Case Studies of RegWatchEurope Regulatory Oversight bodies and the European Union Regulatory Scrutiny Board

OECD

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Please cite this report as:

OECD (2018), "Case Studies of RegWatchEurope regulatory oversight bodies and of the European Union Regulatory Scrutiny Board", OECD, Paris.

http://www.oecd.org/gov/regulatory-policy/regulatory-oversight-bodies-2018.htm

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Foreword

Regulatory oversight is a crucial ingredient of effective regulatory frameworks. It helps bridge the gap between formal requirements for regulatory policy and the implementation of better regulation efforts in practice. Oversight creates incentives to use regulatory management tools and fosters a whole-of-government approach towards regulatory policy. Dedicated oversight bodies may provide critical co-ordination and capacity-building functions that help ensure that regulatory policy is implemented consistently across the public administration.

While OECD countries have invested at least to some extent in regulatory oversight, institutional setups for regulatory oversight vary substantially across jurisdictions. Beyond actors traditionally charged with oversight functions, such as units in the centre of government or line ministries, parliaments or supreme audit institutions, the past 20 years have seen a surge in bodies with less traditional features tasked specifically with regulatory oversight. These include bodies at arm's length from the executive that are not subject to direct instructions from government, but may be supported by a secretariat located within the executive. The activities, characteristics and governance arrangements of this new type of regulatory oversight bodies have not, to date, been sufficiently studied.

The present report aims to fill this gap. It brings together case studies of eight European arm's length regulatory oversight bodies: the members of the informal network RegWatchEurope from the Czech Republic, Finland, Germany, the Netherlands, Norway, Sweden, and the United Kingdom, as well as the European Union Regulatory Scrutiny Board. The case studies were provided by the respective oversight bodies, based on a common structure developed by the OECD Secretariat to ensure consistency among chapters. The introductory chapter that describes and compares the bodies' common features and differences was drafted by the OECD with the United Kingdom's Regulatory Policy Committee.

This report complements other ongoing work of the OECD Regulatory Policy Committee on the topic of regulatory oversight, including data collection conducted as part of the Indicators of Regulatory Policy and Governance Survey 2017 and an analytical paper by Andrea Renda and Rosa Castro. Results feed into the *2018 Regulatory Policy Outlook* and will inform further discussions of the OECD Regulatory Policy Committee on the mechanics and critical conditions for effective regulatory oversight.

Acknowledgements

This report was coordinated and prepared by Céline Kauffmann and Rebecca Schultz from the OECD Regulatory Policy Division in co-operation with the members of the informal network RegWatchEurope from the Czech Republic, Finland, Germany, the Netherlands, Norway, Sweden, the United Kingdom, as well as the European Union Regulatory Scrutiny Board. It was developed under the overall supervision of Nick Malyshev, Head of the OECD Regulatory Policy Division. Analytical support was provided by Benjamin Gerloff, OECD Regulatory Policy Division.

The eight case studies comprised in this volume where drafted by the regulatory oversight bodies themselves. In particular, the OECD would like to thank the following contributors: Janina Hatt (Nationaler Normenkontrollrat, Germany), Tuomas Lihr, Antti Moisio and Meri Virolainen (Finnish Council of Regulatory Impact Analysis), Maros Guoth and Jirina Jilkova (Regulatory Impact Assessment Board, Czech Republic), Katarina Porko and Christian Pousette (Swedish Better Regulation Council), Fredrik Hansen and Maria Rosenberg (Norwegian Better Regulation Council), Paulien Officier and Rudy van Zijp (Adviescollege Toetsing Regeldruk, Netherlands), Philipp Aepler and Hiroko Plant (Regulatory Policy Committee, United Kingdom), and Nils Bjoerksten (Regulatory Scrutiny Board, European Commission). Special thanks go to Philipp Aepler, Andrew Hallett and Hiroko Plant from the United Kingdom Regulatory Policy Committee for their inputs to the introductory Chapter 1 on behalf of RegWatchEurope.

The document underwent a review process by the OECD Secretariat and was shared and discussed with the OECD Regulatory Policy Committee on two occasions. The Secretariat is grateful to RPC delegates for useful and constructive feedback throughout this process. The document was prepared for publication by Jennifer Stein and Sara Kincaid, OECD Regulatory Policy Division. Editorial assistance was provided by Andrew Hallett (Regulatory Policy Committee, United Kingdom).

The work on regulatory policy is conducted under the supervision of the OECD Regulatory Policy Committee whose mandate is to assist both members and partner countries in building and strengthening capacity for regulatory quality and regulatory reform. The Regulatory Policy Committee is supported by staff within the Regulatory Policy Division of the Public Governance Directorate. The Directorate's mission is to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitments to citizens.

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Acronyms and abbreviations

ACTAL	Dutch Advisory board on regulatory burden (predecessor of ATR)
ADR	Internal Audit Office of the Dutch government (*Auditdienst Rijk*)
ATR	Dutch independent advisory body (*Adviescollege Toetsing Regeldruk*)
BEIS	Department for Business Energy and Industrial Strategy (United Kingdom)
BIT	Business Impact Target (United Kingdom)
BRE	Better Regulation Executive (United Kingdom)
BRFM	Better Regulation Framework (United Kingdom)
BRU	Better Regulation Unit (United Kingdom)
CBI	Confederation of British Industry
CPB	Netherlands Bureau for Economic Policy Analysis
Difi	Agency for Public Management and eGovernment (Norway)
EANDCB	Equivalent annual net direct cost to business figures
EU	European Union
FCRIA	Finnish Council of Regulatory Impact Analysis
FSB	Financial Stability Board (United Kingdom)
GBP	Great British Pound (Pound Sterling)
GDP	Gross domestic product
GLC	Government Legislative Council (Czech Republic)
HR	Human Resources
IAB	European Impact Assessment Board
IRN	Initial Review Notice
IVB	Independent Verification Body (United Kingdom)
KPI	Key performance indicator (European Commission)
NDPB	Non-departmental public body (United Kingdom)
NBRC	Norwegian Better Regulation Council
NKR	German national regulatory control body (*Nationaler Normenkontrollrat*) (Germany)
NKRG	NKR Establishment Act
NOK	Norwegian Krone

NQRP	Non-qualifying regulatory provisions (United Kingdom)
OECD	Organisation for Economic Cooperation and Development
OIOO	*One-in, one–out* Rule (United Kingdom)
OITO	*One-in, two-out* Rule (United Kingdom)
PIR	Post-Implementation Review
RIA	Regulatory Impact Assessment
RIAB	Regulatory Impact Assessment Board (Czech Republic)
RPC	Regulatory Policy Committee (United Kingdom)
RSB	Regulatory Scrutiny Board (Europe)
RWE	RegWatchEurope Network
SaMBA	Small and Micro Business Assessments (United Kingdom)
SBRC	Swedish Better Regulation Council
SME	Small and Medium Enterprise
StBA	Federal Statistical Office (Germany)
VNG	Committee for municipalities (Netherlands)
VNO-NCW	Confederation of Netherlands Industry and Employers (Netherlands)

Chapter 1. Comparing the seven RegWatchEurope oversight bodies and the EU Regulatory Scrutiny Board

This chapter analyses and compares the institutional setup, mandate, activities and capacities of the eight European bodies established at "arm's length" from government that are part of this report. They are the members of the informal network RegWatchEurope from the Czech Republic, Finland, Germany, the Netherlands, Norway, Sweden, and the United Kingdom, as well as the European Union Regulatory Scrutiny Board. This introductory chapter describes and compares the bodies' common features and their differences in order to shed light on lessons learned from their establishment and functioning in practice.

