

OECD Regulatory Policy Outlook 2015

POLICY BRIEF



Access links

- **OECD Regulatory Policy Outlook 2015:** www.oecd.org/publications/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm
- **Indicators of Regulatory Policy and Governance and the underlying data:** www.oecd.org/regulatory-policy/indicators-regulatory-policy-and-governance.htm
- **2012 Recommendation of the Council on Regulatory Policy and Governance:** www.oecd.org/gov/regulatory-policy/2012-recommendation.htm
- **Regulatory Policy Outlook country profiles:** www.oecd.org/regreform/regulatory-policy/outlook-country-profiles.htm
- **OECD regulatory policy website:** www.oecd.org/governance/regulatory-policy/

We see proof every day of the importance of regulation

When we eat our breakfast without questioning the quality of the food, when we take our kids to school, when we feel safely at work, when we consult doctors and undertake medical exams. We take these rules that determine our safety and life style every day as granted. But, when poorly conceived, these rules can become “irritating” and too cumbersome to start up a new business, trade abroad or to obtain a new passport. Worse, they can become ineffective in achieving their objectives and fail to protect us and we lose trust in our institutions.



How can countries ensure that regulation is necessary, well-done, effective and that it actually meets the needs of their companies and citizens? In 2012, the OECD countries adopted a very aspirational instrument on the quality of their rule-making: the Recommendation of the Council on Regulatory Policy and Governance which sought to disseminate the instruments and institutions of the “regulating well”.

Investing in better regulation is a worthwhile investment

It can result in millions saved for governments, businesses and citizens and more effective action. Regulatory impact assessments have saved millions according to estimates in Australia and the United States by reducing the occurrence of bad regulations. A rare estimate of the economic benefits and costs of extending mandatory consultation to all legal proposals for Vietnam showed a net benefit of consultation at some 0.25% of Vietnamese GDP in 2008. War on red tape and unnecessary regulatory inflation across a variety of countries yield substantial benefits: Germany is reducing compliance costs by some EUR 887 million through new regulatory proposals. In the United Kingdom, GBP 418 million were saved through the Employment Law Guidance Programme.

TRENDS IN REGULATORY POLICY: HIGHLIGHTS FROM THE 2015 INDICATORS OF REGULATORY POLICY AND GOVERNANCE

The Regulatory Policy Outlook provides the first evidence-based, cross-country analysis of the progress made by OECD countries in improving the way they regulate. It is based on the 2015 Indicators of Regulatory Policy and Governance, which are the results of a unique OECD survey to 34 countries and the European Commission.



The 2015 Indicators of Regulatory Policy and Governance

The OECD 2014 Regulatory Indicators Survey gathers evidence from all 34 OECD countries and the European Commission on the implementation of regulatory policy practices as of 31 December 2014. The survey focuses on the processes of developing regulations (both primary and subordinate) that are carried out by the executive branch of the national government and that apply to all policy areas. It investigates in detail three principles of good regulatory practices as defined in the 2012 Recommendation, for which information on formal requirements and evidence on their implementation has been collected:

- Stakeholder engagement
- Regulatory Impact Assessment (RIA)
- *Ex post* evaluation

Three composite indicators provide an overview of country's practices in these areas. Each indicator reviews the systematic adoption of the practice, the methodology used, the quality of oversight and the level of transparency.

- Systematic adoption records formal requirements and how often these requirements are conducted in practice.
- Methodology gathers information on the methods used in each area, e.g. the type of impacts assessed or how frequently different forms of consultation are used.
- Oversight and quality control records the role of oversight bodies and publically available evaluations.
- Transparency records information from the questions that relate to the principles of open government, e.g. whether government decisions are made publically available.

