COUNCIL

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REPORT ON THE IMPLEMENTATION OF THE RECOMMENDATION OF THE COUNCIL ON REGULATORY POLICY AND GOVERNANCE

(Note by the Secretary-General)

JT03445202

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.
1. The Recommendation of the Council on Regulatory Policy and Governance\(^1\) was adopted by the Council on 22 March 2012 [C(2012)35] (hereafter, the “Recommendation”). This note presents a report by the RPC on the implementation of the Recommendation, including the RPC’s conclusions regarding the instrument’s relevance, dissemination and whether it requires revision.

**Background**

2. OECD Ministers requested in 1995 that the OECD examine the significance, direction and means of reform in regulatory regimes in OECD Member countries. The 1995 Recommendation for Improving the Quality of Government Regulation [OECD/LEGAL/0278] was the first-ever international statement of regulatory principles common to OECD Member countries. Building on this fundamental text, and broadening it to embrace market openness, competition policy and microeconomic principles in a multidisciplinary framework, the OECD produced a Report to Ministers on Regulatory Reform in 1997. The report’s policy recommendations have provided guidance to OECD Member countries to improve regulatory policies and tools, strengthen market openness and competition, and reduce regulatory burdens. Moreover, these recommendations have provided a fundamental cornerstone for OECD country reviews of OECD Member countries carried out both in sectoral and policy areas.

3. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance (hereafter, the “Guiding Principles”), based on the evidence of the OECD country reviews carried out up to 2004, reflect the state of regulatory policy evolution at that time. The Guiding Principles set out the importance of political commitment to regulatory reform, the desirable characteristics of good regulation, and the links with competition and the elimination of barriers to trade and investment. The Guiding Principles, which emphasised effective and continuous regulatory management in order to secure high-quality regulation, were complemented by the 2005 APEC-OECD Integrated Checklist for Regulatory Reform.

4. The Guiding Principles covered regulatory management, competition and market openness, which corresponds to the nature of the horizontal work on regulatory reform. Three separate OECD bodies (the Trade Committee, the Competition Committee and the Working Party on Regulatory Management) developed and approved their respective parts of the Guiding Principles. The Special Group on Regulatory Policy then discussed and endorsed the Guiding Principles as a whole. This process corresponded to the multidisciplinary nature of the Guiding Principles in the absence of a Regulatory Policy Committee.

5. Prior to developing the Recommendation, 24 reviews of OECD Member countries were completed as well as three reviews of non-Member countries: the Russian Federation (2005), Brazil (2007), and the People’s Republic of China (2008). In addition, over the course of 2009 and 2010, the Better Regulation policies and practices of 15 OECD member countries of the European Union were reviewed under the framework of the Guiding Principles.

6. While the 1995, 1997 and 2005 documents remain relevant, the creation of the Regulatory Policy Committee in 2009, with a different and broader mandate than the

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\(^{1}\) The Recommendation is available on the online *Compendium of OECD Legal Instruments* as OECD/LEGAL/0390.
Working Party on Regulatory Management and the Special Group on Regulatory Policy, foreshadowed the need for a new normative approach to regulatory policy. Likewise, the report “Regulatory Policy and the Road to Sustainable Growth,” which synthesised 10 years of OECD work on regulatory reform, called for a revision and update of collective thinking on regulatory policy and governance [GOV/RPC(2010)16].

The Recommendation

7. The Recommendation is the result of careful assessment of best practice identified by the Regulatory Policy Committee from over a decade of reviews of OECD Member countries. It develops a systemic governance framework that can deliver ongoing improvements to the quality of regulations. It provides advice on the development of institutions and the application of tools, and also provides practical measures against which Adherents can assess their capacity to develop and implement quality regulation. The twelve principles set out in the body of the Recommendation are elaborated on in an Annex, which forms an integral part of the Recommendation, to provide Adherents with further guidance on the principles’ implementation.

8. The Recommendation begins by noting the importance of having political commitment at the highest level, proposing that this be expressed through a whole-of-government regulatory policy directed at the public interest. Without strong political leadership, little progress can be expected in reforming long-standing practices and cultures that have seen regulatory burdens grow. The development and, more importantly, entrenchment of an over-arching regulatory policy is crucial if progress is to occur across government and be maintained over time.

9. Of the other eleven elements of the Recommendation, there are five that could be said to be most directly about good governance (paraphrased briefly below):

   - adhering to transparency and public consultation;
   - establishing oversight institutions and support mechanisms;
   - publishing of regular reports on regulatory and regulator performance;
   - designing regulatory agencies to secure their objectivity and consistency;
   - ensuring procedural fairness and access to review mechanisms.

10. Each of these elements makes an important contribution to building a regulatory system that can deliver well-informed regulatory decisions; decisions that will also be well implemented and, importantly, that can win the trust of the public.

11. The remaining six elements of the Recommendation involve what could be called action or process requirements for a sound regulatory system:

   - integrate Regulatory Impact Assessment (RIA) into early stages of regulatory development;
   - conduct systematic reviews of regulations in place;
   - apply risk management and risk communication strategies;
   - take into account existing international standards and external impacts;
   - promote regulatory coherence across domestic jurisdictions;
• foster regulatory management capacity at sub-national levels.

12. The last three elements listed above consider the fact that domestic regulation has effects on business and other activity that is increasingly cross jurisdictional or even global. Reducing unnecessary regulatory differences across jurisdictions reduces transaction costs and promotes trade and growth. This has been addressed through international agreements in areas like finance and trade, but individual countries can also test their own regulations against international standards and seek to minimise unjustifiable disparities.

13. Finally, while national governments are responsible for important areas of regulation, many of the regulatory burdens borne by individual businesses occur within lower jurisdictions. Building capacity for the effective development and management of regulation at local and regional levels of government is accordingly an imperative if the system as a whole is to function well.

14. In the Recommendation, the Council instructed “the Regulatory Policy Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter, in consultation with other relevant OECD Committees”; this note presents this report. This report was delayed in order to benefit from the most up-to-date data on implementation from the 2017 iREG survey, which were utilised in the 2018 Regulatory Policy Outlook.

Methodology

15. Most of the data used to monitor the implementation of the Recommendation resulted from the 2014 and 2017 Regulatory Indicators Surveys [GOV/RPC/MRP(2014)3/ANN1] and [GOV/RPC(2017)13/ANN1].

- Data for 2014 were gathered from the 34 countries that were OECD Member countries at the time of data collection and the European Union.

- Data for 2017 were collected from the 35 countries that were OECD Member Countries at the time of data collection, 3 accession candidate countries (Colombia, Costa Rica and Lithuania), as well as the European Union.

16. The surveys investigated three elements of the Recommendation in detail: stakeholder engagement (element 2), Regulatory Impact Assessment (element 4) and ex post evaluation (element 5). For each of these areas, the survey has collected information on formal requirements and has gathered evidence on their implementation. These three elements are considered core regulatory management tools and the RPC has developed composite indicators on their use. Information on elements 1, 3, 8, 10, 11 and 12 was also addressed in the survey but not with the same level of scrutiny as that for 2, 4 and 5. Perhaps with time, the RPC will also develop composite indicators for these other elements.

17. The design of the Regulatory Indicators surveys was built on intensive exchanges with delegates to the RPC on the implementation of the Recommendation, including a workshop in Stockholm in 2013, discussions on a list of good practices in implementing
the Recommendation, and a workshop session in The Hague in 2014. Furthermore, OECD Member countries of the Steering Group on Measuring Regulatory Performance worked intensively together with the Secretariat on the design of questions. OECD Member countries of the Steering Group at the time included Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Estonia, the European Union, Germany, Ireland, Mexico, the Netherlands, Norway, Spain, Sweden, the United Kingdom, and the United States.

18. The Indicators draw upon survey responses to the 2014 and 2017 surveys. For the 2017 round, answers were provided by 36 of 37 Adherents\(^4\) in the respective time-periods. These responses came from delegates to the RPC and central government officials. The questionnaire and indicators methodology were developed in close co-operation with delegates to the RPC and the Steering Group on Measuring Regulatory Performance. Survey answers underwent a thorough verification process in order to enhance data quality and ensure comparability of answers across Adherents and over time. This process was carried out by the OECD Secretariat in co-operation with delegates to the RPC.

19. The surveys focus 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.

20. To complement the 2014 and 2017 survey data, the Secretariat circulated a questionnaire to RPC delegates following the April 2017 Committee meeting to gather information on dissemination of the Recommendation as well as Adherents’ opinions on whether the Recommendation is still adequately relevant to the current and foreseeable future developments in the field of regulatory policy. Moreover, it sought the views of Adherents as to whether there is a need to update the Recommendation, and if so, how.

21. Data for Principle 9 for practices in place for primary laws and subordinate regulations was collected separately. As the Regulatory Indicators Survey only cover processes of developing primary laws that are carried out by the executive branch of the national government, these questions are not applicable to the United States, as no primary laws are initiated by the executive in the United States (they are all initiated by Congress).

22. Data for Principle 7 was taken from the 2018 OECD Working Paper “Regulatory management practices in OECD countries”. These data are collect through the Product Market Regulation (PMR) survey conduct by the Economics Department every five years.