Introduction: Comparing the features of arm's length regulatory oversight bodies in Europe

The *OECD Regulatory Policy Outlook 2018* (OECD, 2018) dedicates a chapter to the institutional landscape of regulatory policy and oversight. This chapter aims to provide a mapping of institutions responsible for regulatory policy across OECD countries with a specific focus on regulatory oversight arrangements (Box 1.1). Evidence informing the chapter was collected through answers to the regulatory oversight component of the Regulatory Indicators Survey, an analytical paper by Rosa Castro and Andrea Renda on "Defining and Contextualising Regulatory oversight and Co-ordination" (Castro and Renda, forthcoming) and the present study.

This report focuses on the bodies established over the course of the past 20 years in Europe as "arm's length" regulatory oversight bodies, organised in the RegWatchEurope (RWE) network and on the Regulatory Scrutiny Board (RSB). The bodies and acronyms are provided in Table 1.1. It aims to describe and compare their common features and differences, as well as draw some lessons from their establishment and their experience. The bodies under study share a number of features, particularly in their motivations and governance arrangements, including Boards or Committees comprised of independent experts.

The analysis aims to shed some light on the governance, organisation, activity and performance of these bodies to inform current discussions in the OECD Regulatory Policy Committee on the following issues:

- What is regulatory oversight and why is it important?
- What is the institutional set-up for regulatory policy and how are the various regulatory oversight functions organised across jurisdictions?
- How are oversight bodies organised to deliver on their mandate?
- Has regulatory oversight been effective, and what impacts have resulted?

Box 1.1. Regulatory oversight according to the *2012 OECD Recommendation*

Principle 3 of the 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012) calls for countries to "establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality". The Recommendation highlights the importance of "a standing body charged with regulatory oversight (…) established close to the centre of government, to ensure that regulation serves whole-of-government policy" and outlines a wide range of institutional oversight functions and tasks to promote high quality evidence-based decision making and enhance the impact of regulatory policy.

In line with the 2012 Recommendation, a working definition of "regulatory oversight" has been employed in the 2018 Regulatory Policy Outlook, which adopts a mix between a functional and an institutional approach. "Regulatory oversight" is defined as the variety of functions and tasks carried out by bodies / entities in the executive or at arm's length from the government in order to promote high-quality evidence-based regulatory decision making. These functions can be categorised in five areas but do not need to be carried out by a single institution / body:

Areas of regulatory oversight	Key tasks
Quality control (scrutiny of process)	• Monitor adequate compliance with guidelines / set processes • Review legal quality • Scrutinise impact assessments • Scrutinise the use of regulatory management tools and challenge if deemed unsatisfactory
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	• Gather opinions from stakeholders on areas in which regulatory costs are excessive and / or regulations fail to achieve its objectives. • Reviews of regulations and regulatory stock. • Advocate for particular areas of reform
Systematic improvement of regulatory policy (scrutiny of the system)	• Propose changes to improve the regulatory governance framework • Institutional relations, e.g. co-operation with international for a • Co-ordination with other oversight bodies • Monitoring and reporting, including report progress to parliament / government to help track success of implementation of regulatory policy
Co-ordination (coherence of the approach in the administration)	• Promote a whole of government, co-ordinated approach to regulatory quality • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle • Facilitate and ensure internal co-ordination across ministries / departments in the application of regulatory management tools
Guidance, advice and support (capacity building in the administration)	• Issue guidelines and guidance • Provide assistance and training to regulators/administrations for managing regulatory policy tools (i.e. impacts assessments and stakeholder engagement)

Source: OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, http://dx.doi.org/10.1787/g2g90cb3-en; OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en.

Table 1.1. Bodies covered in this analysis and their acronyms

Country	Body	Acronym
Czech Republic	Regulatory Impact Assessment Board	RIAB
European Union	Regulatory Scrutiny Board	RSB
Finland	Finnish Council of Regulatory Impact Analysis	FCRIA
Germany	Nationaler Normenkontrollrat	NKR
Netherlands	Adviescollege Toetsing Regeldruk	ATR (and its predecessor ACTAL)
Norway	Norwegian Better Regulation Council	NBRC
Sweden	Swedish Better Regulation Council	SBRC
United Kingdom	Regulatory Policy Committee	RPC

Comparing the establishment and history of arm's length regulatory oversight bodies in Europe

The broader OECD context

In line with the OECD Recommendation, OECD countries have all established or are establishing regulatory oversight capacities and bodies, mostly at the centre of government. Nevertheless, it is worth noting that compared to 2014, the group of bodies located at arm's length from government (see Box 1.2 for an explanation of the notion of "arm's length" and "independence" in this document) has grown. It is largely due to the recent establishment of a number of such bodies in Europe, including Norway and Finland (Figure 1.1). Overall, European bodies account for the bulk of these entities,

including the eight bodies portrayed here (the seven members of RegWatchEurope and the European Commission's Regulatory Scrutiny Board).

Box 1.2. The notion of arm's length and independent regulatory oversight bodies

There is no internationally-agreed definition of independence of regulatory oversight bodies. Consequently, countries' understanding and practices vary across the OECD. The OECD secretariat has carried out extensive research on the de jure and de facto conditions for the independence of regulatory agencies (see for example OECD 2016). While similar analysis on the independence of regulatory oversight bodies has yet to be conducted, this research provides a solid basis for such work in the future.