Further information on the methodology and underlying data is available at www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm

OECD countries have come a long way in improving regulatory quality over the past two decades

They have done this by taking a whole-of-government approach to regulatory policy and made it a pillar of their public sector reform efforts:

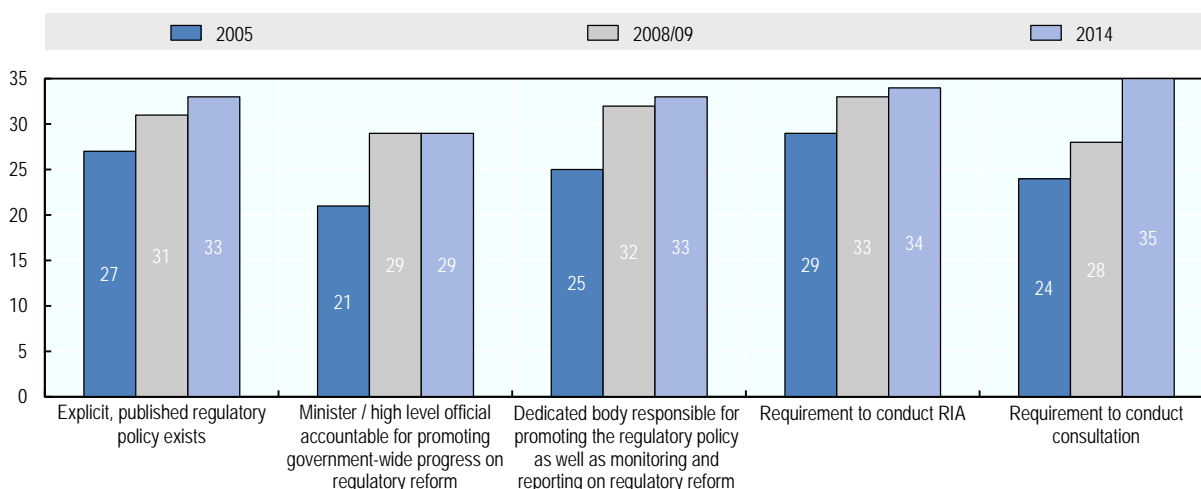
33 have adopted an explicit regulatory policy.

29 have designated a minister or high-level official responsible for promoting government-wide progress on regulatory policy.

33 have established a standing body charged with regulatory oversight.

In **all** but **1** country, Regulatory Impact Assessment and consultation have become formal requirements for the executive branch in the development of new regulations.

Figure 1. Adoption of an explicit whole-of-government policy for regulatory quality and formal requirements for regulatory policy tools



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.

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

Despite the strong commitment of OECD countries to regulatory quality, there is still a gap between the vision and the reality of regulation

Too often, countries regulate in the dark and do not use enough the leverage they have through better regulation to support growth, to restore trust and foster well-being. It is also due to an attention deficit from our leaders. Too rarely, we hear that they will pay attention to the way they develop and enforce regulation so that protection is effectively ensured at least costs for all.

Looking ahead, countries can further embed regulatory policy in law and practice to respond to emerging risks and opportunities and to promote growth and well-being.

Use the tools of regulatory policy strategically:

Countries can further ensure that stakeholder engagement is well integrated early in the regulation development process; make sure that the depth of RIA is proportionate to the expected impacts of regulation, and assess more systematically that regulations achieve their policy goals when conducting *ex post* evaluation.

The governance of good regulation matters:

Institutions besides the national executive, such as parliaments, regulatory agencies and sub-national and international levels of government have an important role to play in improving the way regulations are developed, implemented, evaluated and made consistent across sectors and jurisdictions.