Process

23. Information and data pertaining to this monitoring report were presented to RPC in November 2016 [GOV/RPC(2016)8] with the first and second drafts being presented at the November 2017 [GOV/RPC(2016)8/REV1] and April 2018 meetings [GOV/RPC(2016)8/REV3]. This current draft is based on comments received at the 19\(^{th}\) meeting of the RPC in November 2018 and the report was approved by the RPC by written procedure on 4 March 2019 (GOV/RPC(2016)8/REV4). with comments having been received from two OECD Member countries during this process. The current draft was also shared with the Public Governance, Investment and Competition Committees for comments.

\(^4\) All 36 current OECD Member countries responded. Kazakhstan only adhered to the Recommendation in 2017 after the survey was underway and has thus not been included in the results.
Dissemination

24. Adherents have used a wide range of tools and approaches to disseminate the Recommendation. A relatively small number of Adherents (3) mentioned that they have made formal reference to the Recommendation in their national regulation policy, e.g. reform agenda, legislation or action plans. This could well be explained by the fact that many countries’ regulatory policy system predated the 2012 Recommendation. Moreover, these systems – a “law on law-making” – tend to evolve relatively slowly over time. A number of Adherents, however, did mention that their systems were a reflection of the underlying OECD work on regulatory quality, embodying the core principles of not only the Recommendation but also that the 1995 Recommendation of the Council on Improving the Quality of Government Regulation [OECD/LEGAL/0278].

25. It appears that in many Adherents, more informal and ad hoc approaches are the norm for the dissemination of the Recommendation. For instance, a number of Adherents mentioned the organisation of government workshops and presentations around key components of the Recommendation, such as regulatory impact assessment. Others mentioned that the Recommendation was referred to in annual reports to parliament or the executive on regulatory policy. Various training activities were also mentioned as an opportunity to share the finding of the Recommendation across government.

26. These data indicate that the Recommendation is generally well known across Adherents and has had an impact on the work of regulatory oversight bodies. A number of Adherents referred to the Recommendation as a “standard reference” for the work of these units.

Summary and conclusions

27. The implementation of regulatory policy and governance in Adherents varies greatly in both scope and form. The vast majority of Adherents can much more actively use the Recommendation to embed further good regulatory design and delivery in law and practice. Such efforts by Adherents will be instrumental to help them to respond to emerging risks and opportunities and to promote growth and well-being.

28. The assessment of the Recommendation shows that the institutional contexts and the maturity of regulatory systems differ substantially across Adherents. Moreover, there is a need to understand which institutional settings support regulatory policy better and why. In particular, oversight bodies play a critical role in support of regulatory policy. Adherents report several types of oversight bodies with a wide range of responsibilities, highlighting the need for both clear allocation of tasks and effective co-ordination. While some specialisation may be warranted, too much can result in fragmentation and can erode the whole-of-government approach specified in the Recommendation.

29. Other institutions – parliaments, regulatory agencies, 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. However, these institutions do not always fully embrace this role. There is room for making the quality of rule making a core objective of these institutions and improving the way they work together and with the executive on this agenda.

30. Similarly, regulatory quality is no longer solely a domestic responsibility. Governments need to more actively and deliberately consider international regulatory co-
operation to ensure the effectiveness of regulatory frameworks. Despite globalisation, only one-third of Adherents have an explicit policy on international regulatory co-operation.

31. The Recommendation should be levered to promote greater evidence-based policy making. There is room for using regulatory impact assessment (RIA) more strategically to support decisions by policy makers and politicians. This means carrying out RIA well upstream in policy formulation, evaluating regulatory alternatives and assessing whether the estimated benefits outweigh the estimated costs of proposed regulations. Presently, only one-third of Adherents use a threshold test or other mechanisms to ensure that RIA analysis is commensurate with the expected impacts of regulation and does not itself become a burden. Finally, releasing RIA documents for public consultation would provide a further opportunity to gather evidence and build consensus.

32. Stakeholder engagement is a key administrative practice, both to support better regulation and good governance. Stakeholder engagement should be well integrated into each step of the rule-making cycle: when identifying a problem and its possible solutions, when developing a set of regulatory options and when drafting the regulatory proposal. While most Adherents have a formal requirement to engage stakeholders, it 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. Despite its widespread use in other policy fields, ex post evaluation is practiced sporadically in regulatory policy. In the last three years, only seven Adherents have undertaken ex post evaluation frequently for primary and subordinate legislation. The majority of evaluations focus on reducing administrative burdens. Governments could make greater use of reviews that focus on coherence of regulations with existing legislative frameworks and assess more systematically whether policy goals have been achieved. Establishing quality standards against which to evaluate regulation as part of the RIA process would ensure a stronger connection between ex ante and ex post evaluation. Finally, greater stakeholder involvement in ex post evaluation would help identify the priorities for revising regulations.

33. Regulatory implementation and enforcement remain the weakest links in regulatory governance. As an illustration, one-third of Adherents lack a whole of government regulatory compliance and enforcement strategy let alone policy. To address this shortcoming, inspections must become more transparent, responsive, evidence and risk-based and proportional. Looking ahead, new approaches to regulatory design and delivery, such as those based on behavioural economics, could also enhance the impact of regulatory tools.

34. The progress in each of these areas for further action will continue to depend on strong political leadership as highlighted in the first principle of the Recommendation. The prospect of returns makes such commitment a worthwhile investment.

35. As the findings of this report show, for all responding Adherents - even for those at the vanguard - implementing the full pallet of regulatory policy and governance as articulated in the Recommendation has not yet been fully explored. Nevertheless, this is how it should be. After all, it is the role of the OECD to set high standards. The Recommendation, therefore, continues to provide a ‘light on the hill’, setting aspirational standards and clarifying for each Adherent where the largest gaps remain. Addressing these
in the years ahead will be crucial to the capacity of governments to harness their countries’ economic potential, while realising their social and environmental goals.

Proposed Action

36. In light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

THE COUNCIL

a) noted document C(2019)60, in particular the report set out in its Annex, and agreed to its declassification;

b) invited the Regulatory Policy Committee to continue disseminating and monitoring the implementation of the Recommendation, with a particular focus on the elements covered in the “key findings” section of the Report, and to report to the Council thereon in five years.
Annex: Report on the implementation of the 2012 Recommendation of the Council on Regulatory Policy and Governance

Introduction

1. In its Recommendation of the Council on Regulatory Policy and Governance (hereafter, the “Recommendation”) [OECD/LEGAL/0390], the Council “instruct[ed] the Regulatory Policy Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter, in consultation with other relevant OECD Committees”. Most of the data presented in this Report, including the composite indicators, are the results of the 2014 and 2017 Regulatory Indicators Surveys. The surveys focus on OECD countries’ regulatory policy practices as described in the Recommendation. Kazakhstan only adhered to the Recommendation in May 2017; and the Secretariat was not able to include the country in the survey as it had already commenced.

2. The objective of this Report is to compile all the data resulting from the indicators, written comments subsequently submitted from Adherents and the findings of a survey regarding the dissemination of the Recommendation by Adherents in order to give an overview of the state of implementation of the Recommendation and assess its continued relevance.

3. The Recommendation establishes a normative framework for the application of regulatory policy and governance as a whole-of-government activity integrated in the policy cycle of regulatory design, enforcement, review and evaluation supported by appropriate institutions. It emphasises the importance of co-ordination, consultation, communication and co-operation throughout the policy cycle. It focuses to a greater extent than have previous OECD standards, as described below, on the need for regulatory co-ordination across levels of government, the organisation of regulatory agencies, the use of international regulatory cooperation and for risk assessment. Together the elements set out in the Recommendation provide Adherents with the basis for a comprehensive assessment of the performance of the policies, tools and institutions that underpin the use of efficient and effective regulation to achieve social, environmental and economic goals.

Rationale for the Recommendation

4. OECD Ministers requested in 1995 that the OECD examine the significance, direction and means of reform in regulatory regimes in OECD Member countries. The 1995 Recommendation for Improving the Quality of Government Regulation [C(95)21/FINAL] was the first-ever international statement of regulatory principles common to OECD Member countries. Building on this fundamental text, and broadening it to embrace market openness, competition policy and microeconomic principles in a multidisciplinary framework, the OECD produced a Report to Ministers on Regulatory Reform in 1997. The report’s recommendations have provided guidance to OECD Member countries to improve regulatory policies and tools, strengthen market openness and competition, and reduce regulatory burdens. Moreover, these recommendations have provided a fundamental cornerstone for OECD country reviews of OECD Member countries carried out both in sectoral and policy areas.
5. The OECD’s 2005 *Guiding Principles for Regulatory Quality and Performance* (hereafter, the “Guiding Principles”), based on the evidence of the OECD country reviews carried out up to 2004, reflect the state of regulatory policy evolution at that time. The Guiding Principles set out the importance of political commitment to regulatory reform, the desirable characteristics of good regulation, and the links with competition and the elimination of barriers to trade and investment. The Guiding Principles, which emphasised effective and continuous regulatory management in order to secure high-quality regulation, were complemented by the 2005 APEC-OECD Integrated Checklist for Regulatory Reform.

6. The Guiding Principles covered regulatory management, competition and market openness, which corresponds to the nature of the horizontal work on regulatory reform. Three separate OECD bodies (the Trade Committee, the Competition Committee and the Working Party on Regulatory Management) developed and approved their respective parts of the Guiding Principles. The Special Group on Regulatory Policy then discussed and endorsed the Guiding Principles as a whole. This process corresponded to the multidisciplinary nature of the Guiding Principles in the absence of a Regulatory Policy Committee.