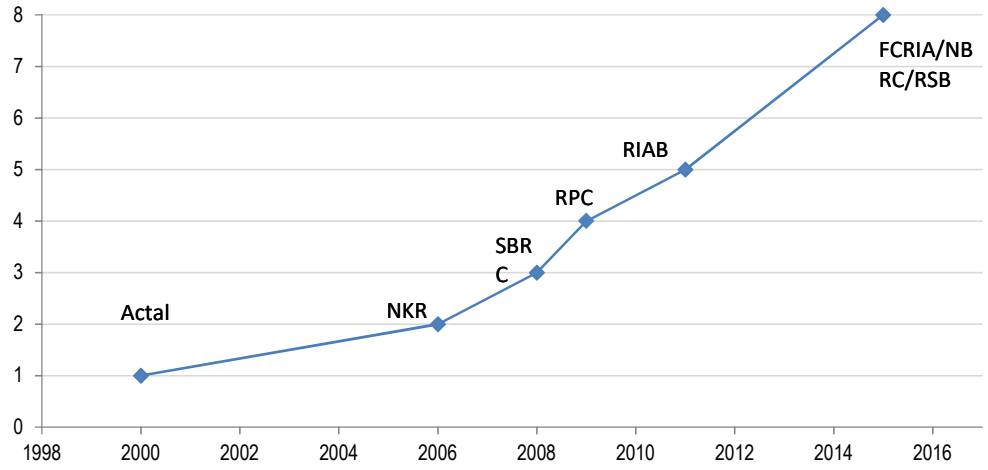
RWE defines itself as "a network of independent external advisory bodies that play a significant role in scrutinising the impacts of new legislation as well as challenging and advising our respective governments on various aspects of better regulation and on the overall regulatory burden of legislation". In this context, "independence" is defined by RWE as referring to both a political and operational dimension. Such bodies are described as being set up by the executive or legislative branch of government, with budgets set by government or Parliament. They are deemed to be equipped with full autonomy in how they perform their functions, organise themselves internally, and shall be free from external, in particular political intervention, in their decision-making.

The OECD has not formally evaluated the independence of the eight bodies under consideration in this study. Consequently, they are described – in this synthesis and in the *OECD Regulatory Policy Outlook 2018* (OECD, 2018) – as "arm's length" bodies, i.e. not subject to the direction on individual decisions by executive government, but could be supported by officials who are located within a ministry or have its own staff.

Further analytical work on the features of independent regulatory oversight would help to better understand regulatory oversight bodies' *modus operandi* and relationship with government, parliament and civil society. The findings of this analysis, which feed into a mapping of the institutional landscape for regulatory policy across OECD countries presented in OECD (2018), provide a starting point for such analysis.

Sources: OECD (2016), *Being an Independent Regulator*, The Governance of Regulators, OECD Publishing, Paris, https://doi.org/10.1787/9789264255401-en; OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, http://dx.doi.org/10.1787/g2g90cb3-en; www.regwatcheurope.eu/ and RWE inputs.

Figure 1.1. Date of establishment of European arm's length bodies



Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, oe.cd/ireg.

Comparison of motivations for establishing oversight bodies

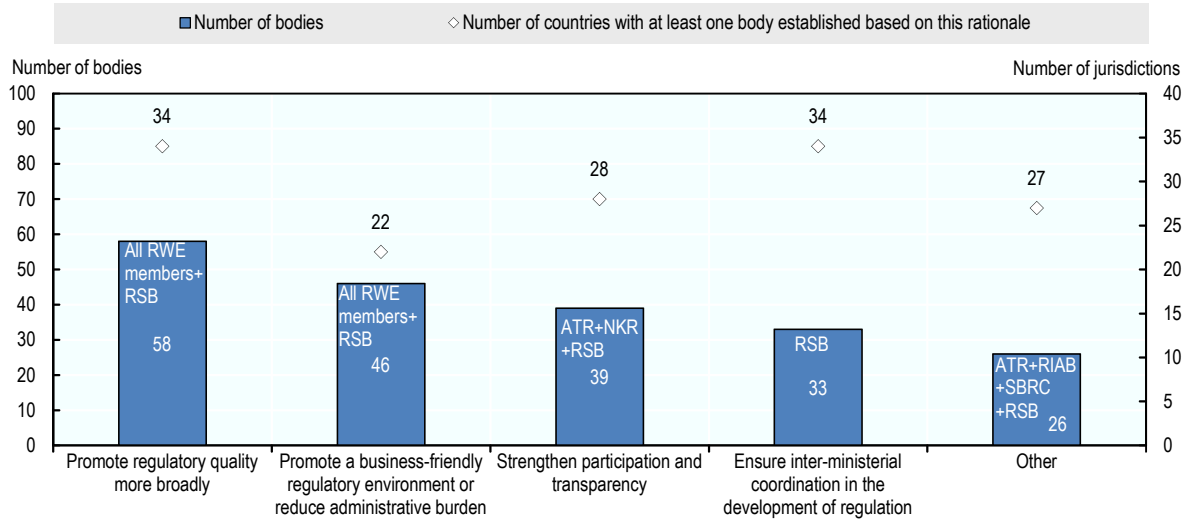
The establishment of many oversight bodies surveyed for this analysis was driven by the principal objective of improving the overall quality of regulation, and to reduce any unnecessary regulatory burden and compliance costs on business. In some cases, the government's decision was informed by a wider public dissatisfaction with bureaucratic structures, regulation-heavy administrations and a perception that reduced economic innovation and a loss of competitiveness internationally stemmed from overly legalistic national administrations.

The Netherlands were the first EU country to establish a separate, independent advisory body with the aim to scrutinise governmental regulation and its impact to business. The Dutch body Actal (now: ATR) was established in 2000, following an earlier temporary committee (the "*Slechte Committee*") that advised the Dutch government on how to realise a substantial reduction of administrative burdens for businesses when complying with regulation. In Germany, the establishment of the NKR by the federal government in 2006 was partly informed by the experience of Actal. The NKR was set up within a greater package of regulatory reforms designed to boost overall economic performance and competitiveness, and stimulate innovation.

At around the same time, the Better Regulation Executive (BRE), a governmental co-ordination body, was created in the United Kingdom. The BRE has become the sponsoring institution of the UK's arms length's oversight body, the RPC. In parallel, the European Commission installed its first scrutiny body, the Impact Assessment Board (IAB), which has been subsequently replaced by the RSB in 2015 – equipped now with a broader mandate and greater safeguards for institutional independence.

The RPC, the SBRC and the RIAB were established in 2008, 2009 and 2011 respectively,[1] following national debates around the reduction of unnecessary regulatory burdens on business and the need to improve the quality of policy-making through greater evidence-based legislative processes (Figure 1.2).

Figure 1.2. Rationale for the establishment of arm's length bodies in the broader OECD sample



Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, oe.cd/ireg.

Finland and Norway followed suit in 2015.Whereas the SBRC and the FCRIA were partly inspired by recommendations made by the OECD, the NBRC explicitly followed the Swedish model. This demonstrates how inter-organisational collaboration and knowledge exchange has contributed to the emergence of regulatory oversight bodies in Europe.

In 2015, the seven European arm's length bodies founded the informal RegWatchEurope group, to foster inter-institutional exchange and co-ordinate initiatives among similar bodies in the realm of regulatory oversight. RegWatchEurope requires members to be independent (see Box 1.2), but allows other government institutions as observers.

