likely effectiveness of risk strategies against their capacity to identify and inform regulatory actions that will help to avoid or mitigate catastrophic or systemic risks and minimise unintended consequences and “risk-risk” tradeoffs. Ensure that risk systems incorporate lessons from past events, including failures and close calls.

9.4 Governments should consider the use of risk-based approaches in the design and enforcement of regulatory compliance strategies to increase the likelihood of achieving compliance goals and to minimise the imposition of costs on citizens and businesses through compliance and enforcement procedures.

9.5 Regulators should be required to develop, implement and review regulatory compliance strategies against risk-based criteria.

9.6 Where the principle of precaution is applied, regulatory agencies must build an accountable system for review as scientific information becomes available.

Ex-Post Regulatory Evaluation

Principle 5: Discussion Note

Author: Christiane Arndt and Nick Malyshev, OECD Regulatory Policy Division

Breakout Group 3: June 3, 16h15-18h00

1. Importance of Principle 5

35. The evaluation of existing policies through ex post impact analysis is necessary to ensure that regulations are effective and efficient. Furthermore, in the absence of a process of renewal, the volume of red tape and regulatory costs tends to accrete over time. This complicates the daily life of citizens and impedes the efficient functioning of business. Consideration should be given early in the policy cycle to the performance criteria for ex post evaluation, including whether the objectives of the regulation are clear, what data will be used to measure performance as well as the allocation of institutional resources (OECD, 2012).

36. It can be difficult to direct scarce policy resources to review existing regulation; accordingly, it is necessary to systematically programme the review of regulation to ensure that ex post evaluation is undertaken. Practical methods include embedding the use of sunset clauses or requirements for mandatory periodic evaluation in rules, scheduled review programmes and standing mechanisms by which the public can make recommendations to modify existing regulation. In some circumstances, the formal processes of ex post impact analysis may inform ongoing policy debate better than ex ante analysis. This is likely to be the case for example, if regulations have been developed under pressure to implement a rapid response (OECD, 2012).

37. The design and organisation of the review procedures need to be carefully considered to deliver meaningful results from reviews. For significant regulations, the conduct of reviews should be independent of the agencies administering the regulation. As regulations usually work in concert with other regulations and administrative procedures, it is important that the processes for review look at the effectiveness of regulation in achieving their policy goals and do not simply take an incremental and atomistic approach. Complementary approaches may, for example focus on the review of industry sectors or opportunities for promoting innovation (OECD, 2012).

2. Implementation of Principle 5 in OECD countries

38. Typically, programmes of administrative simplification focus on identifying opportunities to reduce the administrative burden of complying with regulations through a review of the stock of regulation. However, as these types of programmes are necessarily limited to identifying administrative burdens they do not promote an assessment of the performance of regulatory frameworks in achieving their intended policy objectives. One of the challenges is to identify ways to adapt these administrative burden reduction programmes to deliver more tangible improvements to the regulatory system. Increasingly, countries which have focused their resources on administrative burden reviews are searching for ways to assess and reduce the broader compliance costs of regulation, including identifying alternative ways of achieving public policy goals.

39. The number of countries adopting mechanisms for ex post evaluation of regulations has increased over the last decade. In some policy areas, the majority of OECD member countries report now having automatic review requirements for primary laws (see box).

Ex post evaluation in OECD countries

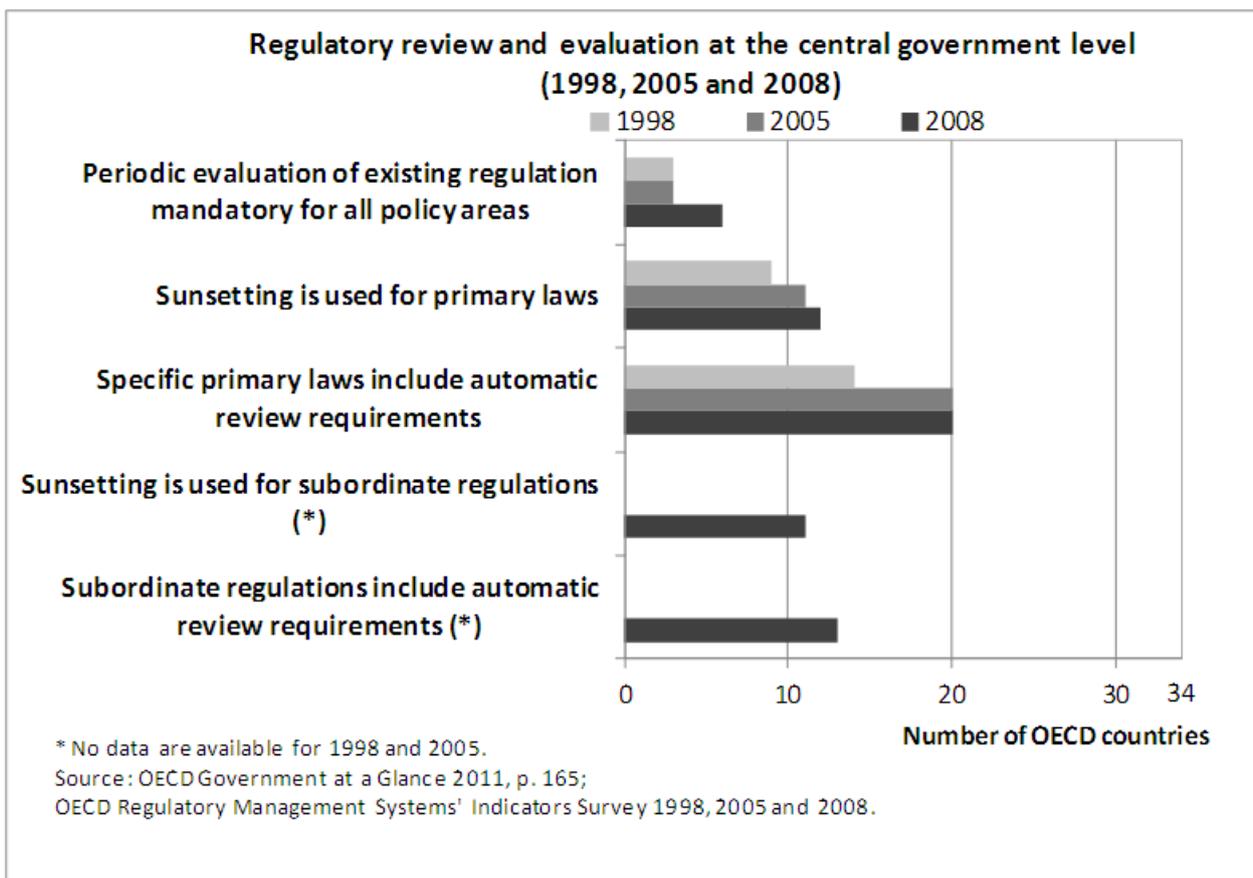
In a number of OECD countries regulations are scheduled to be reviewed some years after their enactment. For example, the impact assessment form in the *United Kingdom* requires officials to commit to a date when they will review the actual costs and benefits of any new proposal, and establish whether the policy has achieved the desired effects. This post implementation review should typically occur within three years of implementation, depending on the nature of the policy. The review should establish a baseline and include the success criteria against which the effectiveness of the policy will be judged. Departments are also asked to consider the scope for simplification, including revisiting EU directives as part of the EU programme of simplification where relevant. Where appropriate, the impact assessment guidance additionally recommends that opportunities to use sunset clauses should be explored (OECD 2010a, p. 112).