Implementation, implementation, implementation:

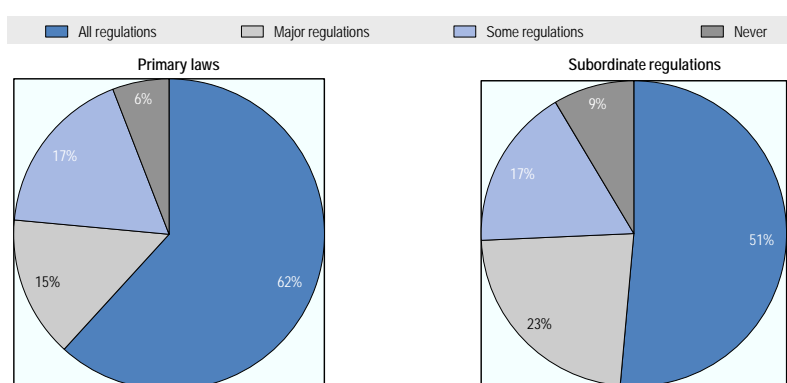
The impact of regulatory policy could be further improved by addressing shortcomings in the implementation and enforcement of regulations and by using new approaches to regulatory design and delivery such as those based on behavioural economics.

STAKEHOLDER ENGAGEMENT

OECD member countries acknowledge the importance of listening to the voice of users

Requirements exist in many countries to engage stakeholders in developing both primary and subordinate regulations. Most countries also ensure easy access to regulations and have policies on using plain language. Many countries are using tripartite consultations to make sure that the views of workers and employers are reflected in newly developed regulations. On the other hand, involvement of stakeholders in performance assessments of regulations and regulatory systems is rather rare.

Figure 2. Requirements to conduct stakeholder engagement: Primary and subordinate regulations



Note: Based on data from 34 countries and the European Commission.

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

Stakeholder engagement should be well integrated into each step of the regulatory governance cycle. Most OECD member countries engage with stakeholders especially when developing or amending regulations. Attempts also exist to involve stakeholders in the process of reviewing the stock of available regulations. Some countries now actively seek stakeholders' input on shaping regulatory reform programmes such as those focusing on administrative simplification.

Stakeholders are still rarely engaged in the final delivery stage of the regulatory governance cycle

Countries could more actively engage with stakeholders at this stage to find ways to implement regulations most effectively, to limit unnecessary burdens and to target better their enforcement methods. Enhanced contact between regulators and regulated entities could result in improved measurement of compliance and a better understanding of the reasons for non-compliance.

Stakeholders should be involved in all phases of the process

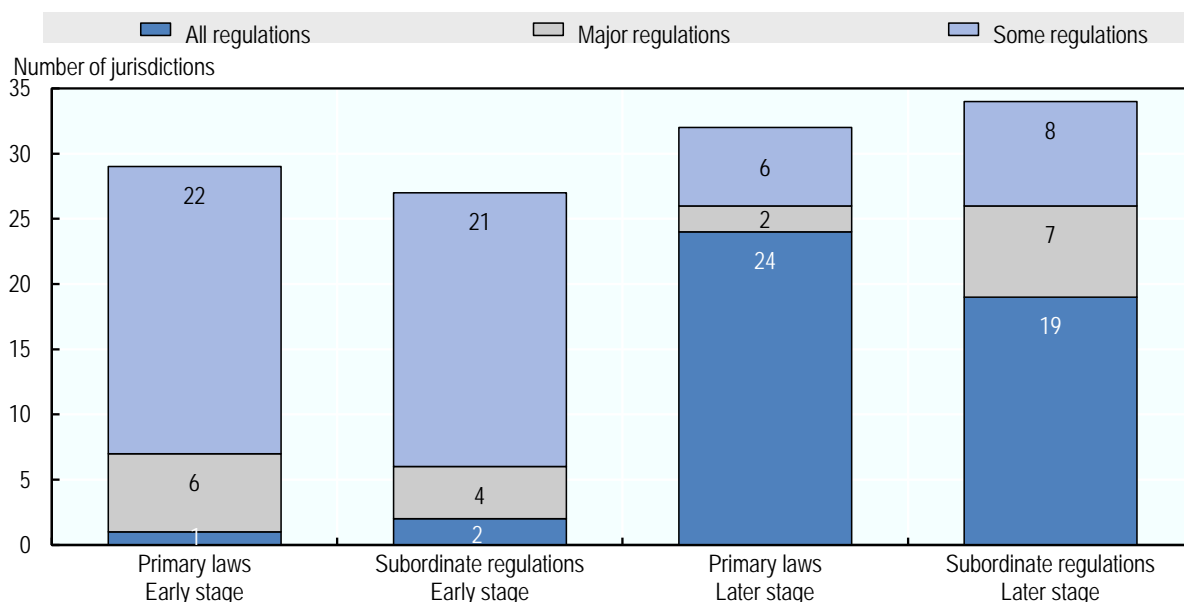
- ➔ When identifying a problem and its possible solutions
- ➔ When developing a set of regulatory and non-regulatory options and
- ➔ When drafting the regulatory proposal