7. Prior to developing the Recommendation, 24 reviews of OECD Member countries were completed as well as three reviews of non-Member countries: the Russian Federation (2005), Brazil (2007), and the People’s Republic of China (2008). In addition, over the course of 2009 and 2010, the Better Regulation policies and practices of 15 OECD member countries of the European Union were reviewed under the framework of the Guiding Principles.

8. While the 1995, 1997 and 2005 documents remain relevant, the creation of the Regulatory Policy Committee in 2009, with a different and broader mandate than the Working Party on Regulatory Management and the Special Group on Regulatory Policy, foreshadowed the need for a new normative approach to regulatory policy. Likewise, the report “Regulatory Policy and the Road to Sustainable Growth,” which synthesised 10 years of OECD work on regulatory reform, called for a revision and update of collective thinking on regulatory policy and governance [GOV/RPC(2010)16].

9. The Recommendation was drafted over the course of 2011. The Regulatory Policy Committee (RPC) devoted a substantial portion of its spring and fall 2011 meetings to this work. At the early stages of its development, the emphasis focused on coverage and objectives, so that the text could reflect the current state of the art while also providing an aspirational dimension, driving reform and generating a drive for results. As the process advanced, technical and legal precision become increasingly important in developing a final draft. In addition to the Committee meeting themselves, more specialised discussions were carried out in between RPC meetings by a Steering Group led by the RPC bureau.

10. During the summer of 2011, the Secretariat organised comprehensive and open consultations around the draft text of the Recommendation. This process included consultations with regulators, the private sector, labour and civil society at large, including through the use of electronic media. A version of the draft Recommendation was also posted on the Internet for comments from the general public. Consultations with Partners were also undertaken. The goal was to ensure that all interested Partners had an opportunity to engage in the work, with particular focus on the Key Partners.
Content/structure of the Recommendation

11. The Recommendation is the result of careful assessment of best practice identified by the Regulatory Policy Committee from over a decade of reviews of OECD Member countries. It develops a systemic governance framework that can deliver ongoing improvements to the quality of regulations. It provides advice on the development of institutions and the application of tools, and also provides practical measures against which Adherents can assess their capacity to develop and implement quality regulation. The twelve principles set out in the body of the Recommendation are elaborated on in an Annex, which forms an integral part of the Recommendation, to provide Adherents with further guidance on the principles’ implementation.

12. The Recommendation begins by noting the importance of having political commitment at the highest level, proposing that this be expressed through a whole-of-government regulatory policy directed at the public interest. Without strong political leadership, little progress can be expected in reforming long-standing practices and cultures that have seen regulatory burdens grow. The development and, more importantly, entrenchment of an over-arching regulatory policy is crucial if progress is to occur across government and be maintained over time.

13. Of the other eleven elements of the Recommendation, there are five that could be said to be most directly about good governance (paraphrased briefly below):

- adhering to transparency and public consultation
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- publishing of regular reports on regulatory and regulator performance
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14. Each of these elements makes an important contribution to building a regulatory system that can deliver well-informed regulatory decisions; decisions that will also be well implemented and, importantly, that can win the trust of the public.

15. The remaining six elements of the Recommendation involve what could be called action or process requirements for a sound regulatory system:

- integrate Regulatory Impact Assessment (RIA) into early stages of regulatory development
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in areas like finance and trade, but individual countries can also test their own regulations against international standards and seek to minimise unjustifiable disparities.

17. Finally, while national governments are responsible for important areas of regulation, many of the regulatory burdens borne by individual businesses occur within lower jurisdictions. Building capacity for the effective development and management of regulation at local and regional levels of government is accordingly an imperative if the system as a whole is to function well.

Methodology for Monitoring the Implementation of the Recommendation

18. Most of the data used to monitor the implementation of the Recommendation resulted from the 2014 and 2017 Regulatory Indicators Surveys [GOV/RPC/MRP(2014)3/ANN1] and [GOV/RPC(2017)13/ANN1].

- Data for 2014 were gathered from the 34 countries that were OECD Member countries at the time of data collection and the European Union.
- Data for 2017 were collected from the 35 countries that were OECD Member countries at the time of data collection, 3 accession candidate countries (Colombia, Costa Rica and Lithuania), as well as the European Union.

19. The surveys investigated three elements of the Recommendation in detail: stakeholder engagement (element 2), Regulatory Impact Assessment (element 4) and ex post evaluation (element 5). For each of these areas, the survey has collected information on formal requirements and has gathered evidence on their implementation. These three elements are considered core regulatory management tools and the RPC has developed composite indicators on their use. Information on elements 1, 3, 8, 10, 11 and 12 was also addressed in the survey but not with the same level of scrutiny as that for 2, 4 and 5. Perhaps with time, the RPC will also develop composite indicators for these other elements.

20. Data for Principle 9 for practices in place for primary laws and subordinate regulations was collected separately. As the Regulatory Indicators Survey only cover processes of developing primary laws that are carried out by the executive branch of the national government, these questions are not applicable to the United States, as no primary laws are initiated by the executive in the United States (they are all initiated by Congress).

21. Data for Principle 7 was taken from the 2018 OECD Working Paper “Regulatory management practices in OECD countries”. These data are collect through the Product Market Regulation (PMR) survey conduct by the Economics Department every five years.

22. To complement the 2014 and 2017 survey data, the Secretariat circulated a questionnaire to RPC delegates following the April 2017 Committee meeting to gather information on dissemination of the Recommendation as well as Adherents’ opinions on whether the Recommendation is still adequately relevant to the current and foreseeable future developments in the field of regulatory policy. Moreover, it sought the views of Adherents as to whether there is a need to update the Recommendation, and if so, how. A first draft and information pertaining to this monitoring report were presented to RPC in November 2017 and April 2018 meetings. This current draft, based on comments received

5. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
at the 19th meeting of the RPC in November 2018. The current draft has also been shared with the Public Governance, Investment and Competition Policy Committees. Once the report was approved by the Committee, Council will be invited to note and declassify it, which may provide for further follow-up actions. Thereafter, this report will be made public through the online Compendium of OECD legal instruments.

Scope of the 2014 and 2017 survey data

23. The design of the Regulatory Indicators surveys was built on intensive exchanges with delegates to the RPC on the implementation of the Recommendation, including a workshop in Stockholm in 2013, discussions on a list of good practices in implementing the Recommendation, and a workshop session in The Hague in 2014. Furthermore, OECD Member countries of the Steering Group on Measuring Regulatory Performance worked intensively together with the Secretariat on the design of questions. OECD Member countries of the Steering Group at the time included Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Estonia, the European Union, Germany, Ireland, Mexico, the Netherlands, Norway, Spain, Sweden, the United Kingdom, and the United States.

24. The Indicators draw upon survey responses to the 2014 and 2017 surveys. For the 2017 round, answers were provided by 36 of 37 Adherents\textsuperscript{6} in the respective time-periods. These responses came from delegates to the RPC and central government officials. The questionnaire and indicators methodology were developed in close co-operation with delegates to the RPC and the Steering Group on Measuring Regulatory Performance. Survey answers underwent a thorough verification process in order to enhance data quality and ensure comparability of answers across Adherents and over time. This process was carried out by the OECD Secretariat in co-operation with delegates to the RPC.

25. The surveys focus 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. However, questions regarding \textit{ex post} evaluation cover all national regulations regardless of whether they were initiated by parliament or the executive. Based on available information, most national regulations are covered by survey answers, with some variation across Adherents. Most respondents have parliamentary systems. The majority of their national primary laws therefore largely originate from initiatives of the executive. This is not the case, however, for the United States where no primary laws are initiated by the executive, or, to a lesser extent, for Mexico and Korea where the share of primary laws initiated by the executive is low compared to other OECD Member countries.

Limitations of the survey and composite indicators

26. In interpreting the survey results, it is important to bear in mind the methodological limitations of composite indicators, particularly those that, as in the current survey, are based on categorical variables.

27. Composite indicators are useful in their ability to integrate large amounts of information into an easily understood format. However, by their very nature, cross-country comparable indicators cannot be context specific and cannot fully capture the complex

\textsuperscript{6} All 36 current OECD Member countries responded. Kazakhstan only adhered to the Recommendation in 2017 after the survey was underway and has thus not been included in the results.
realities of the quality, use and impact of regulatory policy. While the 2014 and 2017 survey puts a stronger focus on evidence and examples to support country responses, it does not constitute an in-depth assessment of the quality of country practices.

28. In-depth country reviews are therefore required to complement the indicators. Reviews provide readers with a more detailed analysis of the content, strengths and shortcomings of countries’ regulatory policies, as well as detailed and context-specific recommendations for improvement. Adherents have a wide range of governance structures, administrative cultures and institutional and constitutional settings that are important to take into consideration to fully assess regulatory practices and policies. While these are taken into account in OECD Member countries’ peer reviews, it is not possible to reflect all these country specific factors in a cross-country comparison of regulatory practices.

29. It is also important to bear in mind that the indicators should not be interpreted as a measurement of the quality of regulation itself. While the implementation of the measures assessed by the indicators aim to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society, the indicators themselves do not assess the achievement of these objectives.

30. The results of composite indicators are always sensitive to methodological choices. At the same time, they are a value source of information and valid for the purpose of this exercise – evaluation of the implementation, dissemination and relevance of the Recommendation (and not Adherents’ individual performance). While country reviews could shed more light on this, it would be important to note that the current data is sufficient to make some informed estimate on the Recommendation and therefore to consider the next steps with regards to it.