The Parliamentary Committee for Legislative Monitoring in *Belgium* is charged with evaluating laws that have been enacted for at least three years. It has to identify possible implementation difficulties (due to complexity, loops, incoherence, vagueness, contradictions) and assess how the law has effectively responded to its initial objective. Requests can be sent by a large number of stakeholders (any administration in charge of implementing law; any authority in charge of law enforcement; any natural or legal person; and deputies and senators). The work of the committee is also to be fed by reports from the Court of Cassation and tribunals on difficulties encountered with laws and from the decisions of the Constitutional Court (OECD 2010b, 33).

Austria has adopted a new regulatory impact assessment system, which is scheduled to enter into force in 2013. It foresees to compare objectives and expected impacts of regulations and policies with actual outcomes within five years after the adoption. The results of this internal evaluation should subsequently be sent to a unit for “outcome controlling” within the Federal Chancellery. After their check for completeness and plausibility of the evaluation, it is then included in the annual report for Parliament (written communication with an Austrian government official, July 2012).

Sources: OECD (2010a), *Better regulation in Europe: United Kingdom*, Paris, OECD; OECD (2010b), *Why Is Administrative Simplification So Complicated. Looking Beyond 2010, Cutting Red tape*, OECD Publishing, Paris;

40. **However, systematic ex post evaluation through ex-post impact analysis is not common in OECD countries.** Only six OECD countries reported in 2008 that periodic evaluation of existing regulation was mandatory for all policy areas and 12 countries report using sunseting including, Australia, Austria, Canada, Finland, France, Germany, Iceland, Korea, New Zealand, Switzerland, the United Kingdom and the United States.



3. Organisational Information and Questions for Discussion

Purpose of the Breakout session

41. The purpose of this interactive session is to:
- identify effective country practices in systematically implementing principles in the Recommendation
 - identify priorities for implementation and
 - discuss obstacles and ways to overcome them

Schedule for the Breakout session

- Introduction to the process of the session by the facilitator
- Introduction to principles by OECD staff
- Critical country reflections
- Discussion: What practices reflect a systematic implementation of the Recommendation?
- Discussion: Which of these practices merit a more systematic adoption in OECD countries in the next five years?
- Discussion: What obstacles could you face in implementing practices like this, and how can these obstacles be overcome?

- Wrap-up/conclusion

Organisation of the Breakout session

42. Participants will start directly in their breakout groups (10-20 participants each group) after the coffee break. Each breakout group will have a facilitator and a rapporteur. The role of the facilitator is to ensure that questions are understood, to stimulate the discussions, limit off-topic discussions, and ensure all questions are answered in time. The role of the rapporteur is to take notes and report answers to all the questions below back to the plenary in the form of 3-5 key points on each of the questions. About 10 minutes are planned in for reporting back on each breakout session in the corresponding plenary session.

The success of the breakout session depends on the participants. Participants are kindly asked to read the background readings before and reflect upon the questions for discussion.

BIBLIOGRAPHY

- OECD (2012), "[International Practices on ex post Evaluation](#)", in OECD, *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, OECD Publishing. Pp. 9-26.
- OECD (2012), [Recommendation of the Council on Regulatory Policy and Governance](#), OECD Publishing.
- OECD (2011), "[Evaluating regulatory performance](#)", in OECD, *Government at a Glance 2011*, OECD Publishing.
- OECD (2009), [Indicators of Regulatory Management Systems. 2009 Report](#), OECD Publishing. Pp. 89f.; 126.

Annex - Text of Principle 5 in the Recommendation

5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent and delivers the intended policy objectives.

- 5.1 The methods of Regulatory Impact Analysis should be integrated in programmes for the review and revision of existing regulations. These programmes should include an explicit objective to improve the efficiency and effectiveness of the regulations, including better design of regulatory instruments and to lessen regulatory costs for citizens and businesses as part of a policy to promote economic efficiency.
- 5.2 Reviews should preferably be scheduled to assess all significant regulation systematically over time, enhance consistency and coherence of the regulatory stock, and reduce unnecessary regulatory burdens and ensure that significant potential unintended consequences of regulation are identified. Priority should be given to identifying ineffective regulation and regulation with significant economic impacts on users and/or impact on risk management. The use of a permanent review mechanism should be considered for inclusion in rules, such as through review clauses in primary laws and sunseting of subordinate legislation.
- 5.3 Systems for reviews should assess progress toward achieving coherence with economic, social and environmental policies.
- 5.4 Programmes of administrative simplification should include measurements of the aggregate burdens of regulation where feasible and consider the use of explicit targets as a means to lessen administrative burdens for citizens and businesses. Qualitative methods should complement the quantitative methods to better target efforts.
- 5.5 Employ the opportunities of information technology and one-stop shops for licences, permits, and other procedural requirements to make service delivery more streamlined and user-focused.
- 5.6 Review the means by which citizens and businesses are required to interact with government to satisfy regulatory requirements and reduce transaction costs.

Regulatory Coherence across Levels of Government and Regulatory Management Capacity at Sub-National Level

Principles 10 and 11: Discussion Note

Authors: Gregory Bounds and Nick Malyshev, OECD Regulatory Policy Division

Breakout Group 4: June 4, 10h45-12h20

1. Importance of Principles 10 and 11

43. The distinction between federal and unitary countries does not encompass the range and variety of the institutional context within which all countries are decentralised to one degree or another. What is consistent is that the relationship among levels of government resulting from decentralisation is characterised by mutual dependence, since it is impossible to have a complete separation of policy responsibilities and outcomes among levels of government. It is necessarily a complex relationship, simultaneously vertical, across different levels of government, horizontal, within the same level of government, and networked.