A typical engagement takes place through a public consultation over the internet at the final stage of the process when a legislative draft is submitted to the government. Stakeholder engagement has yet to become part of the day-to-day work of policy makers and citizens. For that to happen, stakeholders need to be engaged before the final regulatory development phase to ensure meaningful inputs into the rule-making process. All affected parties should be considered in order to guarantee inclusiveness and a level playing field. Real consideration of stakeholder inputs and continuous evaluation of engagement practices would improve the effectiveness of regulations.

The effect of the use of ICTs on the quality and quantity of stakeholder engagement is behind expectations

The use of ICTs in engaging stakeholders in regulatory policy is widespread. But the experience so far shows that ICTs have failed to significantly increase the level of engagement in policy making or to improve its quality. Despite the fact that the mechanisms of engagement have changed, the nature of the process has remained essentially the same as in the pre-digital era.

Figure 3. Early stage and later stage consultations



Notes: Early stage refers to stakeholder engagement that occurs at an early stage, to inform officials about the nature of the problem and to inform discussions on possible solutions. Later stage consultation refers to stakeholder engagement where the preferred solution has been identified and/or a draft version of the regulation has been issued.

Based on data from 34 countries and the European Commission.

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

EVIDENCE-BASED POLICY MAKING THROUGH REGULATORY IMPACT ASSESSMENT

Widespread use of RIA reflects the trend toward more evidenced-based policy making

33 jurisdictions have both established the requirement to conduct RIA in a legal or official document, and are conducting RIA in practice. Yet, despite significant progress in its adoption across OECD countries, challenges remain to make it an essential policy tool for regulatory quality.

An oversight body for the RIA process has been established by the majority of OECD countries

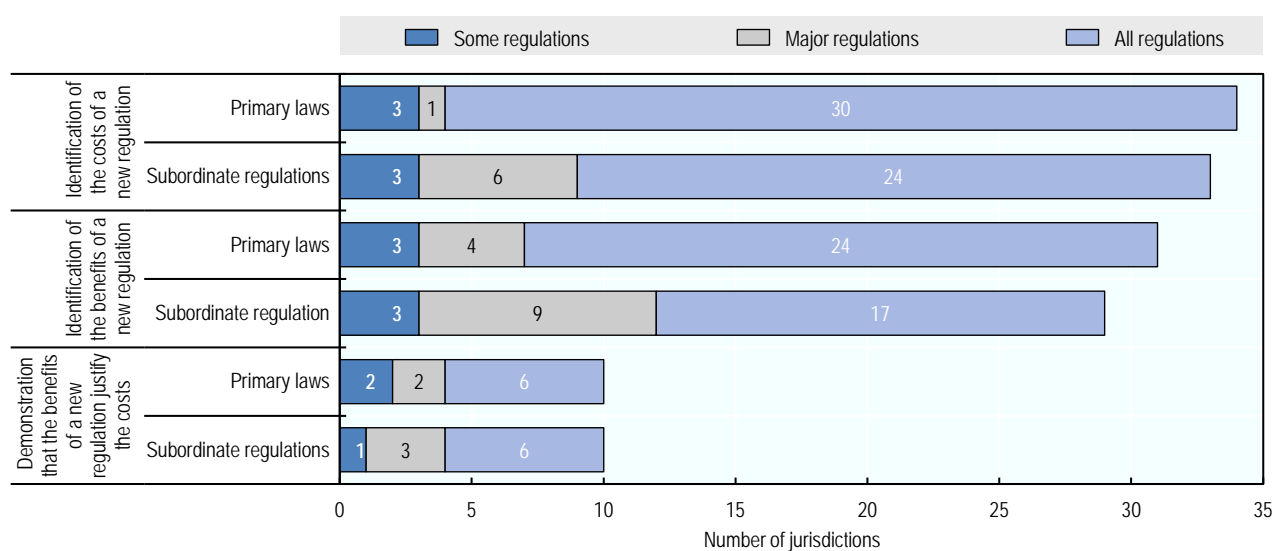
26 countries have a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of RIA. However, in a significant number of cases these oversight bodies do not yet function as effective gatekeepers to guarantee regulatory quality.