Evolution of the bodies over time

All bodies, and particularly those which have been in operation since the 2000s, have continuously expanded the scope of their mandates to go beyond the scrutiny of administrative burden. All have expanded or refocused their original set of tasks and responsibilities to cover a broader portfolio –, often following proposals made by themselves. Actal (ATR), NKR and RPC are suitable exemplars for how regulatory oversight bodies have developed new methodological approaches, scrutiny instruments and review procedures that were subsequently adopted by their sponsoring governments. The integration of functions related to *ex post* evaluations, small/micro business impact assessments or societal signalling procedures demonstrate how these bodies have enlarged their portfolio through proactive development of new regulatory scrutiny measures. Oversight bodies have not only implemented their existing portfolios as formulated in their legal-institutional foundation, but have proposed new instruments and procedures to improve regulatory oversight within national policy-making processes.

In parallel, some of the oversight bodies initially established on a temporary basis or with limited independence have become permanent (e.g. SBRC), or have gained in autonomy compared to their predecessors (e.g. RIAB, RSB).

Institutional framework of arm's length regulatory oversight bodies in Europe

Table 1.2. Key governance characteristics

	Legal framework	Institutional sponsor	Length of members' mandate	Temporary / permanent	Year of establishment (predecessor)
ATR	Legal act (*Kaderwet Adviescolleges*), ministerial decree	Ministry of Economic Affairs	4 years	Temporary	2017 (2000)
FCRIA	Government Decree 1735/2015 on the Council of Regulatory Impact Analysis	Prime Minister's Office	3 years	Permanent	2015
NBRC	Government Order	Ministry of Trade, Industry and Fisheries	4 years	Permanent	2015
NKR	NKR Establishment Act (2006)	None	5 years	Permanent	2006
RIAB	Government Resolution No. 768 (of 19 October 2011)	Government Legislative Council / Office of the Government of the Czech Republic	no limit	Permanent	2011 (2007)
RPC	Non-statutory set-up[1]	Department for Business, Energy & Industrial Strategy	Between 2 and 4 years	Permanent	2010
RSB	Decision of EU Commission President	European Commission	3 years	Permanent	2015 (2006)
SBRC	Government Decree	Agency for Economic Development and Rural Growth	2 years	Permanent, (temporary until 2015)	2015 (2008)

1. Statutory scrutiny relates to the RPC's role as the Independent Verification Body (IVB) for the Business Impact Target (BIT) (see below).
Source: Case studies.

Comparison of legal framework establishing the body

All bodies, with the exception of the NKR, ATR and RPC, were established on the basis of governmental decrees, resolutions, directives or orders. This includes the RSB which was put in place following a decision by the Commission's President Juncker.

The NKR's was founded via a specific act (the NKR Establishment Act 2006), which established the NKR as an independent non-governmental body. The German government made use of this legislative option to ensure that any changes to the NKR's mandate must be proposed to, reviewed and decided by parliament. Similarly, the ATR is based on a legal act that governs all advisory boards in the Netherlands (the "*Kaderwet Adviescolleges*"), and was established following a specific ministerial decree.

In contrast, the RPC is based on a non-statutory mandate. This allows the body to easily adapt to changes within the legal-political framework of the United Kingdom. However, it also means that political support for the RPC's role as a regulatory scrutiny body within the British policy-making processes influences how effectively the RPC can deliver on its key tasks. Political change, perhaps stemming from a change in government and its regulatory agenda, can operate as both a catalyser and constraint. This applies, to some extent, to all arm's length scrutiny bodies, and particularly to those with a weaker legal-institutional foundation.

Seven out of the eight bodies have been established on a permanent basis, with the SBRC transforming from a temporary to permanent body in 2015. Only the ATR (similarly to its direct predecessor Actal) is established on a temporary basis, given the specific provisions of the laws which enacted both. Institutional permanence has important

consequences for regulatory oversight bodies. An unlimited or long-term mandate is more likely to allow oversight bodies to act with greater independence, and for both committees and secretariats to plan their work with longer time horizons. It may also offer greater incentives to oversight bodies to develop new instruments and methodology for regulatory scrutiny, which in turn helps to strengthen the overall regulatory quality control.

Comparison of institutional frameworks

The surveyed regulatory oversight bodies have all, with the exception of the NKR, been established under the umbrella or auspices of a sponsoring governmental organisation. The latter varies among the eight bodies assessed, ranging from central government (FCRIA, RIAB, RSB) to specific ministries / departments (ATR, NBRC, RPC) or governmental agencies (SBRC).

Comparison of the governance of the oversight bodies

The bodies surveyed share a range of common governance features. Their institutional designs provide some safeguards from external interference in their regulatory scrutiny, and they are equipped with various technical, human and financial resources. At the same time, a number of bodies' secretariats are directly located within their sponsoring government organisation, receive staff from the sponsoring institution or are supported by staff from .that institution. Sponsoring institutions assess their efficiency, case and financial performance. Most bodies' staff are recruited by the respective governmental institution which serves as the bodies' institutional umbrella, and board members are commonly appointed by, and often also nominated by, national governments.

Mandate, scope of actions and activities of arm's length regulatory oversight bodies in Europe

Oversight functions

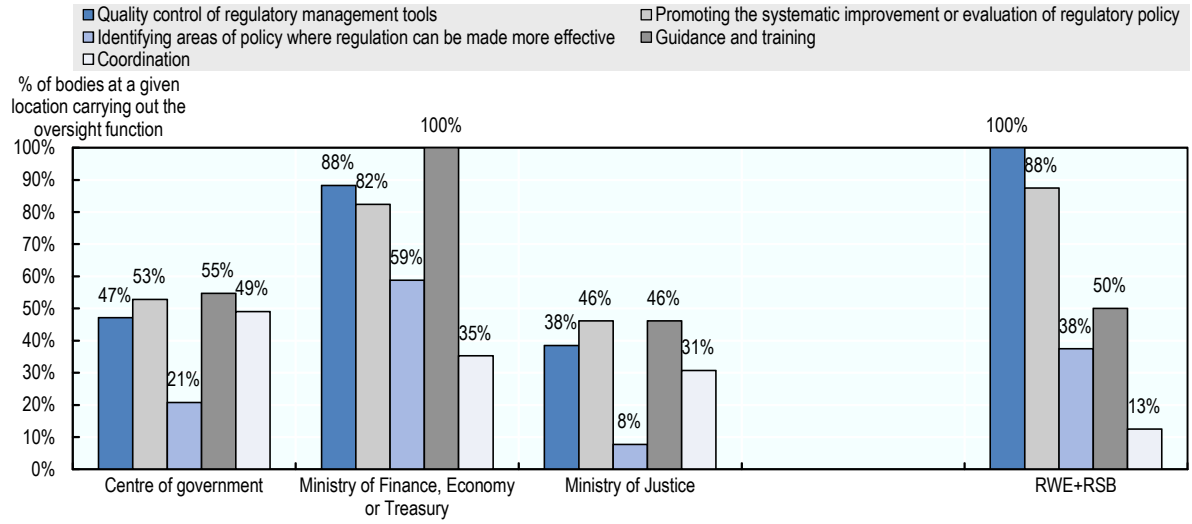
All bodies surveyed are involved in the area of regulatory oversight that the OECD qualifies as quality control. This confirms the specialisation patterns highlighted in the 2018 Regulatory Policy Outlook (OECD 2018), in particular that arm's length bodies, in line with the specificity of their institutional set-up, are predominantly tasked with the quality control of regulatory management tools. This differentiates them from other bodies with regulatory oversight functions in other locations and specialising in co-ordination, systematic improvement of regulatory policy or training (see Figure 1.3).