44. The exercise of regulatory authority by multiple levels of government should, in principle, operate in concert to achieve national economic and social policy goals, such as the creation of common markets and the equal protection of citizens and of the environment. However, the complexity of these relationships creates the potential for horizontal and vertical gaps in the capacities of government to operate effectively and in harmony. These gaps include: the fiscal capacity of governments to meet obligations, information asymmetries between levels of government, gaps in administrative accountability, with administrative borders not corresponding to functional economic and social areas at the sub-national level, gaps in policy design, when line ministries take purely vertical approaches to cross-sectoral regulation that can require co-design or implementation at the local level and often a lack of human, or infrastructure resources to deliver services.

45. Members and non-Members are increasingly developing and using a wide variety of mechanisms to help bridge these gaps and improve the coherence of regulatory multi-level policy making. These mechanisms may be “binding”, such as legal mechanisms, or “soft”, such as platforms of discussion, and they must be sufficiently flexible to allow for territorially specific policies. Involvement of sub-national governments in regulation-making takes time, but medium-long term benefits should outweigh the costs of co-ordination. Countries that successfully approach regulatory reform in this way can expect to reap productivity benefits across the economy, through the redesign of regulatory process and the removal of regulatory burdens and better co-ordinated action.

46. Co-ordination across levels of government should be accompanied by efforts to develop regulatory management capacity at sub-national level. National governments have a role to play in supporting the development of local capacities for regulatory management, through appropriate governance and fiscal arrangements and incentives, as well as providing advice and training to officials.

2. Implementation of Principles 10 and 11 in OECD countries

47. Gaps in capacity not only involve the ability of sub-national governments to implement national regulation but also to define their own strategy for regulatory management, including the assessment of regulatory impact and reforms needed. As demands for regulatory governance become more strategic, the capacity of the sub-national level is often insufficient or reveals important disparities among local actors

(in particular across urban and rural areas). There is also a trade-off between the salience of information available at the local level (through close contact with citizens and businesses) and the risk of capture, or a narrow conception of the public interest.

International experiences with institutional design for regulatory reform at the sub-national level

In British Columbia, one of the first actions taken by the administration that took over in 2001 to demonstrate its strong commitment to regulatory reform was the appointment of a ministry-level agency responsible for deregulation. In fact, regulatory reform was the only responsibility of the Minister of State for Deregulation. The office has gone through several name changes. It evolved to Regulatory Reform Office and now to Straightforward BC.

The core responsibilities of Straightforward BC include developing and executing the government's regulatory reform strategy, maintaining the central database of regulatory counts, and producing reports for cabinet and quarterly reports for the public (advocating). Furthermore, under the *Regulatory Reporting Act*, enacted in November 2011, the province is now required to publish annual reports on its regulatory reform progress.

Regarding the challenging task, Straightforward BC requires a copy of the *Regulatory Criteria Checklist* when regulation is going to be introduced. It also conducts spot checks of the central database to evaluate how well it is being kept up. Concerning the facilitating task, Straightforward BC does not see its role as that of gatekeeper or police, but of facilitator. A key role the office has played is to help staff in other ministries evaluate whether additional regulation is the right approach and understand the implications of regulating. In addition to specific training for the staff appointed by every ministry to handle regulatory reform, in the first few years of the reforms Straightforward BC organised workshops on specific topics such as plain language, cost-benefit analysis, and outcome-based regulation. An annual conference has provided a good opportunity to reinforce that regulatory reform is a priority across all of government, bringing together the facilitating and advocating tasks. Going forward, one of the main strategies consists on developing in-house expertise in the use of continuous improvement methodologies and business process mapping to assist all ministries in advancing simplification initiatives.

This institutional infrastructure has been critical to achieve a 42% reduction in regulatory requirements since 2001 and a commitment for zero net increase until 2015.

In Australia, all states have established a body responsible for screening compliance with regulatory impact assessments. In Victoria, for example, the *Victorian Competition and Efficiency Commission (VCEC)* was established under an executive order that explicitly provides for its independence. The scope of its oversight function includes the review of measurements of the administrative burdens of regulations. The VCEC also introduced in 2005 the *Victorian Guide to Regulation*, later revised in 2007. It provides detailed information of the legislative process and a step-by-step guide to the preparation of RIA and business impact assessments.

Source: Garcia Villarreal, Jacobo Pastor (2010), OECD (2010), *Multi-level Regulatory Capacity in Australia*, Paris, pp. 61-64, and Straightforward BC (2012), *Achieving a Modern Regulatory Environment: BC's Regulatory Reform Initiative, First Annual Report – 2011/2012*, available at www.straightforwardbc.gov.bc.ca.

National support to develop regulatory policies

In **Mexico**, the Federal Law on Administrative Procedure grants on COFEMER the mandate to promote regulatory quality in states and municipalities. Accordingly, COFEMER helps states develop their own laws on regulatory improvement. 20 out of the 31 federal states and the Federal District have a law on better regulation, mandating state authorities and, sometimes, municipalities, to pursue regulatory improvement policies. In addition, eight states have laws on economic development containing a section on regulatory improvement.

The number of state and municipal public servants trained by COFEMER increased from 147 in 2008, to 370 in 2009, 484 in 2010, 647 in 2011, and 6 540 in 2012. This is in addition to the National Conference on Regulatory Improvement that COFEMER organises twice a year.

One of the main multi-level co-ordination mechanisms used in Mexico consist of covenants between COFEMER, states and municipalities. These covenants establish that COFEMER will provide training, advice, and implementation assistance concerning regulatory policies and tools. For example, COFEMER has led the implementation of the System for quick business start up (SARE), which is a simplification programme for start-up procedures. Up until October 2011, 189 SARE had been implemented, leading to the establishment of 264 489 businesses and 701 157 jobs, with an investment of \$42 441 million pesos. According to COFEMER, the turnaround time for the municipal start-up license went down from 25.2 to 2.4 days in the municipalities that established SARE between March 2010 and November 2011.

Recently, COFEMER started promoting a regulatory governance cycle approach in states and municipalities. Accordingly, it has helped states and municipalities to develop and apply RIA, build centralised registries, and carry out regulatory reviews.