Only in **19** countries, these bodies are able to return the RIA for revision, either for primary laws, subordinate regulation, or both. This places a question mark as to the effectiveness of these RIA systems in warranting that the implemented regulations are “fit-for-purpose”.

A stronger engagement with stakeholders should be pursued by OECD countries

Only **14** OECD jurisdictions have the requirement to release RIA documents for consultation with the general public for subordinate regulation. For the case of primary regulations, this number is even lower: **12** jurisdictions. OECD countries could also benefit more by exploiting ICT technologies to strengthen the RIA process. There is a sizeable number of OECD jurisdictions which do not make RIAs publicly available on-line: **10** for subordinate regulations, and **5** for primary laws. Exploiting this technologies will help to make the RIA process more transparent and open to the public.

Figure 4. Analysis of costs and benefits in RIA



Note: Based on data from 34 countries and the European Commission.

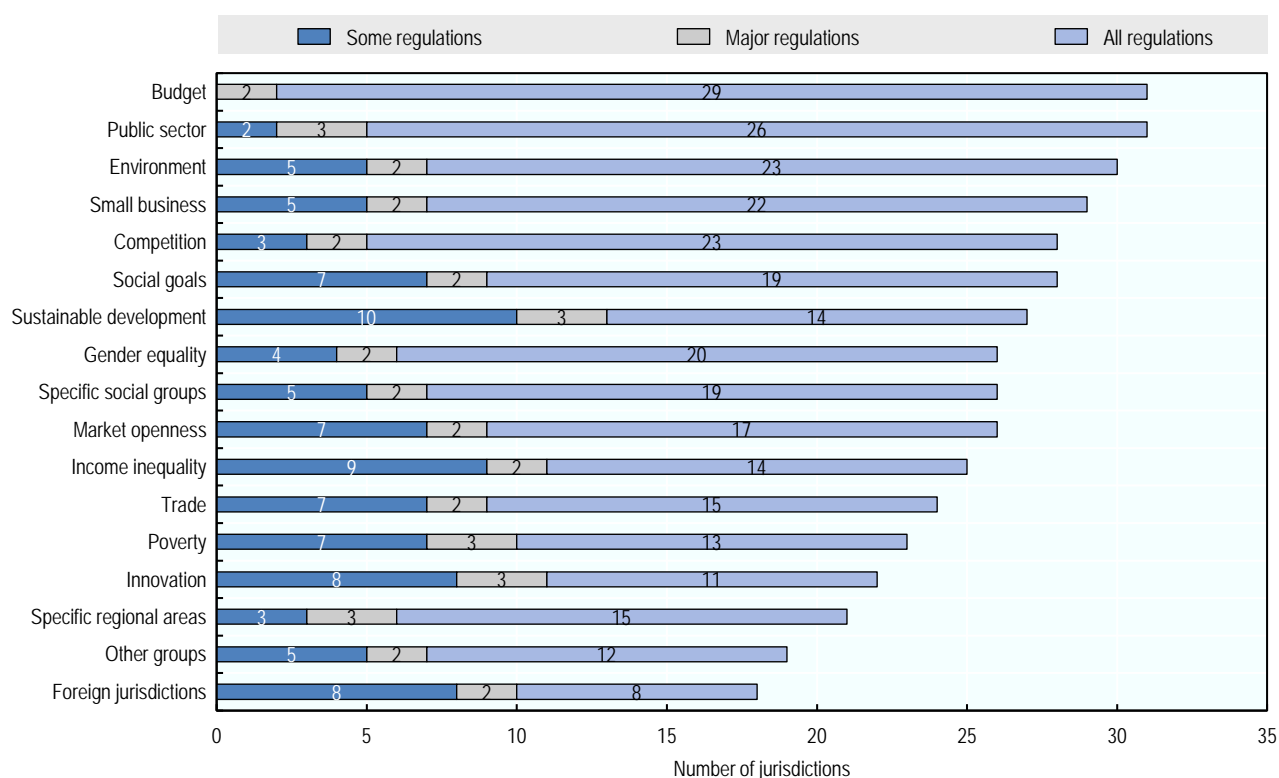
Source: 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