As illustrated in Table 1.3 mapping the range of oversight areas, these later activities are mostly ancillary/ or complementary activities for the bodies under consideration. In particular, most bodies leverage their regulatory expertise to identify areas where regulation can be made more effective or support systematic improvement of regulatory policy, mostly as collateral functions of their scrutiny activity.

Nevertheless, it is worth explaining that some bodies view their guidance/ and capacity building activities of ministries in the areas of their scrutiny (RIA in particular) as a critical and growing component of their work. ATR, in particular, was reformed and differs from ACTAL in its earlier intervention and stronger focus on transfer of knowledge and expertise. Recently, the RPC has also started developing case histories to "provide practical guidance, and case study examples, of how the better regulation framework methodology has been interpreted. This is intended to provide policy makers

and analysts with a practical guide on how novel or tricky methodology issues have been approached in the past, and the outcomes of the RPC scrutiny in those cases".[2]

Figure 1.3. Nature of oversight functions carried out by different bodies in OECD countries



Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, oe.cd/ireg.

By contrast, Table 1.3 illustrates clearly that co-ordination is not a core activity of arm's length oversight bodies. This is in line with their location, which does not accord them a privileged position for co-ordination.

Scope of action

All bodies scrutinise the quality of impact assessments for new legislative proposals (both primary and secondary legislation[3]) (Table 1.4) – although not all of them examine the draft regulatory proposal in conjunction with the RIA. Their RIA scrutiny focuses on compliance with formal requirements, an appropriate description of the problem, the quality of evidence used, the assessment of alternative options and the impact on business. This is very much in line with the elements generally scrutinised by bodies responsible for quality control across OECD countries. Generally speaking, the assessment of benefits and impacts on citizens remains more limited (Table 1.5) – also a prevalent feature across the OECD, which reflects methodological difficulties. For example, the ATR reports not to scrutinise the assessment of benefits for businesses or citizens. The NBRC and SBRC, in turn, do not look at the costs or benefit calculations incurred to citizens and focus on business impacts only.

There are nevertheless some variations across bodies in terms of the scope of application of the RIAs under scrutiny (it may be related to the scope of application of RIAs) and the impacts considered in the analysis:

Some bodies may include the assessment of decrees in their scrutiny (FCRIA, NKR, RIAB). Others go beyond the scrutiny of legislation coming from central government, such as FCRIA/ATRl (if asked) or SBRC/RPC/NKR (at the request of the relative parliament). In 2016, NKR introduced the scrutiny of EU legislative proposals for their impacts on Germany. The RPC now scrutinises regulatory activities of arms-length

regulators. The NBRC also scrutinises proposals made by both ministries and independent regulators.

Beyond the core focus on business impacts, the consideration of other impacts may vary across bodies (Table 1.5): largest impacts (Actal/ATR), impacts on SMEs (NBRC, NKR, RPC, SBRC, RIAB), impacts on citizens (Actal/ATR, FCRIA, NKR, RIAB, RPC), impacts on professionals (Actal/ATR), impacts on administrative burdens (FCRIA, NBRC, NKR, SBRC, NBRC, RIAB), wider impacts on society (FCRIA). It is worth noting that some bodies go beyond the scrutiny of RIAs: some look at the policy to consider whether there are less burdensome alternatives (Actal/ATR, NBRC, RPC), some review *ex post* evaluations or have the mandate to do so (FCRIA, RPC, RSB) and some scrutinise evaluation clauses (NKR). Actal has issued two regulatory burden audits.

Table 1.3. Areas of oversight against the OECD typology

	Quality control	Identifying areas where regulation can be made more effective	Systematic improvement of regulatory policy	Co-ordination	Guidance, advice and support
ATR	- ATR carries out *ex ante* quality control of all legislative proposals from central government, and ministerial decrees if they produce substantive compliance costs. - ATR scrutinises the quality of the evidence of a legislative proposal on the need to intervene - ATR scrutinises the RIA of the legislative proposal	In response to signals from the business community or from society, ATR advises government on regulatory bottlenecks. ATR reviews domains of legislation to assess possible areas for reform	ATR dialogues with the National Ombudsman, the Netherlands' Court of Audit and the Council of State on new ways to improve legislative quality.	ATR facilitates and promotes the dissemination of good practice between ministries and promotes the application of regulatory management tools and from a practice perspective.	- ATR is involved early in rule-making process to provide an advice function - ATR can be solicited by parliament for advice on legislative initiatives, amendments and on the stock of legislation - ATR can be solicited by regional and local governments for advice - ATR can advise on rules issued by arm's length regulators
NKR	The NKR monitors: - compliance with the guidelines on compliance costs in RIA; - the application of set processes (e.g. the consultation of stakeholders, the evaluation clause, the SME test, etc.)	The NKR engages with stakeholders on areas in which regulatory costs are excessive and reviews regulations and regulatory stock causing excessive costs with the aim to introduce less burdensome regulation.	As part of its annual report, the NKR monitors the performance of the Federal Government on Better Regulation and proposes changes aimed at improving the regulatory governance framework (e.g. introduction of the one in, one out-rule, *ex post* evaluation requirement, the EU *ex ante* -procedure test)	The NKR promotes a co-ordinated whole of government approach and facilitates intra-ministerial co-ordination in the application of regulatory management tools.	Together with other authorities, the NKR issues guidance for all aspects of Better Regulation and provides assistance and training to departmental policy officials, regulators and public administrations for applying regulatory policy tools.
FCRIA	FCRIA issues statements on RIAs that are included in draft government proposals for legislation to be adopted by parliament, as well as of other draft legislation such as significant decree-level provisions or EU legislation. The scrutiny covers economic impacts, impacts on public authorities, environmental impacts and wider impacts on society.	No.	The FCRIA makes proposals for improving the quality of bill drafting and of RIAs; evaluates the effectiveness of its own activities; and submits an annual report of its activities to the Prime Minister's Office.	The FCRIA promotes a whole of government, co-ordinated approach to regulatory quality.	No
NBRC	The NBRC considers the *ex ante* evidence-base for all draft legislation affecting business' operating conditions prepared by ministries and other central governmental	The NBRC has the mandate to evaluate whether a proposed regulation is likely to fulfil its objective with the	The NBRC reports on the overall quality of impact assessments relevant to businesses in its annual report, with the aim to motivate	The NBRC will highlight a lack of co-ordination between government bodies when deemed appropriate in	The NBRC provides general guidance to government administrations, agencies and departments producing business related regulatory impact assessments