Implementation of the Recommendation

31. Adherents have come a long way in improving regulatory quality by systematically adopting the principles and tools described in the Recommendation. The large majority of Adherents, as well as the European Union, have generally taken a whole-of-government approach to regulatory policy and made it a pillar of their public sector reform efforts:

- All responding Adherents have adopted an explicit regulatory policy.
- 33 Adherents have designated a minister or high-level official responsible for promoting government-wide progress on regulatory policy.
- 35 Adherents have established at least one standing body charged with some form of regulatory oversight.
- All responding Adherents have formal requirements to use Regulatory Impact Assessment (RIA) and public consultation for the executive branch in the development of new regulations.

32. While Adherents aim to build a solid regulatory policy system comprising all the elements of the Recommendation, the implementation of the Recommendation varies considerably across Adherents and there is room for improvement of implementation is every single jurisdiction. Adherents are at different stages of implementing the Recommendation and, under constraints of resources and absorption, need to make decisions on which practices to adopt first and which practices might be introduced at a later stage. These choices are not without risks – implementing some practices of the
Recommendation without other essential complementary elements may limit the effectiveness of the practices.

33. Adherents also face a number of challenges in carrying out their regulatory activities owing to new trends such as rapid technological innovation and globalisation. It is important to note that elements of the Recommendation may apply to the preparation of parliamentary legislation, to the preparation of secondary legislation by the executive (e.g. executive orders, decrees, etc.), or to implementing regulations by regulatory agencies. Adherents thus engage in an extremely broad range of “rule-making” activity which may or may not be fully captured by the normative framework of the Recommendation. With the above-mentioned caveat in mind, Adherents continue to face a number of challenges in establishing the conditions for and in delivering on their regulatory quality agenda as provided for in the Recommendation.

34. Among the challenges, Adherents may lack a strategic approach and focus too much on processes rather than on the impacts of regulatory quality. There is some risk that regulatory policy tools – especially consultation and Regulatory Impact Assessment – may be used in a procedural fashion after policies and the regulatory decision have been made. For some Adherences, the scope of regulatory policy has been limited to burden reduction initiatives and minimising the administrative costs imposed on business by regulations. This narrow, procedural approach may prevent Adherents from fully benefiting from the efforts they have made to establish the conditions for regulatory quality.

35. For many Adherents, regulatory policy remains challenging. It involves finding a balance between the use of different tools, a shift in culture towards less heavy-handed intervention and better consideration of risks and resources and extending the scope of regulatory policy beyond the executive and national sphere. Many Adherents still struggle to move beyond the establishment of the legal requirements and use fully the tools and opportunities of regulatory policy to improve regulatory quality.

36. The political economy of establishing the conditions for and maintaining regulatory quality is often difficult. In particular, finding support for regulatory reform is proving complex. Political support is necessary, and so is building a culture of regulatory quality throughout the administration. Addressing the potential opposition from certain groups will be important. Rallying support requires that the case for regulatory quality and the links between improving regulatory quality, delivering on policy objectives, and promoting growth are clarified.

37. The following section addresses the implementation of each provision of the Recommendation in turn.

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, the distributional effects are considered and the net benefits are maximised.

38. Most Adherents show signs of such a commitment. An increasing number of Adherents have nominated a Minister or a high-level official to be accountable for promoting government-wide progress on regulatory reform; and have developed and published an explicit regulatory policy. Most Adherents have also established a dedicated body responsible for promoting regulatory policy and for monitoring and reporting on
regulatory reform and quality. In practice, most Adherents have standard procedures for developing primary and subordinate laws (Figure 1).

39. This high-level of commitment shows that Adherents have established the conditions for implementing the Recommendation: developing an explicit policy and making it widely known, securing high-level political leadership and advocacy with government; and establishing de facto procedures. There is still a small number of Adherents that do not have an explicit regulatory policy and others that no longer report having some of the major requirements for regulatory quality that they had reported in 2008/09. On the whole, however, the survey data show evidence of stalling rather than backsliding.

**Figure 1. The adoption of an explicit whole-of-government policy for regulatory quality**

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<th>OECD member countries</th>
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<td>Existence of an open, published regulatory policy promoting and monitoring regulatory reform and quality</td>
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<td>Specific minister or high-level official accountable for promoting government-wide progress on regulatory reform and quality</td>
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<td>Existence of standard procedures by which the administration develops subordinate regulations</td>
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40. The way regulatory policy is embedded into law differs substantially across Adherents. While most Adherents report an explicit, published regulatory policy, there is no blue print or a model legal text to embed this policy into law. The evidence shows that regulatory policy is rarely expressed in a single high-level document. Instead Adherents have a wide range of documents and policy frameworks, from broad approaches to regulatory policy (through constitutional provisions, cabinet directives on regulatory management, implementation plans for regulatory reform or frameworks for better regulation and directives on regulatory planning and review), to focused documents referring to specific regulatory tools such as RIA, administrative simplification and ex post evaluation. They take several forms: laws, manuals or guidelines, and government strategies and programmes.
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.

41. This principle usually takes the form of stakeholder engagement in Adherents. Stakeholder engagement is both an administrative practice and a mind-set. It originates from the intersection of national regulatory reform efforts intended to promote more effective policy making with open government (participatory democracy) initiatives aimed to stimulate more transparent and inclusive policy making. The emergence of stakeholder engagement has been portrayed as a part of a wider shift from “government” to “governance”, in which vertical and hierarchical forms of policymaking are giving way to more horizontal and co-operative approaches. This shift has spurred a process of communication, consultation and participation of stakeholders in different phases of the regulatory governance cycle. It is increasingly perceived not only as fundamental for understanding stakeholders’ needs but also for improving trust in government. It is also widely recognised that making regulatory decisions without stakeholder engagement may lead to confrontation, dispute, disruption, boycott, distrust and public dissatisfaction.

42. Adherents have been paying increasing attention to various ways to engage stakeholders in making, implementing and reviewing regulations. The central objective of regulatory policy – ensuring that regulations are designed and implemented in the public interest – can only be achieved with help from those subject to regulations (citizens, businesses, social partners, NGOs, public sector organisations, etc.). While this assertion states the obvious, the value of open and inclusive policymaking has only been widely accepted parallel to the renaissance of participatory democracy. Amid contemporary challenges of representative democracies, such as the increased distrust of political parties and civic disaffection, Adherents only recently acknowledged the importance of “pay[ing] more attention to the voice of citizens, business and civil society, who need to be part of the regulatory development process” (OECD, 2015).

43. The results of the survey show that most Adherents have systematically adopted stakeholder engagement practices and require that stakeholders be consulted especially in the process of developing new regulations. For a small number of Adherents stakeholder engagement practices are either informal or consultation is only required in specific areas of regulation. Otherwise, there are no significant differences among top performing Adherents concerning systematic adoption of stakeholder engagement.

44. Concerning methodology, Adherents that do not systematically conduct public consultations open to the general public exhibit relatively weak regulatory management systems. Engaging the general public in both early and later stage consultation can make a big difference in the quality of the system, as well as setting minimum periods for submitting comments. Having some formal procedures for taking comments received during consultations into account and providing feedback to consultees as well as publishing and justifying decisions not to conduct consultations are critical pillars of the transparency of the engagement process.

45. The oversight and quality control of stakeholder engagement makes a significant difference in how Adherents perform. Having a dedicated body independent from the drafting institution that checks the quality and comprehensiveness of consultations can play
an important role in the overall quality of the system, especially if it has a right to return the draft based on insufficient consultations. Having such a body is also important in ensuring the quality of the engagement process itself.

**Figure 2. Composite indicators: Stakeholder engagement in developing primary laws, 2017**

![Composite indicators: Stakeholder engagement in developing primary laws, 2017](image)

*Note:* The more regulatory practices as advocated in the Recommendation a country has implemented, the higher its score. The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The results apply exclusively to processes for developing primary laws initiated by the executive. This figure excludes the United States where Congress initiates all primary laws.


46. Adherents generally engage stakeholders in developing secondary regulations slightly less than in developing primary laws. The factors influencing the scoring are very similar for primary and secondary regulations.
Figure 3. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2017

Note: The more regulatory practices as advocated in the Recommendation a country has implemented, the higher its score. The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four.


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.

47. The institutional setup for regulatory policy and oversight is a critical enabler of effective regulatory frameworks. The Recommendation outlines a wide range of oversight functions to promote high quality evidence-based decision making and enhance the impact of regulatory policy. These functions include the quality control of regulatory management tools; examining the potential for regulation to be more effective; contributing to the systematic improvement of the application of regulatory policy; co-ordination; training and guidance; and strategies for improving regulatory performance.

48. Regulatory oversight provides important impulses for the implementation of better regulation efforts. Regulatory oversight mechanisms can help ensure that civil servants use regulatory management tools and follow due process to produce high-quality regulations that achieve their objectives and are aligned with long-term policy goals. Oversight also helps foster a whole-of-government perspective towards regulation and performs essential co-ordination activities to ensure a homogenous approach to regulatory policy across the public administration.
49. Adherents have invested in regulatory oversight in line with the Recommendation, although institutional setups vary strikingly across countries. All Adherents have a body in place that covers at least one of the regulatory oversight functions identified in the Recommendation. Responsibility for different oversight functions is frequently split between several bodies within one jurisdiction. This raises the issue of effective coordination mechanisms between bodies with shared responsibilities and the merits and challenges of various organisations for regulatory policy tasks and responsibilities.