It is common practice across OECD countries to identify the benefits and costs of draft regulation as part of the RIA process

High quality regulations are expected to bring net benefits to citizens and businesses and the society as a whole. However, they also bring about costs: implementation and compliance costs, administrative burdens and potential distortions in other markets. It is encouraging to report that the majority of OECD countries include the identification of these costs and benefits as part of the RIA process.

However, countries still have ample opportunity to include a demonstration that the benefits of regulation outweigh their costs as part of RIA. This finding demonstrates a use of RIA as a “least cost” appraisal exercise. It also reflects methodological issues and resource challenges.

Figure 5. Assessment of impacts in RIA



Note: Based on data from 34 countries and the European Commission.

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

OECD countries evaluate an extensive array of policy objectives as part of the RIA process

These might cover a broad range of policy objectives from the impact on competition to those on gender equality. Yet, the perennial challenges to mainstream RIA might be exacerbated by these wider and occasionally spurious policy evaluations. More could be done to support the proportional use of RIA with the application of “materiality” analysis – by which only the most significant impacts that are material to the possible outcomes of a regulatory intervention would be assessed.

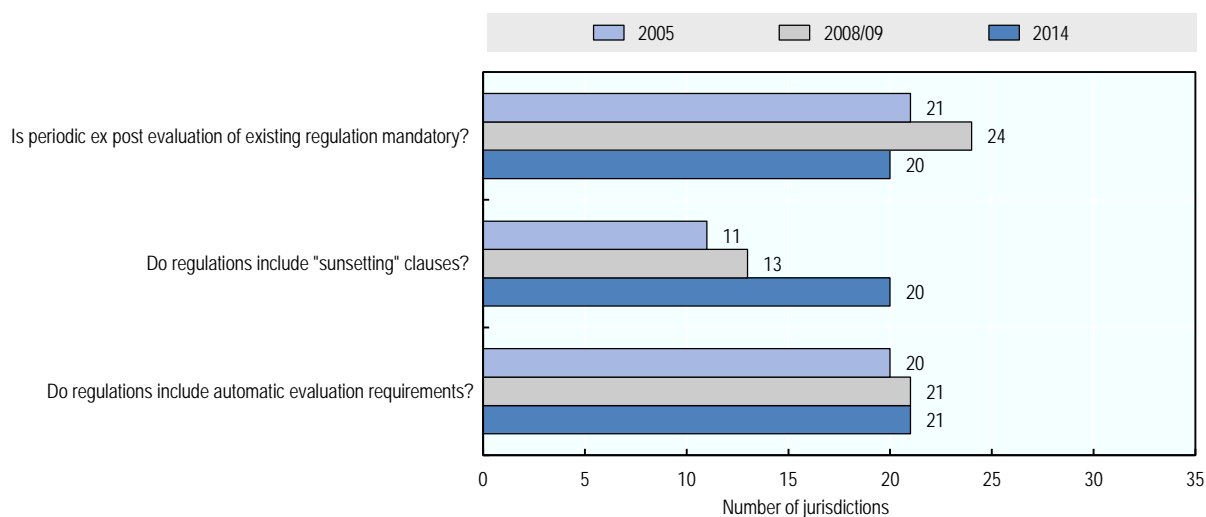
CLOSING THE REGULATORY GOVERNANCE CYCLE THROUGH SYSTEMATIC *EX POST* EVALUATION

Evaluating the effectiveness and outcomes of existing laws and regulations is a necessary part of governance