In **Australia** the Council of Australian Governments (COAG) is the main forum for the development and implementation of inter jurisdictional policy, comprising the Australian Prime Minister as its chair, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association (ALGA). It was established in May 1992 out of a shared agenda aimed at advancing microeconomic reform and reducing the economic costs of duplication and overlap (Hollander, 2006). This agenda led to the historic National Competition Principles agreement, which was signed by COAG in 1995. In 2006, COAG reached an agreement to implement a further ambitious programme of national reform, including national regulatory reform called the Australian National Reform Agenda (NRA)

COAG's regulatory reform effort focuses on reducing the regulatory burden across the three levels of government. As part of the regulatory reform stream of the 2006 National Reform Agenda (NRA), governments agreed to a range of measures to ensure best-practice regulation making and review, and to commence the reform of selected specific regulation —hotspots|| .7 The best practice measures included a commitment from all governments to:

establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition;

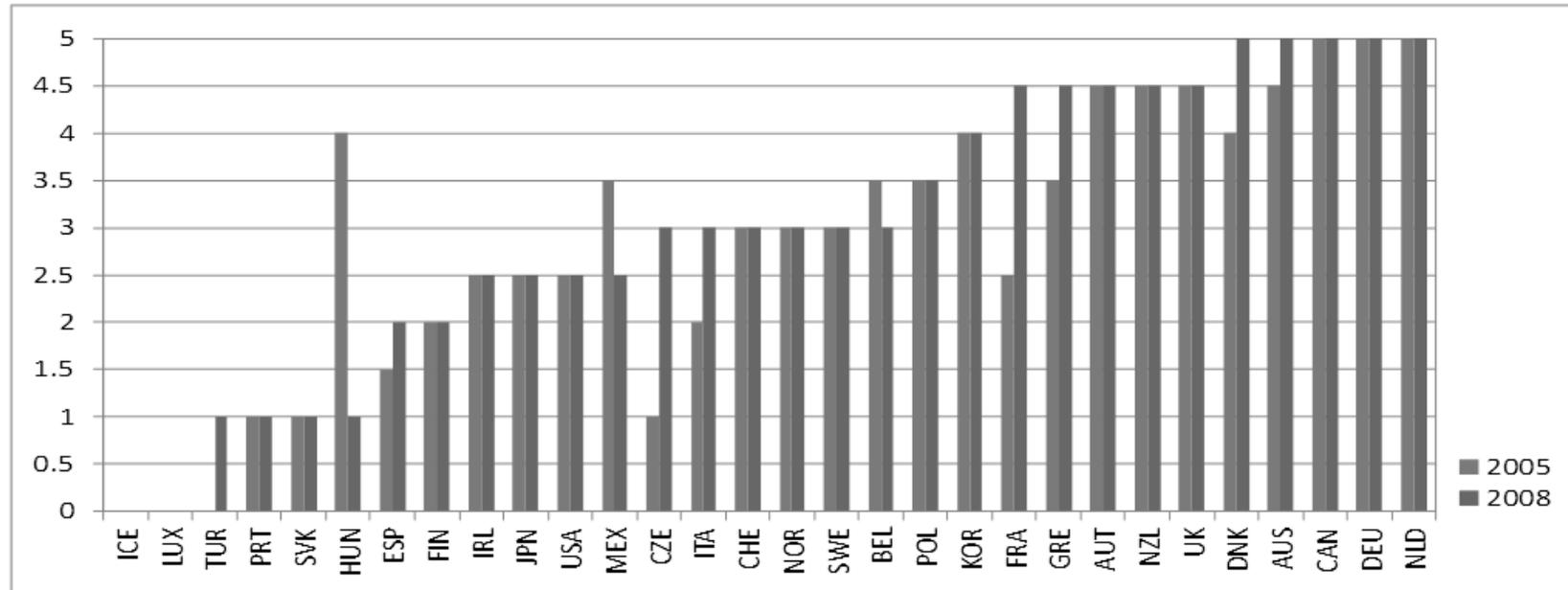
undertake targeted public annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits to business and the community;

identify further reforms that enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role and operation of regulatory bodies; and

in principle, aim to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden

Source OECD (2012c). *Mexico, Towards a whole-of-government perspective to regulatory improvement*, Paris, OECD Publishing. OECD 2010, *Multilevel Regulatory Capacity in Australia* COAG (2006), —Communiqué 10 February 2006, www.coag.gov.au/coag_meeting_outcomes/2006-02-10/index.cfm.

Figure 1: Multi-level co-ordination mechanisms for regulatory policy



Note: This figure summarises information about the existence of formal co-ordination mechanisms between national/federal and state/regional governments with respect to regulatory policy. It does not provide information on their effectiveness. This question is not applicable to the European Union.

Source: OECD Regulatory Management Systems' Indicators Survey 2005 and 2008. www.oecd.org/regreform/indicators

Questions:

Are there formal co-ordination mechanisms between National/Federal and State/regional governments? (in Federal or quasi-federal countries, between national and regional/local governments in unitary countries)

Do any of these mechanisms impose specific obligations in relation to regulatory practice?

Are any of the following regulatory harmonisation mechanisms used?

- Mutual recognition?
- Regulatory harmonisation agreements?
- Strict regulatory uniformity agreements?

Weights:

No=0, Yes=1

No=0, Yes=1

No=0, Yes=1

If not at all, weight=0; if sometimes, weight=0.5; if widely, weight=1

3. Organisational Information and Questions for Discussion

Purpose of the Breakout session

48. The purpose of this interactive session is to
- identify effective country practices in systematically implementing principles in the Recommendation
 - identify priorities for implementation and
 - discuss obstacles and ways to overcome them

Schedule for the Breakout session

- Introduction to the process of the session by the facilitator
- Introduction to principles by OECD staff
- Critical country reflections
- Discussion: What practices reflect a systematic implementation of the Recommendation?
- Discussion: Which of these practices merit a more systematic adoption in OECD countries in the next five years?
- Discussion: What obstacles could you face in implementing practices like this, and how can these obstacles be overcome?
- Wrap-up/conclusion

Organisation of the Breakout session

49. Participants will start directly in their breakout groups (10-20 participants each group) after the coffee break. Each breakout group will have a facilitator and a rapporteur. The role of the facilitator is to ensure that questions are understood, to stimulate the discussions, limit off-topic discussions, and ensure all questions are answered in time. The role of the rapporteur is to take notes and report answers to all the questions below back to the plenary in the form of 3-5 key points on each of the questions. About 10 minutes are planned in for reporting back on each breakout session in the corresponding plenary session.

The success of the breakout session depends on the participants. Participants are kindly asked to read the background readings before and reflect upon the questions for discussion.