**Figure 4. Number of bodies responsible for different oversight functions**

![Number of bodies](image)

*Note:* This figure is based on information available for all OECD countries, as well as Colombia and Costa Rica.


50. A majority of regulatory oversight bodies is located within government, either at the centre of government or at a line ministry, drawing on their specific expertise in economic, legal or other areas. Other bodies are however also increasingly involved in regulatory oversight and legal scrutiny functions. They include “traditional” players that are external to government, such as parliamentary bodies, supreme audit institutions, bodies that are part of the judiciary or located in the Office of the Attorney General. They also include bodies with less traditional features, showing the institutional dynamism of countries in this area. For example, this group includes “arm’s length” bodies that are not subject to the direction on individual decisions by executive government, but may be supported by a secretariat located within government; or bodies involving representatives from the government, the legislative branch and/or civil society. Further analytical work on the features of these bodies may be worthwhile to better understand their modus operandi and relationship with government, parliament and civil society.
Figure 5. Location of bodies with oversight functions

Notes: This figure is based on information available for 161 bodies reported in the survey from all OECD countries, as well as Colombia and Costa Rica. Data presents the number of jurisdictions with at least one body in a particular location.

51. Clearly, location also depends on the nature of the oversight functions. Functions supporting a whole-of-government approach to regulatory policy through co-ordination, the provision of guidance and training or the overall systematic improvement and advocacy for regulatory policy are located within government in most cases. Bodies exercising quality control of regulatory management tools are frequently located within government as well, but notably non-departmental bodies also play an important role for this function. In contrast, almost half of bodies tasked with the evaluation of regulations or the overall regulatory policy framework are non-departmental bodies or are located external to government.

52. There is still very little evidence on the impact of regulatory oversight on regulatory quality and societal well-being. About half of the bodies responsible for quality control of regulatory management tools have a mechanism in place to monitor and report on their actions. Frequently, the number of reviews or interventions of the oversight body is tracked, while in-depth evaluations of the overall effectiveness of their activities remain scarce. Further analytical work could explore the conditions for effective regulatory oversight, including considerations of the features and capacities of the bodies as well as the role of the socio-political context.

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 trade-offs of the different approaches analysed to identify the best approach.

53. Regulatory impact assessment (RIA) provides crucial information to decision makers on whether and how to regulate to achieve public policy goals. It is challenging to develop “correct” policy responses which also maximise net societal well-being. It is the role of RIA to help assist with this, by critically examining the impacts and consequences...
of a range of alternative options. Improving the evidence base for regulation through RIA is one of the most important regulatory tools available to governments.

54. A well-functioning RIA system can assist in promoting policy coherence by clearly illustrating the inherent trade-offs within regulatory proposals. It does this by showing the efficiency and distributional outcomes of regulation. RIA also has the ability to reduce regulatory failures: for example RIA can illustrate that reducing risks in one area may create risks for another. RIA can also reduce regulatory failure by demonstrating where there is no case for regulating, as well as highlighting the failure to regulate when there is a clear need. While RIA is used across Adherents, there is no single model that is followed in implementing this regulatory policy tool. The design and evolution of RIA systems has taken into account the institutional, social, cultural and legal context of the relevant Adherents. However, despite existing differences in the purpose, scope and methods of RIA systems around the world, the process tends to follow a similar structure. The key steps of a typical RIA involve problem definition, identification of regulatory options, data collection, assessment of alternative options, identification of the preferred policy option and provisions for monitoring and evaluation.

55. Figure 6 and Figure 7 show that all surveyed Adherents have taken measures to make RIA part of their policy process. The main drivers supporting this trend are the systematic adoption and underlying methodology for RIA. The data shows that all surveyed Adherents – without exception – have taken steps to establish a methodology for RIA for both primary laws and subordinate regulation. Likewise, the vast majority of Adherents have formal requirements for RIA.

Figure 6. Composite indicators: Regulatory Impact Assessment for developing primary laws, 2017
Notes: The more regulatory practices as advocated in the Recommendation a country has implemented, the higher its score. The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The results apply exclusively to processes for developing primary laws initiated by the executive. This figure excludes the United States where Congress initiates all primary laws.


Figure 7. Composite indicators: Regulatory Impact Assessment for developing subordinate regulations, 2017

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Notes: The more regulatory practices as advocated in the Recommendation a country has implemented, the higher its iREG score. The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The results apply exclusively to processes for developing primary laws initiated by the executive. This figure excludes the United States where Congress initiates all primary laws.


56. Many Adherents can improve their RIA system by pursuing stronger oversight. An important consideration is the scope of the oversight function – from a simple gatekeeping role to an agency that has a strong challenge function. While the formal requirement to consult as part of RIA is common, implementation is uneven in practice. Generally, the link between consultation for RIA and broader open government processes is weak.

57. Many Adherents have adopted the practice of evaluating 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.
58. Evidence across Adherents suggests that much remains to be done to use RIA in a way which allows the public and the regulators to follow the regulation through its life cycle. This approach would allow one to monitor a regulation’s implementation, compliance, performance, and intended policy objectives as well as other clearly-defined policy goals. RIA is the initial link in a chain in which monitoring of implementation and ex post assessment of regulation help to close the regulatory governance cycle.

59. Adherents have the opportunity to demonstrate that RIA is about ensuring that new regulations add to the overall welfare of societies by measuring and communicating the benefits of the RIA system. Beyond identifying the net positive benefits in monetary value of new regulations, relevant performance indicators could be employed to reveal the added benefits of RIA to citizens and businesses due to reductions of administrative burdens and regulatory costs, or due to reduction of incidents on human health or the environment, for instance.

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 deliver the intended policy objectives.

60. There is a fundamental value in assessing the effectiveness of laws and regulation once it is in force. Indeed, it is only after implementation that the effects and impacts of regulations can be fully assessed, including direct and indirect incidence and unintended consequences. Indeed, the evidence points to the fact that policy evaluation is becoming an institutionalised practice and many Adherents have taken important steps to develop evaluation systems in their public administrations. Yet, the practice among Adherents varies considerably and in general would benefit from more consistent approaches. This includes developing ex post evaluation strategies as well as methodologies to ensure consistent application.

61. Most Adherents have systematically adopted ex post evaluation for primary and subordinate legislation and have measures of transparency in some way (Figure 8 and Figure 9). However, despite the high benefits in reforming the stock of regulation ex post evaluation systems are still rudimentary in most Adherents and changes since 2014 are marginal on average. Most improvements were made to oversight and quality control and the systematic adoption of ex post evaluation. Despite these improvements however, oversight and quality control to ensure effective implementation continue to be underdeveloped.
Figure 8. Composite indicators: Ex post evaluation for primary laws, 2017

Notes: The more regulatory practices as advocated in the Recommendation a country has implemented, the higher its score. The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four.

Figure 9. Composite indicators: Ex post evaluation for subordinate regulations, 2017

Notes: The more regulatory practices as advocated in the Recommendation a country has implemented, the higher its score. The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four.


62. The data demonstrates that Adherents should place a greater emphasis on evaluating the extent to which the policy goals that were initially identified have been achieved. While ex post evaluation remains the least developed of the regulatory tools, some promising practices are emerging.

Box 1. Examples of ex post reviews in OECD countries

- A review of the regulatory framework for resource development in Canada found that investors could be discouraged by complex rules and processes, threatening the economic viability of major projects. The Ministry of Finance recommended the implementation of the Responsible Resource Development Plan, which included more predictable project reviews, reduced duplication of review processes, strengthened environmental protection, and enhanced consultation with Aboriginal people.

- The Chilean Productivity Commission undertook a review of its copper mining industry. It made a total of 53 recommendations, a number of which specifically related to the copper mining regulatory environment. It recommended that approval processes for large projects be shortened, to ideally not exceed three years. To achieve this, better coordination within and between government agencies would
be required. Further recommendations related to improving the industry’s safety and reforming exploration and licencing arrangements.

- The Prime Minister’s Office in Finland published a study on investigating the evaluation and reduction of regulatory burdens. The 2018 study concluded that it could not provide an overall assessment of the regulatory burden due to insufficient information from either budget papers (a ‘top down’ approach) or on a law-by-law basis (a ‘bottoms up’ approach). However the report presented 15 proposals to reduce or avoid regulatory burdens, including recommendations on implementation and legislative drafting.

- The German Finance Ministry conducted an in-depth review in 2017 on standard tax forms for citizens. In its conclusions, the Ministry issued recommendations for simplifying tax forms. Following the review, consultation and co-ordination discussions were held with authorities at the subnational level in order to implement the recommendations.

- In 2015, the Israeli Government announced a five plan for the reduction of the regulatory burdens. In 2016 some 31 different regulatory areas were reviewed, including laws relating to competition, administrative burdens, compliance costs, compliance with international instruments, risk, and regulatory overlap. For example, the Ministry of Environmental Protection examined the regulatory process in the field of integrated licensing of industries, such as non-ionising radiation and hazardous waste. The Ministry expects NIS74.5million in annual savings to the economy by reducing interactions with authorities and creating certainty throughout the life of the license.

- In 2014, an administrative burden review in the United States examined the response of agencies to Executive Order 13610, Identifying and Reducing Regulatory Burdens. In the first iteration of periodic reports implementing the Executive Order, Executive Departments and Agencies identified more than 100 initiatives producing an estimated annual reduction in paperwork burden of more than 100 million hours.