Knowing whether policy instruments are working in reality should be the starting point for any new or further government intervention. It should also be the basis for streamlining or eliminating requirements to enhance the overall regulatory environment. However, the practice of *ex post* evaluation has stagnated across OECD member countries. In the last three years, seven countries only have undertaken *ex post* evaluation frequently for primary and subordinate legislation.

The majority of *ex post* evaluation exercises in the past 12 years have been confined to reducing administrative burdens, competition or compliance costs. Broader evaluations on sectors or policy themes could provide tangible benefits in contributing to creating a better regulatory framework for priority policy areas.

Figure 6. Requirements for *ex post* evaluation



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.

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

Governments should assess more systematically whether underlying policy goals have been achieved

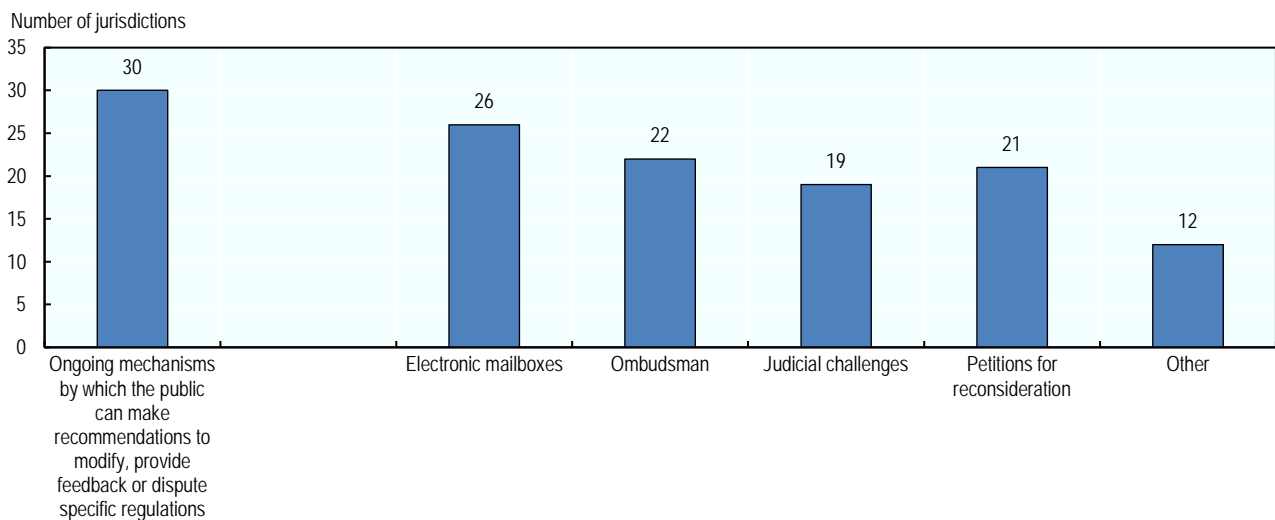
OECD countries rarely assess whether the policy outcomes have been achieved. This provides an opportunity for more holistic evaluation systems that assess whether policies have worked or have not worked and recording these assessments for use by other policy makers.

Investment in establishing quality standards and mechanisms is an area where OECD countries can improve. There are a variety of methods by which governments quality control *ex post* evaluation across the OECD. This includes issuing guidance on methodologies to independent bodies providing a quality control function. Governments should ensure there are sufficient capacities and skills to conduct effective *ex post* evaluation with the appropriate oversight.