BIBLIOGRAPHY

- OECD (2010), [*Multi-level Regulatory Capacity in Australia*](#), Paris.
- García Villarreal, Jacobo Pastor (2010), [*Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level*](#), *OECD Working Papers on Public Governance*, No. 18, Paris, OECD Publishing.
- Rodrigo, D., L. Allio and P. Andres-Amo (2009), "[*Multi-Level Regulatory Governance: Policies, Institutions and Tools for Regulatory Quality and Policy Coherence*](#)", *OECD Working Papers on Public Governance*, No. 13, OECD publishing.
- OECD (2007), [*Italy: Ensuring Regulatory Quality Across Levels of Government*](#), Paris.

Annex - Text of Principles 10 and 11 in the Recommendation

10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supra national, the national and sub-national levels of government. Identify cross cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.

- 10.1 Design appropriate co-ordination mechanisms to develop regulatory policies and practices for all levels of government, including where appropriate through the use of measures to achieve harmonisation, or through the use of mutual recognition agreements;
- 10.2 Develop tools to diagnose regulatory issues that cut across levels of government (including supra-national organisations) to identify and reform overlapping regulations;
- 10.3 Capitalise on the proximity of sub-national governments to local firms and citizens to develop effective consultation procedures in the design of regulation and better reflect local needs in overall regulatory policy, at all levels of government;
- 10.4 Promote information sharing and transparency mechanisms between levels of government to overcome asymmetries of information and promote complementarities across regulations;
- 10.5 Disseminate innovative regulatory practices that take place at the local level, including making effective use of benchmarks among different jurisdictions;
- 10.6 Facilitate local variations and experimentation in regulatory approaches when it is nationally beneficial;
- 10.7 Supranational bodies with rule making powers should be encouraged to consider and apply all relevant aspects of this Recommendation.

11. Foster the development of regulatory management capacity and performance at sub national levels of government.

- 11.1 Governments should support the implementation of regulatory policy and programmes at the sub-national level to reduce regulatory costs and barriers at the local or regional level which limit competition and impede investment, business growth and job creation.
- 11.2 Promote the implementation of programmes to assess and reduce the cost of the compliance with regulation at the sub-national level;
- 11.3 Promote procedures at the sub-national level to assess areas for which regulatory reform and simplification is most urgent to avoid legal vacuum, inconsistencies, duplication and overlap;
- 11.4 Promote efficient administration, regulatory charges should be set according to cost recovery principles, not to yield additional revenue;
- 11.5 Support capacity-building for regulatory management at sub-national level through the promotion of e government and administrative simplification when appropriate, and relevant human resources management policies;

- 11.6 Use appropriate incentives to foster the use by sub-national governments of Regulatory Impact Assessments to consider the impacts of new and amending regulations, including identifying and avoiding barriers to the seamless operation of new and emerging national markets;
- 11.7 Develop incentives to foster horizontal co-ordination across jurisdictions to eliminate barriers to the seamless operation of internal markets and limit the risk of race-to-the bottom practices, develop adequate mechanisms for resolving disputes across local jurisdictions;
- 11.8 Prevent conflict of interest through clear separation of the roles of sub-national governments as regulators and service providers.

Organisation of Regulatory Agencies and Administrative and Judicial Review

Principles 7 and 8: Discussion Note

Authors: Faisal Naru and Daniel Trnka, OECD Regulatory Policy Division

Breakout Group 5: June 4, 10h45-12h20

50. A regulatory agency exists to achieve objectives deemed by the government to be in the public interest. They must exercise their authority within the scope permitted by their legal powers, treat like cases in a like manner and have justifiable reasons for decisions, and for any departure from regular practice. This will help to promote economic activity and support business confidence while building public trust through the effective, consistent and efficient delivery of policy outcomes.

51. The way that a regulatory agency is organized is of great importance to achieve the policy outcomes. The legislation that grants regulatory authority to a specific body should explicitly specify the objectives for doing so. In particular, the legislation should spell out the policy objective it aims to achieve rather than the process by which the objectives will be achieved. Principle based legislation is likely to be the most appropriate way of meeting policy objectives in complex or rapidly changing policy environments.

52. It is also important to consider how governance arrangements of a regulatory agency will influence public trust. Creating a regulatory agency independent from the government and from those it regulates can provide greater confidence that decisions are fair and impartial. This may be warranted when the decisions of the regulatory agency have significant financial and market consequences and are required to be arm's length from the political process to reduce the regulatory risk of investments. The "other side of the coin" of independence is having a system of accountability structures which need to take account of the performance of the regulatory duties.

53. Regulatory agencies should report regularly – either to the legislature or the responsible ministry in their policy area – on the fulfilment of their objectives and the discharge of their functions, including through meaningful performance indicators. Key operational policies and other guidance material, covering matters such as compliance, enforcement and decision review should be publicly available. Regulatory agencies should establish processes for and publish arm's length internal review of significant decisions. Likewise, regulatory agencies should be subject to independent review of regulatory decisions especially those that have significant economic impacts on regulated parties.

54. Effective co-ordination of regulatory activities can also bring significant administrative benefits. The activities of one regulatory agency can overlap and impact on another; either because the harms they regulate are of a similar nature (for example related to consumer protection), or because they interact with the same businesses. Regulators should be encouraged to see themselves as part of an integrated system of regulation and to work together and learn from each other. The first step is to improve awareness of the complexity in the regulatory system by developing a complete list of regulatory agencies, including their functions and responsibilities.

55. Inspections and enforcement actions are generally the primary way through which businesses "experience" regulations and interact with regulators. Inadequate enforcement and inspection practices can mean that improvements to the design of regulations fail to realise their full benefits. Reform of inspections and regulatory delivery to make them more compliance-focused, supportive and risk-based can all lead to

real and significant improvements for economic actors, even within the framework of existing regulations. Getting the policy settings right and deciding which inspection bodies and regulatory enforcement or regulatory delivery institutions should exist, and with what mandate, is essential. For most countries, the existing institutional structures and resources allocation have evolved over many years, incrementally through legislative and governmental decisions focusing on one particular issue at a time, without the benefit of a comprehensive perspective. As a result, government structures often have many overlapping or partly duplicating functions.

56. It is also important to ensure there are effective systems for the review of regulatory activity by regulatory agencies. Access to appeal procedures should be swift and uncomplicated without the excessive burden of legal costs. To promote economic activity and support business confidence there should be fast resolution of all approval processes necessary to start a business, and infringement processes should be concluded within clear timeframes.