Source: OECD (2017); Comisión Nacional de Productividad (2017); Prime Minister’s Office (Finland) (2018); Ministry of Finance (Germany) (2017); Prime Minister’s Office (Israel) (2017); Office of Management and Budget: Office of Information and Regulatory Affairs (United States) (2016).

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.

63. Information on the performance of regulatory management practices is necessary to identify and evaluate if regulatory policy is being implemented effectively and if reforms are having the desired impact. Yet the majority of Adherents make no or only limited attempts to systematically assess the implementation and functioning of their regulatory tools and processes. This implies that most Adherents neither know whether regulatory policy is properly implemented nor whether it has an impact on decision-making. For example, as highlighted in Figure 10, while Adherents’ governments generally emphasise the importance of consultation with stakeholders, only 11 Adherents publish indicators on
the performance of public consultation practices (OECD, 2014c and 2014d). Less than two thirds of Adherents have published indicators on the functioning of RIA and only ten on the functioning of ex post evaluation systems. By contrast, in line with the strong focus on administrative simplification programmes, 20 Adherents make indicators on the performance of these programmes available.

**Figure 10. Publicly available indicators on the functioning of regulatory management tools/programmes**

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<tr>
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<th>2014</th>
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<tr>
<td><strong>RIA</strong></td>
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<td><strong>Stakeholder engagement</strong></td>
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<td><strong>Ex post evaluation</strong></td>
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*Note: Data is based on 34 OECD Member countries in 2014 and 36 in 2017 and Colombia and Costa Rica. Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, [http://oe.cd/ireg](http://oe.cd/ireg).*

**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.**

**64.** To help Adherents implement this principle, the Regulatory Policy Committee and the Network of Economic Regulators have developed committee level guidance. The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* (BPP-Governance of Regulators) has undergone a rigorous consultation process. The initial draft of the BPP-Governance of Regulators was discussed at the ad hoc meeting of the Network of Economic Regulators (NER) on 21 November 2012 with key questions and comments from an academic expert. The draft was circulated among NER Member countries and associations for further written comments. A revised version was discussed at the 8th Meeting of the Regulatory Policy Committee (RPC) on 22-23 April 2013, and it was also shared at the NER meeting on 24 April 2014. Incorporating feedback from both meetings, the 3rd draft was released for public consultation for a period of 3 months from June to August 2013. The document was revised absorbing public feedback and a subsequent version was presented and approved at the 9th Meeting of the RPC on 12-13 November 2013 and the NER meeting on 14 November 2013. A preliminary version of the document was then circulated at the 10th meeting of the RPC on 14-15 April 2014 and the NER meeting on 14 April 2014 before its final publication.

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65. The BPP-Governance of Regulators has been instrumental in assisting regulators across Adherents in implementing the Recommendation. To complement this work, the Secretariat has developed a new set of indicators measuring the governance of regulators as part of the OECD’s economy-wide indicators of product market regulation (PMR). The indicators covered six network sectors – energy (including electricity and gas), e-communications (including telecommunications), rail transport, air transport and water.

66. The indicators for each sector addressed three governance components:

- **Independence**: This component maps the degree to which a regulator operates independently and with no undue influence from both the political power and the regulated sectors by looking at the legal status of regulators, staffing, budget stability and autonomy.

- **Accountability**: This component covers the accountability of the regulator vis-à-vis various stakeholders, including the government, parliament, the regulated industry and the general public. It captures the adherence to regulatory management tools and looks at the collection, use, publication and reporting of performance information.

- **Scope of action**: This component sheds light on the range of activities that the regulator performs, including tariff-setting, issuing standards, enforcement activities and sanctioning powers.

67. In 2018, the indicators were calculated for 35 Adherents. The indicators were not calculated for the United States, which did not return the survey and for Colombia, Costa Rica and Kazakhstan, which were not part of the survey exercise. In all, indicators were developed for 35 energy regulators, 34 e-communications regulators, 31 rail regulators, 29 air regulators, and 17 water regulators.

68. The three indicators are presented in Figure 11. The indicators vary from 0 to 6, with 0 being the most effective governance structure and 6 being the least. In the interest of brevity, the data presented below is an average across the six network regulators for Adherences. These averages clear mask considerable variation across regulators with individual jurisdictions. For a more granular analysis on measuring regulatory governance, see [GOV/RPC/NER(2019)1] and [ECO/CPE/WP1(2018)19/ANN5/REV2].

8. The survey, which is carried out by the Economics Department, only covered OECD Member countries and the Key Partners.
Figure 11. The governance of regulators in six network sectors, 2018

The indicators vary from 0 to 6 from the most to the least effective governance structure


Independence

Accountability

Scope of Action

69. Independence maps the degree to which a regulator operates independently and with no undue influence from both the political power and the regulated sectors. When...
regulators enjoy a degree of independence, this can “provide greater confidence and trust that regulatory decisions are made with integrity” (OECD, 2014). Independent regulators can better provide a “credible commitment” to adhere to long-term political goals when the political power delegates activities to them, signalling to the public, investors and market actors that these goals will not be abandoned in the name of short-term gain, electoral popularity or sectorial interest. Fully mapping the determinants of independence across different market contexts is challenging; work recently developed by the OECD Network of Economic Regulation provides a framework to better capture a wider array of elements that contribute to independence (OECD, 2016). As a result, the independence component captures the legal status of the regulator, relationship with the executive, staffing (including for the most senior positions), budget sources and spending autonomy.

70. The second component covers the accountability of the regulator vis-à-vis various stakeholders, including the government, parliament, the regulated industry and citizens. Regulatory agencies have significant powers; enjoy various degrees of independence; and their decisions affect prices, investment, property rights and other fundamental economic outcomes. Thus, formal accountability is crucial to balance independence as well as to enhance legitimacy. The accountability component also captures the adherence to compliance and accountability instruments such as regulatory management tools and the collection, use, publication and reporting of performance information, all of which enhance the transparency and provide scrutiny of regulators’ actions.

71. This component sheds light on the range of activities that the regulator performs, including tariff-setting, issuing standards, enforcement activities and sanctioning powers. Unlike the independence and accountability components, the quantity of functions that regulators have does not necessarily translate into higher quality. Therefore, better scope of action scores do not indicate better governance arrangements. However this component is useful to gauge key differences between sectors and countries for what concerns the remit of regulatory authorities.

72. The data outlined above (and the analysis in [GOV/RPC/NER(2019)])) offers a comprehensive overview of governance arrangements of regulatory agencies in the majority of Adherences. This analysis provides numerous insights for regulatory agencies wishing to compare their arrangements to others, for central government units in charge of regulatory policy, as well as for researchers and practitioners. The key highlights are:

- Governance structures vary considerably across Adherences and sectors.
- There is a positive relationship between independence and accountability confirming the finding that greater autonomy comes with stronger accountability structures.
- Governance arrangements around the independence of regulators show the smallest variation, suggesting some form of convergence on this institutional arrangement.
- While most regulators identify as “independent bodies with adjudicatory, rule-making or enforcement powers”, mapping the practical determinants of independence requires looking at their relationship with the executive, staffing, budget and spending autonomy.
- Most regulators are accountable to the executive with the exception of e-communications regulators, half of which are accountable to parliament or congress.
The vast majority of regulators provide opportunities for stakeholders to comment on draft decisions, even in the absence of a legislative requirement.

The regulators surveyed perform a wide range of functions; independent regulators more so than ministerial ones.

Roughly 12% of the regulators sampled are in charge of more than one sector (i.e. multi-sector regulators), typically combining either energy and water or rail and air.

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.

73. The most prevalent forms of appeal against adverse regulatory enforcement decisions in individual cases in Adherents are a review by the regulatory enforcement body and judicial review, with 29 Adherents reporting them as the options most readily available to affected parties. Eleven Adherents report to have had a programme to facilitate the appeal process between 2009 and 2014, with all programmes except one relating to the length of delay for appeals. A majority of programmes also related to costs to appellants and the number of stages for appeal. Twelve Adherents state that a parliamentary or legislative committee or body is in place in their jurisdiction specifically to review the legality and procedural fairness of regulations.

74. This principle will need to be assessed more carefully in the next monitoring round and explicit data and indicators will need to be developed. Due to resource constraint, the Secretariat has been unable to assess this principle as of date.

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.

75. The Secretariat has very limited data that assesses the implementation of this principle. Due to resource constraint, the Secretariat has been unable to assess this principle as of date. It will need to be studied more carefully in the next monitoring round and explicit data and indicators will need to be developed.

76. The limited data on risk assessment from the 2017 survey indicates that a majority of Adherents have some level of risk assessment requirement, dependent on the type of legislation and the domain. Twenty-one Adherents state that the written guidance in place on the preparation of RIAs gives advice on risk assessment. Only four Adherents claim to have undertaken any major principle-based review in the past 12 years that was based on risk. The indicators cover risk assessment in primary laws and subordinate regulation in health and safety, environment or all areas of regulation.

10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, 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.

77. Twenty-one Adherents have a standing co-ordination mechanism across national and sub-national governments or municipalities to promote coherence, avoid duplication
or conflict of regulations. The data indicates that more than a third of Adherents do not have such mechanisms, suggesting that an important number of Adherents do not implement this principle.