Greater stakeholder involvement in *ex post* evaluation would help identify the priorities for revising regulations

OECD countries often engage stakeholders, with only 5 OECD countries reporting to not engaging stakeholders in *ex post* evaluation. It is important to have participation of all stakeholders for the credibility and integrity in evaluations. This is a key element of building trust in an inclusive approach to governance.

Figure 7. Mechanisms by which the public can make recommendations



Note: Based on data from 34 countries and the European Commission.

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

DID YOU KNOW?

In **Belgium**, reforms aimed at simplifying regulation for citizens and businesses have led to a EUR 1.25 billion reduction in administrative costs for citizens and businesses over the period 2008-2014 (with roughly 65% of these savings benefitting business and 35% benefitting citizens)

Source: www.simplification.be/

In **Germany**, regulatory reform significantly reduced compliance costs for business, citizens and the administration:

- A 2014 amendment of the Social Code decreased annual compliance costs by EUR 126.8 million.
- By simplifying electronic invoicing, the annual administrative burden for business was reduced by ca. EUR 3.3 million between 2006 and 2011.
- The key points agreed by the Federal Cabinet in 2011 on the reduction of bureaucracy saw potential benefits for the economy of at least EUR 1.45 billion a year, among others through the reduction of administrative burdens such as: shortening of retention periods under commercial, tax and social legislation (EUR 600 million); e-government activities. (EUR 350 million); harmonisation of requirements for financial and payroll accounting (EUR 300 million); advanced electronic signature for businesses (EUR 100 million).

Sources: Federal Government (2015), "Better Regulation 2014: Official – simple – tangible"; Federal Government of Germany (2012), "A foundation for better law: five years of bureaucracy reduction and better regulation".

In February 2014, the **Greek government**, working with the OECD, identified administrative cost totalling EUR 4.08 billion in 13 policy areas. Over three-quarters of the burdens identified were in three priority areas: VAT administration, company law and annual accounts, and public procurement:

- cleaning the VAT register and removing VAT filing requirements on businesses with zero turnover, EUR 226 million;
- introducing a clear minimum turnover threshold for micro businesses – like in other EU countries – of EUR 10 000, so that the smallest businesses can choose whether the administrative burdens of VAT administration outweigh the business advantage for them, EUR 136 million;
- removing duplicate and expensive publicity arrangements for company annual accounts and event-driven notifications, and taking the arrangements online, EUR 60 million.

Source: OECD (2014).

In **the United Kingdom**, war on red tape has saved business GBP 10 billion over the last 4 years by abolishing inadequate regulation:

- Pubs and village halls can now host live music events between 8am and 11pm without applying for a licence
- The law does not make it an offence anymore to fail to report a grey squirrel on your land
- Child minders who feed children in their care no longer have to register separately as a food business
- The age at which people can legally buy Christmas crackers was lowered from 16 to 12 years old
- Bus companies no longer have to hold on to property, including decaying food left behind by passengers, for at least 48 hours and can instead decide themselves which items will be re-claimed
- Cattle movements no longer have to be recorded on a lengthy paper based system and now are tracked online, freeing up farmers

Source: www.gov.uk/government/news/hancock-red-tape-drive-saves-business-a-record-10-billion.

Substantial benefits can be expected from **greater regulatory co-operation**:

- OECD governments and industry save EUR 153 million per year through reduced chemical testing, use of harmonised formats and work sharing (Source: OECD, 2010).
- It is expected that an ambitious Transatlantic Trade and Investment Partnership deal would increase the size of the EU economy around EUR 120 billion (or 0.5% of GDP) and the US by EUR 95 billion (or 0.4% of GDP), of which between two thirds and four fifths of the gains would come from cutting red tape and having more co-ordination between regulators (Source: European Commission).
- IRC that decreases regulatory burden by 10% (in Canada or the United States) yields an increase of 2.5% in exports of goods and services (Policy Research Initiative, 2004).



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