57. The establishment of fixed time limits within which an authority should be expected to give notice of a decision, combined with silence means consent rules, are mechanisms to improve the responsiveness of regulatory agencies and to facilitate quick resolution of issues in standard cases. It is acknowledged that exceptions from standard time frames are likely to be necessary to allow for special and complex matters. However, good practice is facilitated by identifying a narrow list of areas where exceptions may be applied and, even in such cases, applicants should expect to receive notice of the progress of their administrative matter.

58. Currently, the overall systemic structure of regulatory agencies is not known across OECD countries. There are large variances in the organisation and structure of regulatory agencies from national to regional, ministerial to autonomous, etc. The OECD has launched a consultation paper on the governance of regulators to begin to explore these issues further. In addition the 2013 Product Market Regulation Survey will also provide further information on the regulatory management of network sectors (energy, transport, and telecommunications).

59. Ensuring effective compliance with rules and regulations is an important factor in creating a well-functioning society and trust in government. It is a major element in safeguarding health and safety, protecting the environment, securing stable state revenue and delivering other essential public goals. An increasing number of OECD countries are coming to realise the importance of the enforcement phase in ensuring the quality and effectiveness of regulatory policy and delivery and for reducing the overall level of regulatory burdens imposed on businesses and citizens. The challenge for governments is to develop and apply enforcement strategies that achieve the best possible outcomes by achieving the highest possible levels of compliance, while keeping the costs and burden as low as possible. A well-formulated enforcement strategy is one that provides correct incentives for the regulated subjects as well as appropriate guidelines for enforcement staff, and minimizes both the monitoring effort and the costs for the regulated subjects and the public sector.

Organisational Information and Questions for Discussion

Purpose of the Breakout session

60. The purpose of this interactive session is to:
- identify effective country practices in systematically implementing principles in the Recommendation on:
 - *A consistent policy on the system, role and functions of regulatory agencies*
 - *The use and requirement of regulatory agencies to employ good regulatory practice tools such as RIA and engaging with stakeholders*
 - *Compliance strategies, inspection arrangements and regulatory sanctions.*
 - identify priorities for implementation and
 - discuss obstacles and ways to overcome them

Schedule for the Breakout session

- Introduction to the process of the session by the facilitator
- Introduction to principles by OECD staff
- Critical country reflections Portugal
- Critical country reflections United Kingdom
- Discussion: What practices reflect a systematic implementation of the Recommendation?
- Discussion: Which of these practices merit a more systematic adoption in OECD countries in the next five years?
- Discussion: What obstacles could you face in implementing practices like this, and how can these obstacles be overcome?
- Wrap-up/conclusion

Organisation of the Breakout session

61. Participants will start directly in their breakout groups (10-20 participants each group) after the coffee break. Each breakout group will have a facilitator and a rapporteur. The role of the facilitator is to ensure that questions are understood, to stimulate the discussions, limit off-topic discussions, and ensure all questions are answered in time. The role of the rapporteur is to take notes and report answers to all the questions below back to the plenary in the form of 3-5 key points on each of the questions. About 10 minutes are planned in for reporting back on each breakout session in the corresponding plenary session.

The success of the breakout session depends on the participants. Participants are kindly asked to read the background readings before and reflect upon the questions for discussion.

BIBLIOGRAPHY

[Governance Principle Paper]

Draft OECD Best Practice Principles: the Governance of Regulators [GOV/RPC(2013)7].

Draft OECD Best Practice Principles: Improving Regulatory Enforcement and Inspections, GOV/RPC(2013)5.

Annex - Text of Principles 7 and 8 in the Recommendation

7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.

7.1 The legislation that grants regulatory authority to a specific body, should clearly state the objectives of the legislation and the powers of the authority.

7.2 To ensure that regulatory agencies are integrated in the regulatory system, governments should compile and maintain a public register of all entities in government with authority to exercise regulatory functions. The register should include the details of the statutory objectives of each regulatory authority and a listing of the regulatory instruments that it administers.

7.3 Independent regulatory agencies should be considered in situations where:

- There is a need for the regulatory agency to be independent in order to maintain public confidence;
- Both the government and private entities are regulated under the same framework and competitive neutrality is therefore required; and
- The decisions of regulatory agencies can have significant economic impacts on regulated parties and there is a need to protect the agency's impartiality.

7.4 Mechanisms of public accountability are required that clearly define how a regulatory agency is to discharge its responsibility with the necessary expertise as well as integrity, honesty and objectivity.

7.5 Regulatory agencies should be required to follow regulatory policy including engaging with stakeholders and undertaking RIA when developing draft laws or guidelines and other forms of soft law.

7.6 Agency performance should be subject to regular external evaluation.

8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations, and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.

8.1 Citizens and businesses that are subject to the decisions of public authorities should have ready access to systems for challenging the exercise of that authority. This is particularly important in relation to regulatory sanctions, i.e. sanctions issued by an authority in virtue of a regulation. Ci

- 8.2 This access should include the right to appeal the decisions of regulators on legal grounds, including on the grounds of procedural fairness and due process. This should also include the possibility to challenge in court the legality of any statutory provision, on which decisions of regulators are based, *vis-à-vis* higher hierarchical legal norms, including constitutional norms.
- 8.3 In principle, appeals should be heard by a separate authority than the body responsible for making the original regulatory decision.
- 8.4 Governments should, where appropriate, establish standard time periods within which applicants can expect an administrative decision to be made.

International Regulatory Co-operation (IRC)

Principle 12: Discussion Note

Céline Kauffmann, OECD Regulatory Policy Division

Breakout Group 6: June 4, 10h45-12h20

What is international regulatory cooperation? Any agreement or organisational arrangement, formal or informal, between countries (at the bilateral, regional or multilateral level) to promote some form of co-operation in the design, monitoring, enforcement, or ex post management of regulation. IRC is not restricted to its strict equivalence with international legal obligations. It also includes non-binding agreements and voluntary approaches. IRC is not limited to the design phase of the regulatory governance cycle. It may be carried out in the monitoring or enforcement phase; or involve the full regulatory governance cycle.

1. Importance of Principle 12

62. Pursuing IRC has become essential for governments to ensure the effectiveness of regulatory systems at achieving public policy goals while preventing regulation from becoming an inappropriate impediment to international flows, such as trade or investment. The past half-century has witnessed the progressive emergence of an open, dynamic, globalised economy that has created ever-closer inter-linkages among national economies. At the same time, intensification of global non-economic challenges, such as those pertaining to the environment (air or water pollution for example), human health or safety has shown the limit of domestic action to address issues that are cross-border in nature. Attention was drawn even more strongly to the importance of IRC by the economic crisis that began in 2008, whose origin can in part be attributed to failings in national regulations and in policy coordination among countries.