	Quality control	Identifying areas where regulation can be made more effective	Systematic improvement of regulatory policy	Co-ordination	Guidance, advice and support
	authorities. The NBRC scrutinises impact assessments by monitoring adequate compliance with the Instructions for Official Studies, and assessing the description of impacts for businesses. The NBRC may also point out lack in stakeholder involvement where appropriate.	least possible cost to business.	better impact assessments going forwards. The NBRC may also point out important recurring problems observed in the impact assessments evaluated that year.	its advisory opinions. The NBRC does not carry out actual co-ordination.	to ensure effective regulation. The NBRC also contributed suggestions to updates in the national guidelines for assessing impacts to business from regulation in 2017
SBRC	The SBRC scrutinises RIAs that may have significant effects on businesses against the Ordinance on Regulatory Impact Assessment.	The SBRC secretariat points out proposals to support the Agency for Economic and Regional Growth track the administrative and other costs for businesses.	The SBRC presents annual reports to the government	No	No
RIAB	The RIAB carries out reviews of the quality of RIA reports that accompany draft legislation prepared by ministries and other central governmental authorities	No	No	No	The RIAB offers the possibility of informal consultation with regards to the methodological aspects of draft RIAs under process of elaboration by ministries
RPC	- The RPC monitors policy assessments and scrutinises RIAs for adequate compliance against the Better Regulation Framework (BRFM). - The RPC provides opinions on the quality of analysis behind calculation of the impacts on business. - The RPC scrutinises *ex post* regulatory assessments and post-implementation reviews against the BRFM.	No	The RPC reports annually to the government and the public on the overall quality of regulatory impact assessments across government and on the features of the system that support – or mitigate against – improving the quality of evidential support for ministerial decision-making.	No	- The RPC Secretariat meets with departmental Better Regulation Units and policy officials to discuss individual RIAs and promote methods of best-practice in RIAs across government. - The RPC has its own online guide to answer frequently asked questions, and provides tailor-made trainings to departments and regulators.
RSB	- The RSB assesses the fitness for purpose of RIAs and evaluations. - The RSB reviews how stakeholder views are collected and used in policy making	No	- The RSB advises the Secretariat-General on how to improve the system for impact assessments and evaluations. - The RSB publishes an annual report and organises an annual	The RSB conducts upstream meetings with Commission services to ensure common understandings of impact assessment and evaluation	The RSB provides regular input to the Secretariat-General with regard to how guidelines and guidance are working in practice, and may suggest changes if some elements seem prone to quality problems.

	Quality control	Identifying areas where regulation can be made more effective	Systematic improvement of regulatory policy	Co-ordination	Guidance, advice and support
			conference to feed a broader debate on better regulation.	processes and problems.	

Source: Case studies.

[1] There is no formal inception date of the RPC, since the body has no statutory foundation. The Gibbons Review, which recommended the set-up of an arm's length oversight body, was published in 2007, when the work on the RPC's establishment began. The first committee members were appointed in 2009, making the Committee operational.

[2] https://regulatorypolicycommittee.weebly.com/case-histories.html.

[3] As part of its survey of regulatory policy and governance, the OECD defines primary laws as regulations which must be approved by parliament/congress. Secondary legislation, in turn, is defined as regulations that can be approved by the head of government, by an individual minister or by the cabinet – that is, by an authority within the executive.

Table 1.4. Scope and modalities of scrutiny

	Regulatory instruments	Comprehensiveness	Selection criteria	Number of opinions per year	Timing of intervention	Time taken	Powers
ATR	Primary legislation, General administrative measures / governmental decrees, Ministerial decrees if change has substantive effects on compliance costs, Parliamentary amendments at the request of parliament		All legislation. Decrees selected by ATR (with ministries) following a proportionality principle.	200 *ex ante* opinions per year (expected)	At the latest during the consultation phase. ATR can also issue supplementary opinions during the final stages of the legislative process (just before political decision-making).	Max. four weeks (or longer if the consultation phase takes longer than four weeks).	Advisory
FCRIA	Primary legislation, Decrees and EU legislative proposals	10-20 % of all government proposals	At the discretion of FCRIA, based on economic & societal significance	Approx. 30	After consultation round on draft proposal	Max. four weeks	Advisory
SBRC	Primary and secondary legislation, agency regulations, EU legislative proposals	NA	At the discretion of SBRC, based on significance of impacts on business	130-200	During the public hearing phase	Minimum two weeks	Advisory
NKR	Primary and secondary legislation (including decrees) EU legislative proposals Parliamentary amendments at the request of parliament or Bundesrat	All primary and secondary legislation, and EU legislative proposals	None	200 (primary and secondary legislation) Five-ten EU legislative proposals Requests of parliament or Bundesrat occur only in rare cases	Iterative process during the beginning of first (inter-ministerial) draft of the legislative proposal and final draft proposal tablet in Cabinet	Depends on time set by the ministries, ideally four weeks	
NBRC	Primary and secondary legislation, EU legislative proposals (at the request of ministries)	All proposals for new or altered regulation affecting the operating conditions for business	At the discretion of NBRC, based on the significance of impacts and burden on business	35 opinions in priority cases (out of 244 cases considered)	During the phase of public consultations.	Half of the consultation phase. (3-6 weeks)	Advisory
RIAB	Primary legislation, Decrees	Some 50-60% of government draft legislation	All RIAs for primary laws with some exceptions.[1] For subordinate legislation, the decision is made on a more ad hoc basis.	75-80	After the interdepartmental comments procedure on draft proposal		Advisory

	Regulatory instruments	Comprehensiveness	Selection criteria	Number of opinions per year	Timing of intervention	Time taken	Powers
RPC	Primary and secondary legislation EU legislation Regulatory activities of arms-length regulators	RIAs and PIRs requiring ministerial agreement need an RPC opinion		500	During consultation over a new policy development and at final stage of proposal development	30 days	Sanctioning power[2] (impact assessments require a positive assessment to proceed)
RSB	Primary EU legislation	All EU proposals requiring a RIA	All EU proposals requiring a RIA, all fitness checks and major evaluations at its discretion	53 impact assessments, 17 fitness checks and major evaluations	Prior to consideration by the College of Commissioners		Sanctioning power (impact assessments require a positive assessment to proceed)

1. The decision is made by the Chair of the Government Legislative Council ("GLC"), respectively by the Section of the GLC of the Office of the Government.
2. For the assessment of a final stage IA, only the assessment of the Business Impact Target can affect the colour of the RPC opinion. For details see Table 8.4.
Source: Case studies.