78. In most Adherents, central government bodies, supported by a network of institutions and rules, function alongside regional and local governments, with their own set of rules and mandates. In many cases, different layers of government have the capacity to design, implement, and enforce regulation. This multi-level regulatory framework poses a series of challenges that affect the relationships of public entities with citizens and businesses. If poorly managed, it may impact negatively on economic growth, productivity, and competitiveness.

79. In the course of carrying out a number of Regulatory Policy Reviews (for instance but not limited to Australia and Mexico), the OECD has found that high-quality regulation at one level of government can be undermined by poor regulatory policies and practices at other levels, impacting negatively on the performance of economies and on business and citizens’ activities.

80. Adherents have different mechanisms to ensure regulatory coherence among levels of government (Figure 12). According to the 2014 Regulatory Indicators Survey, 21 Adherents have a standing co-ordination mechanism across national and sub-national governments to promote regulatory coherence and avoid duplication or conflicts of regulation.9

Figure 12. Mechanisms to ensure coherence across all levels of government and improve performance at the sub-national level

Note: Based on data from 34 Adherents in 2014.

9. The issue of multi-level regulatory governance was not covered in the 2017 Regulatory Indicators Survey because of resource constraints. This topic may be covered in a future round subject to greater interest from the Regulatory Policy Committee.
11. Foster the development of regulatory management capacity and performance at sub-national levels of government.

81. Ten Adherents use performance benchmarking to share or promote best practices of regulatory management across sub-national governments, ten rely on reports on good practices and lessons learned, and five use some other means (i.e., ombudsmen reports and discussions in co-ordination bodies). Given the relatively large number of Adherents who do not have mechanisms for sharing or promoting best practices suggests that the implementation of this principle is lacking.

82. The experience shows that regulatory policy should have support at the highest political level to be developed and sustained. This is no different at the sub-national level. Regional and local governments should make regulatory policy a priority and develop and adopt principles and practices for better regulation. This requires political leadership (from governors, mayors, etc.) to allocate resources and mobilise public administrations towards good practices of regulatory management. National governments can help in this endeavour and by establishing or strengthening co-ordination bodies. Experiences such as those of Australia (Council of Australian Governments, COAG) and Canada (Federal-Provincial-Territorial Committee on Regulatory Governance and Reform) illustrate how these bodies can support sub-national government efforts to embed better regulation in their policy-making processes.

83. Despite a positive trend towards the adoption of better regulation practices at the sub-national level, important challenges remain. First, in most Adherents regional and local governments are granted some degree of autonomy (particularly in federal countries). This implies that central governments cannot dictate policies adopted at the sub-national level and, therefore, their role is more of motivating and convincing sub-national authorities of the importance of adopting a regulatory policy. In Mexico, for example, the Federal Commission for Regulatory Improvement (COFEMER)\(^\text{10}\) and the Association of Economic Development Secretariats (AMSDE)\(^\text{11}\) established the Framework Agreement for co-operation concerning regulatory reform for Mexico’s productivity and economic development. This has helped to promote regulatory policy to state and municipal governments and to facilitate COFEMER’s advice and support.

84. Resource availability and capacities at the sub-national level is a second major challenge. Regional and local governments usually have more limited resources (technical and human) to adopt and sustain regulatory policy. For example, the adoption of RIA at the sub-national level is particularly challenging. To address this issue, the central government of Australia has facilitated resources to sub-national governments that fulfilled the goals set out in the framework of COAG. This has represented an additional motivation for sub-national governments to adopt the practices of regulatory policy.

85. Looking ahead, national governments could design support mechanisms to help and motivate sub-national governments to adopt the principles and practices of regulatory policy. Regulatory policies in Adherents could also be explicit regarding this “facilitation

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10. COFEMER was recast as the National Commission for Regulatory Improvement (CONEMER) following the promulgation of the General Law of Regulatory Improvement on 18 May 2018.

11. AMSDE brings together the secretariats for economic development of the 31 federal states and the Federal District in Mexico.
role” for national governments and the recommendation for sub-national territories to mirror the efforts done at the central level.

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.*

86. The Recommendation recognises the importance of international regulatory co-operation (IRC) to ensure the quality and effectiveness of regulation in a globalised world. It emphasises in particular the need for policy makers and regulators to consider relevant international standards and frameworks for co-operation, and the likely effects of regulation on parties outside the jurisdiction. Moreover, IRC is also increasingly seen as a necessary means for helping governments achieve policy goals and minimise costs on society to address the challenges and benefit from the many opportunities offered by the growing interconnectedness of economies.

87. In order to highlight IRC practices across jurisdictions, the 2017 OECD Survey of Regulatory Policy and Governance embedded a number of questions on how regulators were required to account for the international environment in domestic rule-making. The results show that despite increasing awareness, implementation of IRC by domestic regulators remains relatively new practice.

**Figure 13. Number of jurisdictions with an explicit, published policy or a legal basis on IRC**

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<td>30</td>
<td>No, there is no policy on international regulatory co-operation</td>
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<tr>
<td>6</td>
<td>Partial, only sectoral policies apply</td>
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<td>2</td>
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*Note: Data for OECD countries is based on the 36 OECD Member countries, Colombia, and Costa Rica. Source: Indicators of Regulatory Policy and Governance Survey 2017, [http://oe.cd/ireg](http://oe.cd/ireg).*

88. Compounding the challenge, the data show the fragmentation of IRC policies and responsibilities across various legal and policy tools managed by a variety of responsible bodies. No country has today developed an overarching policy or legal basis consolidating its vision and strategy on regulatory co-operation. The agenda is split across a range of documents addressing separately the adoption and application of international commitments, the consideration of international standards, co-operation agreements in specific sectors and, in the majority of cases, responsibilities are neither clearly allocated.
nor co-ordinated among possible responsible bodies. This fragmented governance does not facilitate the development of a unified and compelling narrative around IRC likely to influence the regulatory and legislative culture of countries.

**Figure 14. Authorities charged with overseeing the systematic consideration of international instruments**

38 respondents

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Note: Data for OECD countries is based on the 36 OECD Member countries, Colombia, and Costa Rica. 

89. Legal requirements to consider international instruments when developing new laws and regulations are quite widespread – in line with obligation to adopt other international obligations. However, surprisingly, the practices are still far from systematic and the tools and approaches to support regulators in this endeavour (e.g. specific guidance, database of instruments) are yet to be fully developed in most countries. Often, regulators face a formal requirement in this area with little means or understanding of how to implement it in practice. Where they exist, these requirements also address mainly technical regulations (which carry the most likely impacts on trade) and do not inform more broadly the legislative and regulatory agenda of the country, foregoining the benefits of broader consistency with international instruments and the possibility for regulators to benefit from the international expertise in their own field.
90. The consideration of the international impacts of a domestic regulation remains limited. It should be noted that conducting impact assessment of domestic impacts is already a complex endeavour. Providing such an assessment with a view to international impacts, where numerous factors influence the impact as well, is methodologically very challenging. The *ex ante* practice is largely focused on trade impacts and does not seem to be deepening or spreading across jurisdictions over time. The *ex post* practice is confined to a small subset of countries but seems to be slightly improving. Again, the limiting factor may be the lack of reliable indicators and general difficulties in assessing international impacts as well as a lack of understanding on the part of regulators of what they could do in this area.

91. Stakeholder engagement is potentially an important means to collect the insights and inputs of foreign players – be they regulators from other jurisdictions or other stakeholders. However, the most systematic mechanism to leverage foreign inputs is provided by trade notification mechanisms (within EU or through the WTO). They therefore strongly focus on trade concerns. Even within this narrow focus, the data show disconnect between the authorities responsible for the oversight of trade transparency provisions and those in charge of supervising the engagement of stakeholders in the rule-making processes.

92. Overall, the evidence suggests that there is potential to provide greater support to regulators to implement existing IRC requirements, to broaden them beyond trade considerations and to better integrate regulatory impact assessment, stakeholder consultation, and *ex post* evaluation to consider more systematically the international environment in domestic rule-making.

93. The evidence also points to ample opportunities to bridge the gap between domestic regulatory practices and international attempts to develop a more transparent and evidence based culture of international norms and standards. Be it with stakeholder engagement or...
impact assessment, the expertise and evidence collected at the domestic level could be of use to the international one. Conversely, the adoption by international organisations of practices and disciplines such as those promoted by the Recommendation at domestic levels could go a long way to provide greater confidence to domestic regulators, policy makers and the public at large, in the quality of international norms and standards.

**Dissemination and relevance of the Recommendation**

**Dissemination**

94. The Council also invited the Adherents and the-Secretary General to disseminate the Recommendation. The Secretariat has thus provided consultations and conducted outreach continuously to promote the Recommendation among Adherents and stakeholders. The Secretariat has presented the Recommendation at numerous international conferences and OECD workshops. Many Adherents have hosted policy seminars to raise awareness of the Recommendation amongst their policy makers, civil servants, legislators, businesses and civil society. The dissemination activities of the OECD Secretariat and Adherents have been a valuable means to explain the rationale and the value of the Recommendation to relevant government officials and a broad range of stakeholders, as well as to increase their understanding of its provisions and to suggest good practices in support of its implementation.

95. The Secretary-General reinvigorated this effort by launching the first Regulatory Policy Outlook during the Public Governance Ministerial in Helsinki in October 2015. He invited all countries to actively use the finding of the 2015 Outlook, together with the Recommendation, to monitor their progress on the implementation of regulatory policy.