63. Through Principle 12 of the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance, OECD countries have acknowledged the potential of IRC to better manage global goods and risks, to make markets function better and level the playing field, to reduce costs and build regulatory capacity (see Annex 1). In effect, the evidence, as systematically collected in OECD (2013), shows that governments do increasingly seek to ensure greater co-ordination of their regulatory objectives, processes and enforcement, through a wide variety of IRC mechanisms and multiple actors.

64. Despite the general acknowledgment of the importance of IRC, the variety of governance arrangements and tools to promote IRC, and their practical consequences, remains not well understood. There is no cross-country consensus yet on the language used in relation to IRC, or on the range and definition of the different mechanisms in the hands of policy makers to promote IRC. The quantitative evidence on the benefits and costs of IRC remains scant. Changing language and anecdotal evidence generate uncertainty with regards to the benefits and costs of regulatory co-operation and prevent systematic and rational decision making on IRC. OECD (2013) highlights that there is still a need to develop greater guidance to countries on how to implement more systematically Principle 12 of the Recommendation based on emerging successful practices in countries.

65. The break out session on IRC of the Stockholm Workshop precisely provides the opportunity to delegates and experts to develop a common understanding of how to implement Principle 12. In particular, the session seeks to discuss the scope of application of the Principle (what IRC approaches does it refer to?) and to identify the practices already in use or under development in countries with the potential to help a systematic implementation of the Recommendation.

2. Implementation of Principle 12 in OECD countries

66. In relation to IRC, the Recommendation urges countries to:

- take into account relevant international regulatory settings when formulating regulatory proposals to foster global coherence.
- act in accordance with their international treaty obligations.
- co-operate with other countries to promote the development and diffusion of good practices and innovations in regulatory policy and governance.
- contribute to international fora which support greater International Regulatory Co-operation.
- avoid the duplication of efforts in regulatory activity in cases where recognition of existing regulations and standards would achieve the same public interest objective at lower costs.
- open consultation on regulatory proposals to receiving submissions from foreign interests.

67. In practice, while OECD (2013) takes stock of some interesting practices in relation to IRC that could provide models for countries (see Box), decision making on IRC remains mainly guided by political considerations and is neither informed by a clear understanding of benefits, costs and success factors of the diverse IRC options, nor enforced in a systematic way and following general principles of good regulatory governance. In particular, OECD (2013) notes:

- Formal cross-sectoral requirement to consider all relevant frameworks for co-operation in foreign jurisdictions when developing regulatory measures is only mentioned by a third of the respondents to the IRC Survey (see Annex 2). Even where such a formal requirement exists, there is great heterogeneity in the way it is implemented.
- Two thirds of respondents to the IRC Survey report sectoral or cross-sectoral requirements to systematically consider recognition and incorporation of international standards in the formulation or revision of domestic standards (see Annex 2). However, almost no country is able to provide an estimate of the share of technical regulations equivalent to international standards. And according to Fliess, et al. (2010), there is not much guidance offered by various governments and standards bodies to integrate international standards in regulations.
- The review of evidence confirms the increased internationalisation of regulation, but through a widening range of formal and informal, broad and specific IRC mechanisms. The EU model of regulatory harmonisation through supra-national laws and institutions – making extensive use of regulatory policy tools to ensure the quality of regulation - is almost unique. And, while treaty ratification can still be seen as the traditional model of IRC, other mechanisms such as mutual recognition agreements and transgovernmental regulatory networks are gaining prominence in a range of different sectors. There is, however, little structured and systematic evidence on the benefits, costs and challenges of these mechanisms when used in

various country and sector contexts, as countries/institutions making use of these mechanisms rarely engage in RIAs or costs benefits analysis when doing so.

Box – Examples of interesting country practices in relation to IRC

In **Australia**, there is a cross-sectoral requirement to consider “consistency with Australia’s international obligations and relevant international accepted standards and practices” (COAG Best Practice Regulation). Wherever possible, regulatory measures or standards are required to be compatible with relevant international or internationally accepted standards or practices in order to minimise impediments to trade. National regulations or mandatory standards should also be consistent with Australia’s international obligations, including the GATT Technical Barriers to Trade Agreement (TBT Standards Code) and the World Trade Organization’s Sanitary and Phytosanitary Measures (SPS) Code. Regulators may refer to the Standards Code relating to ISO’s Code of Good Practice for the Preparation, Adoption and Application of Standards.

The Treasury Board of **Canada** produced in 2007 Guidelines on International Regulatory Obligations and Co-operation. The Guidelines encourage departments and agencies to:

- Take IRC into account throughout the entire life cycle of regulating – development, implementation, evaluation and review;
- Think strategically about how IRC can assist in achieving regulatory outcomes;
- Establish regulatory compatibility as a goal for regulators to achieve through the design of regulations and through ongoing regulatory co-operation activities with key international counterparts;
- Actively consider IRC in the ongoing management of regulatory programmes, e.g. when developing or renewing compliance and enforcement policies, technical guidelines, and procedures that are put in place to implement regulation;
- Regularly assess the effectiveness of IRC activities, determine which ones have yielded positive outcomes and make adjustments.

In the **United States**, the guidance of the Office of Management and Budget (OMB) on the use of voluntary consensus standards states that “in the interests of promoting trade and implementing the provisions of international treaty agreements, your agency should consider international standards in procurement and regulatory applications”. In addition, the recent Executive Order 13609 on Promoting International Regulatory Cooperation states that agencies shall, “for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.”¹

In **New Zealand and Australia** there is a requirement that decision-making by Ministerial Councils in relation to Trans-Tasman Mutual Recognition Agreement (TTMRA) matters be informed by the COAG 'Principles and Guidelines for National Standard Setting and Regulatory Action'. Regulatory Impact Statements (RIS) that fall within the ambit of the TTMRA are reviewed by both the Australian Office of Best Practice Regulation and New Zealand RIA Unit.

Sources: Australia (www.finance.gov.au/obpr/docs/COAG_best_practice_guide_2007.pdf); Canada (www.tbs-sct.gc.ca/ri-qr/documents/gl-ld/iroc-cori/iroc-cori-eng.pdf); US (www.whitehouse.gov/omb/circulars_a119; www.whitehouse.gov/the-press-office/2012/05/01/executive-order-promoting-international-regulatory-cooperation).