Table 1.5. Impacts scrutinised

	Compliance costs	Administrative costs	Business costs	Costs to professionals	Costs to Citizens	Costs to civil Society	Direct costs	Indirect costs	Benefits	Impacts on specific sectors	Small Business Test	Alternatives considered
Actal/ATR	X	X	X	X	X		X			X	(X)[1]	X
NKR	X	X	X	X	X	X	X				X	X
FCRIA	X	X	X		X	X	X	X	X	X		X
NBRC	X	X	X	X			X	X	X	X	X	X
SBRC	X	X	X	X			X	X			X	
RIAB	X	X	X	X	X	X	X	X	X	X	X	X
RPC	X	X*	X			X	X	X	X		X	X
RSB	X	X	X	X	X	X	X	X	X	X	X	X

Source: RPC and case studies.

Powers

Arm's length bodies mostly enjoy advisory powers, i.e. the body can issue a formal opinion and has some moral authority to incentivise changes in regulatory proposals, but may not block the proposal from proceeding to the next stage. Given this soft power, the impacts of the oversight bodies will largely depend on the established credibility of the body over time and the individual ministerial staff. Some bodies (e.g. NBRC, NKR) make use of the option to send opinions to the media in order to raise attention or are invited by parliament to present their findings. Most bodies, at a minimum, publish opinions on their website (Table 1.6).

Among the bodies under consideration, the RSB and the RPC enjoy a stronger challenge function.

- If the RSB finds the RIA inadequate, the RSB issues a negative opinion and to proceed the RIA must be revised and resubmitted. A second negative opinion is, in principle, final. Ultimately however, the Commission can permit a proposal to go ahead with a double negative opinion, but this political decision must be explained (see Box 9.1, Chapter 9).
- Based on the quality of the evidence presented, the RPC rates the assessments as either fit for purpose or not fit for purpose. Any assessment considered "not fit for purpose" must be improved before publication. The Department or regulator has fifteen working days to address the concerns raised by the RPC and resubmit the RIA. If the concerns of the RPC are not adequately addressed, a "not fit for purpose" rating is issued. The government then decides whether to go ahead with the process.

Time of action

Most bodies tend to intervene both at the early stage of the rule-making; i) at the time of defining the policy issue and exploring potential solutions and ii) during the development of a draft/proposed regulation); and at the late Stage iii) when a first version of the text of the regulation has been drafted/the proposed regulation has been issued; iv) before approval of the final version of the draft/proposed regulation). Intervening at multiple points in the process may give more opportunities to guide the development of RIAs and improve their quality.

Late intervention is nevertheless slightly more common, typically at the consultation phase of the regulatory proposal (Stage iii). Formal opinions are quasi- systematically provided at Stage iv (by seven out of eight bodies). It is noteworthy that ACTAL was reformed to bring its scrutiny and guidance function further ahead in the rule-making process following an external evaluation.

The capacity of arm's length regulatory oversight bodies in Europe

Board members

There is a large variance in the size of arm's length regulatory oversight bodies, ranging from three (ATR) to 18 committee members (RIAB). This results in an average size of 8.25 members per committee. It is noteworthy that five out of eight bodies have a size of between six and ten members. Board members of nearly all the bodies under consideration work on a part-time or honorary basis. The exception is the board of the

RSB, whose members work full time in their capacity (compared to its predecessor's board that was composed of part-time members). There does not seem to be an obvious correlation between a body's size and the size of the respective country (with regards to GDP, area or population size).

Board members of the surveyed bodies are appointed through two diverging procedures. Three out of eight bodies allow individuals that are deemed eligible to submit their candidacies within an open competition. ATR, NKR and the RPC have issued predefined criteria for the composition of their boards, especially regarding the required expertise and academic background for individuals that may be nominated or nominate themselves. In the case of the EU Commission's RSB the open competition is partly internal, partly public. Half of the board's members are appointed from a pool of candidates from within the Commission, the other half from a separate pool of external candidates. In all three cases the decision of selection and appointment rests with the head of the sponsoring institution (e.g. department, ministry) or government (e.g. cabinet of ministers, college of commissions) or a combination of them. With the exception of the RSB, all body members come from outside government, even though they may have been government officials before. For the majority of surveyed bodies (five out of eight) committee members are selected and appointed directly by the respective government.

The patterns of remuneration for board members are consistent across most bodies: in all but one case board members receive honorariums or lump sums (fixed monthly/annual compensation) or are remunerated on an hourly/pro rata basis, but are not employees of the governmental organisation that sponsors the body. Only in the case of the EU RSB are board members hired on a full time basis and remunerated as such.

Supporting Secretariat

Unlike the size of the regulatory oversight bodies, the size of their supporting secretariats suggests a strong correlation to the size of the country. There is a consistent pattern that the larger the country, and the larger the overall governmental apparatus, the larger the respective secretariat supporting the oversight body: in the Netherlands (ATR - 11 staff), Germany (NKR - 15 staff), and the United Kingdom (RPC - 13 staff), the bodies' secretariats employ proportionally and substantially larger numbers of staff than in the smaller states surveyed for this analysis

The case of the United Kingdom is of particular interest: Whereas in 2017 the secretariat was comprised of 13 full-time staff, this number was expected to double to a total of 28 in 2018.[1] This is largely due to the additional work expected to stem from the United Kingdom intended exit from the European Union.

The secretariat staff of RIAB, SBRC and the RPC carry out tasks for the respective body, but are employed by its sponsoring organisation (the Office of the Government of the Czech Republic, the Swedish Agency for Economic and Regional Growth and the Department for Business, Energy and Industrial Strategy respectively). Similarly, the European Commission's RSB only employs two full-time permanent staff, whereas a 15-staff unit is provided by the Commission's Secretariat General on a part-time basis to support the board's work.

The size of these secretariats is higher than the number of analytical staff reported by government units responsible for the quality control of regulatory management tools as part of the OECD survey on regulatory oversight bodies. Most bodies surveyed by the OECD have fewer than ten analysts. In a third of reported cases, units have fewer than

five full-time employees responsible for quality control. A few exceptions can be found outside of Europe: the Mexican COFEMER and Korea's Regulatory Reform Office have close to 90 employees, and Canada's Regulatory Affairs Sector at the Treasury Board Secretariat as well as the US Office of Information and Regulatory Affairs both report between 20 and 35 analytical staff.