96. The Secretariat has also developed a number of *Best Practice Principles* to support the implementation of the Recommendation. These include *Best Practice Principles* on the governance of regulators, enforcement and inspections, stakeholder engagement, regulatory evaluation and review, and regulatory impact assessment. Adherents are actively engaged in the development of these knowledge-sharing tools, which demonstrate precisely what practical measures they have taken to implement specific provisions of the Recommendation.

**Relevance**

97. As noted above in the section on methodology, the Secretariat conducted a supplementary survey on dissemination and the ongoing relevance of the Recommendation and whether there was a need to update it and if so how. This survey received 20 (out of 3513) responses to the questionnaire. The first question asked Adherents’ perception (on a scale of 1 to 5 with 5 being fully disseminated) on how widely the Recommendation had been disseminated with their jurisdictions. The average response to this question was 3.42 indicating a relative high awareness of the Recommendation across Adherents.

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13. Colombia, Costa Rica and Lithuania were not yet Adherents when the Secretariat conducted the survey. Kazakhstan was not present at the Regulatory Policy Committee meeting when the survey was distributed. Subsequent emails from the Secretariat with details pertaining to the survey went unanswered.
98. Across responding Adherents, line ministries were responsible for the dissemination of the Recommendation in 17 Adherents. This is logical given that they are the primary “users” of regulatory management tools. Likewise, regulatory oversight bodies also had an important role in it dissemination given their responsibility for the supervision of the regulatory system. Finally, a number of Adherents indicated that a number of networks and research bodies were also involved in dissemination. These included business councils, chambers of the industry, and employers’ confederations.

Figure 16. Which institutions have contributed to disseminating the Recommendation?

99. Adherents have used a wide range of tools and approaches to disseminate the Recommendation. A relatively small number of Adherents (3) mentioned that they have made formal reference to the Recommendation in their national regulation policy, e.g. reform agenda, legislation or action plans. This could well be explained by the fact that many countries’ regulatory policy system predated the 2012 Recommendation. Moreover, these systems – a “law on law-making” – tend to evolve relatively slowly over time. A number of Adherents, however, did mention that their systems were a reflection of the

Figure 17. How has the Recommendation been disseminated in your country?
underlying OECD work on regulatory quality, embodying the core principles of not only the Recommendation but also that the 1995 Recommendation of the Council on Improving the Quality of Government Regulation [OECD/LEGAL/0278].

100. It appears that in many Adherents, more informal and ad hoc approaches are the norm for the dissemination of the Recommendation. For instance, a number of Adherents mentioned the organisation of government workshops and presentations around key components of the Recommendation, such regulatory impact assessment. Others mentioned that the Recommendation was referred to in annual reports to parliament or the executive on regulatory policy. Various training activities were also mentioned as an opportunity to share the finding of the Recommendation across government.
101. These data indicate that the Recommendation is generally well known across Adherents and has had an impact on the work of regulatory oversight bodies. A number of Adherents referred to the Recommendation as a “standard reference” for the work of these units.

102. The general awareness and impact of the Recommendation amongst regulatory agencies is somewhat more muted. As referred to above, a number of Adherents mentioned that while regulatory agencies were not explicitly aware of the Recommendation, its principles were embodied in country regulatory reform agendas. Moreover, they mentioned that regulatory agencies respond directly to domestic laws and policies rather than taking account of the Recommendation itself. However, a majority of these Adherents noted that the broad aims of the Recommendation are captured within the regulatory policy framework of their countries.
103. On an encouraging note, three Adherents mentioned that they are developing new regulatory quality frameworks that explicitly take into account (and mention) several of the principles embodied in the Recommendations.

**Figure 210. How relevant do you consider the Recommendation to still be?**

104. By a ratio of roughly two to one, Adherents indicated that they consider the Recommendation to still be highly relevant. One Adherent went so far as to say that seeing as the Recommendation contains basic principles for sound government it is and will always be relevant. Many Adherents felt that all the themes covered by the Recommendation are still valid and important. It was mentioned as the most relevant as a standard reference for the governmental experts in regulatory policy as well as providing an important roadmap in the ongoing process of regulatory improvement. A large number of Adherents mentioned that they are still developing their regulatory systems and supporting regulation management tools. Consequently, the Recommendation will continue being one of the fundamental documents that guide policy debates in this domain.

105. The final two questions asked if there is a need for the Recommendation to be revised and, if so, which section(s) of the Recommendation should be consider necessary and why. Of the surveyed Adherents, 87% (13 out of 15 responses) stated that the Recommendation was still relevant for their country. Eight Adherents out of 19 (42%) did not believe the Recommendation needs to be revised. Suggestions for revision appeared to be largely around the margins of the core principles to the Recommendation. For instance, three Adherents suggested that the oversight principle could be revised following the finding of the forthcoming 2018 Outlook. Two Adherents suggested that recent RPC work on Best Practice Principles or new work on behavioural insights could be more deeply imbedded into the Recommendation. One Adherent suggested that the Recommendation should be more actively implemented at the sub-national level. While all of these suggestion have merit, it is the Secretariat’s view that the Recommendation is still “young” and could gestate more deeply across the Adherents and beyond before undergoing a significant revision.

**Key findings**

106. The implementation of regulatory policy and governance in Adherents varies greatly in both scope and form. The vast majority of Adherents can much more actively
use the Recommendation to embed further good regulatory design and delivery in law and practice. Such efforts by Adherents will be instrumental to help them to respond to emerging risks and opportunities and to promote growth and well-being.

107. The assessment of the Recommendation shows that the institutional contexts and the maturity of regulatory systems differ substantially across Adherents. Moreover, there is a need to understand which institutional settings support regulatory policy better and why. In particular, oversight bodies play a critical role in support of regulatory policy. Adherents report several types of oversight bodies with a wide range of responsibilities, highlighting the need for both clear allocation of tasks and effective co-ordination. While some specialisation may be warranted, too much can result in fragmentation and can erode the whole-of-government approach specified in the Recommendation.

108. Other institutions – parliaments, regulatory agencies, 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. However, these institutions do not always fully embrace this role. There is room for making the quality of rule making a core objective of these institutions and improving the way they work together and with the executive on this agenda.

109. Similarly, regulatory quality is no longer solely a domestic responsibility. Governments need to more actively and deliberately consider international regulatory cooperation to ensure the effectiveness of regulatory frameworks. Despite globalisation, only one-third of Adherents have an explicit policy on international regulatory co-operation.

110. The Recommendation should be levered to promoting greater evidence-based policy making. There is room for using regulatory impact assessment (RIA) more strategically to support decisions by policy makers and politicians. This means carrying out RIA well upstream in policy formulation, evaluating regulatory alternatives and assessing whether the estimated benefits outweigh the estimated costs of proposed regulations. Presently, only one-third of Adherents use a threshold test or other mechanisms to ensure that RIA analysis is commensurate with the expected impacts of regulation and does not itself become a burden. Finally, releasing RIA documents for public consultation would provide a further opportunity to gather evidence and build consensus.

111. Stakeholder engagement is a key administrative practice, both to support better regulation and good governance. Stakeholder engagement should be well integrated into each step of the rule-making cycle: when identifying a problem and its possible solutions, when developing a set of regulatory options and when drafting the regulatory proposal. While most Adherents have a formal requirement to engage stakeholders, it 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. Despite its widespread use in other policy fields, ex post evaluation is practiced sporadically in regulatory policy. In the last three years, only seven Adherents have undertaken ex post evaluation frequently for primary and subordinate legislation. The majority of evaluations focus on reducing administrative burdens. Governments could make greater use of reviews that focus on coherence of regulations with existing legislative frameworks and assess more systematically whether policy goals have been achieved. Establishing quality standards against which to evaluate regulation as part of the RIA process would ensure a stronger connection between ex ante and ex post.
evaluation. Finally, greater stakeholder involvement in ex post evaluation would help identify the priorities for revising regulations.

112. Regulatory implementation and enforcement remain the weakest links in regulatory governance. As an illustration, one-third of Adherents lack a whole of government regulatory compliance and enforcement strategy let alone policy. To address this shortcoming, inspections must become more transparent, responsive, evidence and risk-based and proportional. Looking ahead, new approaches to regulatory design and delivery, such as those based on behavioural economics, could also enhance the impact of regulatory tools.

113. The progress in each of these areas for further action will continue to depend on strong political leadership as highlighted in the first principle of the Recommendation. The prospect of returns makes such commitment a worthwhile investment.

Final considerations

114. As the findings of this report show, for all responding Adherents - even for those at the vanguard - implementing the full pallet of regulatory policy and governance as articulated in the Recommendation has not yet been fully explored. Nevertheless, this is how it should be. After all, it is the role of the OECD to set high standards. The Recommendation, therefore, continues to provide a ‘light on the hill’, setting aspirational standards and clarifying for each Adherent where the largest gaps remain. Addressing these in the years ahead will be crucial to the capacity of governments to harness their countries’ economic potential, while realising their social and environmental goals.

115. Considered as a whole, the ambitions reflected in the Recommendation are still relevant. It is the Secretariat’s view that the Recommendation, noting it is still “young,” should gestate more deeply across Adherents and beyond before considering a significant revision would be merited.

116. In light of the above, it is proposed that the Regulatory Policy Committee continue monitoring the implementation of the Recommendation and report to Council thereon by 2024. This would allow the Secretariat to use the next two rounds of data collection through the Regulatory Indicator Surveys to assess the implementation and ongoing relevance of the Recommendation.