¹ www.whitehouse.gov/the-press-office/2012/05/01/executive-order-promoting-international-regulatory-cooperation

3. Session organisation and Questions for Discussion

68. The session proposes to address the question of the implementation of Principle 12 of the Recommendation by structuring the discussion along the following rounds:

Introduction (5')

- Presentation of the roadmap for the session and of the participants, U facilitator (5')

First round of discussion: the scope of application of Principle 12 (40')

69. This round of discussion seeks to delineate the scope of application of Principle 12 of the Recommendation. At a minimum, Principle 12 encompasses that governments act in accordance with their international treaty obligations. With a view that international regulatory co-operation become integral to systemic risk management and long-term policy planning, the Principle also urges countries to “take into account relevant international regulatory settings when formulating regulatory proposals” and to recognize “existing regulations and standards [when they] would achieve the same public interest objective at lower costs”. The Principle also supports the contribution of countries to global dialogues.

- Presentation of Principle 12 and its scope of application based on the findings of the newly released OECD publication (OECD (2013), *International Regulatory Co-operation: Addressing Global Challenges*), Céline Kauffmann, OECD Regulatory Policy Division (7-10')

Discussions (30')

Questions for discussion:

- What are the critical dimensions of international regulatory co-operation? Does the focus of the Recommendation on international obligations, consideration of international regulatory settings, recognition of international technical standards, contribution to global dialogues capture them all? If not, what aspect of IRC may be missing?
- How to prioritise across the different elements of the Recommendation so that IRC “become integral to systemic risk management and long-term policy planning”?

Second round of discussion: existing tools and promising practices supporting a systematic implementation of Principle 12 (45')

70. This round of discussion seeks to identify the tools and practices supporting a systematic implementation of Principle 12. It seeks to build on the experience of countries to generate a greater understanding of the tools and practices with the greatest potential to foster beneficial IRC.

- Reflections by Canada on implementation of the principles and presentation of the Guidelines on International Regulatory Obligations and Co-operation (7-10')

Discussions (35')

Questions for discussion:

- What existing tools and practices reflect a systematic implementation of principle 12?
- Which of them do you find most efficient and effective to mainstream IRC in regulatory policy?

Conclusion: tools with greater potential to achieve the IRC objectives in the medium term (15')

- Reflections by the EU on next phases in the EU to promote regulatory cooperation (7')
- Wrap up by the Rapporteur (8')

BIBLIOGRAPHY

- GOV/RPC(2013)2, *International Regulatory Co-operation, Options for next steps*, OLIS document: [http://olisweb.oecd.org/vgn-ext-templating/GOV-RPC\(2013\)2-ENG.pdf?docId=JT03337133&date=1364397541287&documentId=610042&organisationId=1&file Name=JT03337133.pdf](http://olisweb.oecd.org/vgn-ext-templating/GOV-RPC(2013)2-ENG.pdf?docId=JT03337133&date=1364397541287&documentId=610042&organisationId=1&file Name=JT03337133.pdf)
- OECD (2013), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing. Available on i-library at: www.oecd-ilibrary.org/governance/international-regulatory-co-operation_9789264200463-en
- OECD (2013), *International Regulatory Co-operation: Case Studies, Vol.1: Chemicals, Consumer Products, Tax and Competition*, OECD Publishing. Available on i-library at: www.oecd-ilibrary.org/governance/international-regulatory-co-operation-case-studies-vol-1_9789264200487-en
- OECD (2013), *International Regulatory Co-operation: Case Studies, Vol.2: Canada-US Co-operation, EU Energy Regulation, Risk Assessment and Banking Supervision*, OECD Publishing. Available on i-library at: www.oecd-ilibrary.org/governance/international-regulatory-co-operation-case-studies-vol-2_9789264200500-en
- OECD (2013), *International Regulatory Co-operation: Case Studies, Vol.3: Transnational Private Regulation and Water Management*, OECD Publishing. Available on i-library at: www.oecd-ilibrary.org/governance/international-regulatory-co-operation-case-studies-vol-3_9789264200524-en
- Fliess, B. et al. (2010), "The Use of International Standards in Technical Regulation", *OECD Trade Policy Working Papers*, No. 102, OECD Publishing, Paris. Available at: www.oecd-ilibrary.org/fr/trade/the-use-of-international-standards-in-technical-regulation_5kmbjgkz1tzip-en

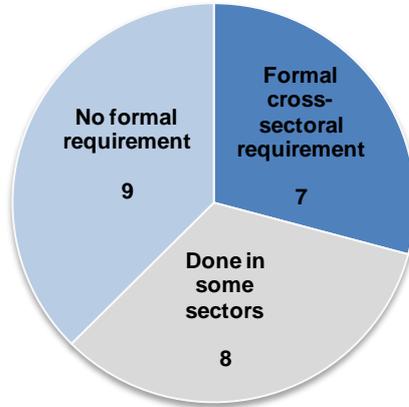
Annex 1 - Text of Principle 12 in the Recommendation

12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

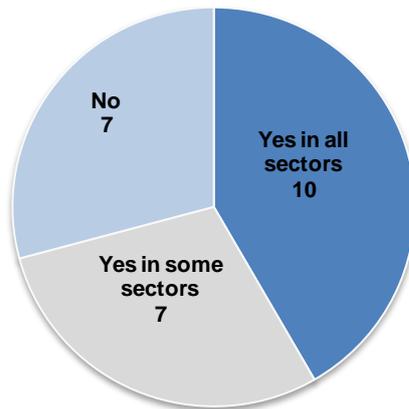
- 12.1 In an increasingly globalised economy, international regulatory co-operation must become integral to systemic risk management and long-term policy planning.
- 12.2 Governments should take into account relevant international regulatory settings when formulating regulatory proposals to foster global coherence.
- 12.3 Governments should act in accordance with their international treaty obligations (for example under the ILO, UN and WTO/GATT Agreements which require that regulations accord foreign products and services treatment no less favorable than like products and services of national origin, or those originating in any other country).
- 12.4 Governments should co-operate with other countries to promote the development and diffusion of good practices and innovations in regulatory policy and governance.
- 12.5 Governments should contribute to international fora, including private or semi-private, which support greater International Regulatory Co-operation (IRC).
- 12.6 Governments should avoid the duplication of efforts in regulatory activity in cases where recognition of existing regulations and standards would achieve the same public interest objective at lower costs.
- 12.7 Processes of consultation on regulatory proposals should be open to receiving submissions from foreign and domestic interests.

Annex 2 – Survey results (OECD, 2013)

Requirement to consider all relevant frameworks for co-operation in other (foreign) jurisdictions in the same field



Requirement to consider international standards



Requirement to explain the rationale for diverting from international standards