Table 1.6. Resources and organisation of oversight bodies (2017)

	Board / Committee	Number of supporting staff	Expertise of staff	Selection process for board members	Annual budget
ATR	3 (part time)	11	1 head, 8 analysts, 2 administrators	Open competition, appointed by government	EUR 1.7 m
FCRIA	9 (part time)	2.5	2 analysts, 1 part-time analyst	Selected & appointed by government	EUR 0.25 m
SBRC	5 (part time)	9 (part time)	1 head of secretariat, 6 analysts, 2 administrators	Selected & appointed by government	All costs for the secretariat are covered by the budget of the Swedish Agency for Economic and Regional Growth. This includes the costs for meeting rooms for the Council.
NKR	10 (in honorary capacity)	15	11 analysts, 1 head of secretariat, 3 support staff.	Selected & appointed by government	EUR 1.5 m (personnel expenses); extra costs for travel, publications and lump sums covered on demand by government
NBRC	6 (part time)	6	1 head of secretariat, 5 analysts, and some administrative support (0..5 people)	Selected & appointed by government	EUR 1.04 m (NOK 10 m)
RIAB	18 (part time)	No full-time employees; Support staff: 1 administrator (provided by the Office of the Government of the Czech Republic)	N/A	Selected by the Chair of the Government Legislative Council and appointed by the Government Legislative Council	Does not have its own budget, but its expenses are covered by the state budget
RPC	8 (part time)	2017: 13 (end 2018: 28)	End 2017: 17 analytical staff, 3 support staff	Open competition, appointed by government	EUR 1.455 m (GBP 1.3 m)
RSB	7 (full time)	2+15	Apart from two administrative assistants, the RSB relies on the part-time support of a 15-staff unit of the Secretariat-General of the European Commission.	Open internal-external competition, appointed by the College of EU Commissioners	N/A

Source: iREG, case studies and RWE.

All oversight bodies, with the exception of FCRIA, RIAB and RSB show a strong consistency in the distribution of internal roles within the respective secretariats. Most staff occupy analytical roles and are supported by a smaller number of administrative staff, whereas each secretariat is led by a designated head of secretariat. FCRIA and RSB employ two administrators. In addition, RSB receives support from a 15-staff unit of the European Commission's secretariat-general on a part-time basis. RIAB is supported by civil servants of the Czech Republic's Office of the Government.

Those bodies which made budgetary data available show a degree of consistency in overall funding: four out of eight bodies have budgets of around EUR 1.0-1.7m. These include the bodies of all three larger states (Germany, United Kingdom, Netherlands) as well as the Norwegian body. Interestingly, the numbers of secretarial staff and committee members vary across these four bodies. This can be partly explained by different remunerations for committee members, and different staff pay (with Norwegian staff salaries being substantially above average staff pay). It also depends on whether secretariats are provided office space free of charge or need to pay rent, and on differences in the frequency of travel by committee members. Further, some bodies' budgets do not include all annual costs, which are directly covered by their sponsoring institutions.

The Finnish body has a substantially smaller budget whereas the Czech body does not have its own delineated budget.

Compared to this sample, but in line with their generally smaller size, government units responsible for quality control of regulatory management tools mostly report overall lower budgets ranging from EUR 300 000 to 650 000.

Monitoring and assessment of the impacts and effectiveness of arm's length regulatory oversight bodies in Europe

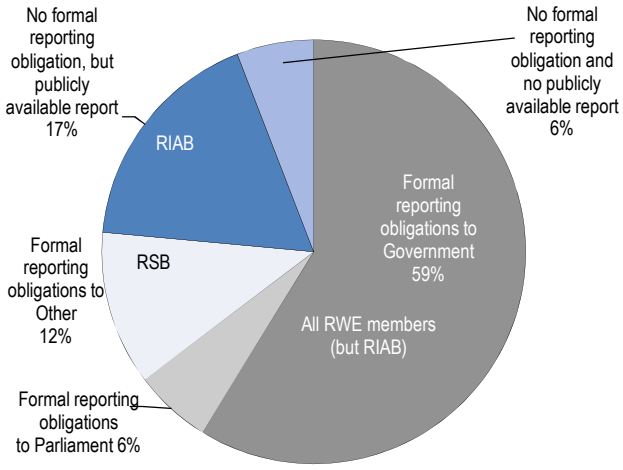
Trends

Across the OECD, there are signs of the increased transparency of results. Given their arm's length nature, the bodies under consideration are under formal reporting obligations to the executive (Figure 1.4). Table 1.7 also highlights that most members of RWE and the RSB publish annual reports featuring their activities of the year and some measures of performance. Most opinions are made public on the website of the oversight bodies. In the case of the RIAB, the opinions are published after the Cabinet discussed the respective legislative proposal. The RIAB itself has no formal reporting obligation. It is however an obligation of the Government Legislative Council, which includes information on the activities of the RIAB in its annual report. The reports are submitted to the Government of the Czech Republic and are publicly available.

Performance monitored by the oversight body is usually limited to improvements in the quality of RIAs (against the legal requirement) over time, as reflected in the content of opinions (not the changes made to legislative proposals). However, some bodies monitor other dimensions of their own performance, such as statistics on their turnaround times for casework, or of the improvement of the outcomes for business (a decrease in compliance costs over time (RPC and NKR).

More rarely, monitoring takes the form of the establishment and tracking of performance against set indicators. The RSB has identified three key performance indicators (KPIs) against which it can be assessed annually: the number of impact assessments and evaluations scrutinised; on-time delivery of RSB opinions; and how much impact assessments improved in quality following interactions with the Board. Similarly, while ACTAL did not have a set of performance indicators, ATR is currently engaged in a dialogue with ministries in order to determine the indicators to monitor its impacts.

Figure 1.4. Reporting obligations of bodies under study within the broader OECD sample of non-departmental bodies or bodies external to government



Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, https://oe.cd/ireg.

Table 1.7. Transparency and monitoring mechanisms of oversight bodies.

	Annual report	Database	Publication of opinions	Reporting obligations
ATR	Yes	Yes (internal)	Yes	Formal reporting obligation to the co-ordinating ministers
FCRIA	Yes		Yes	Formal reporting obligation to centre of government
SBRC	Yes	Yes (internal)	Yes	Formal reporting obligation to government.
NKR	Yes	Yes	Yes	Formal reporting obligation to centre of government
NBRC	Yes	Yes (internal)	Yes	Formal reporting obligation to a single minister
RIAB	No – part of GLC report		Yes	No formal reporting obligation to Cabinet; equivalent data on annual activities of the RIAB are included in the annual report of the Government Legislative Council
RSB	Yes		Yes	Formal reporting obligation to the President and First Vice President of the European Commission
RPC	Yes		Yes	Formal reporting obligation to centre of government

Source: *Case studies*.

A number of bodies collect feedback, mostly through perception surveys seeking qualitative feedback, on the quality and impact of their work. For example, the RPC conducts a quarterly survey of departments and regulators who have submitted cases to offer feedback on their service received and the quality of the opinion returned to them. The Swedish Better Regulation Council surveys ministries' and government agencies' perception of the Council's opinions and their impacts and makes the information available in its annual reports. ATR plans to introduce a feedback mechanism in the *ex ante* scrutiny procedure, involving reciprocal feedback between ATR and ministries.

Oversight bodies are also subject to external evaluations (that differ in their criteria/metrics). For example, under Dutch law, the oversight body has to be evaluated every four years. These evaluations have provided input for the design of the next

mandate and generated substantial changes over the course of the last 17 years (see case study of ACTAL/ATR). Furthermore, the mandate of ATR was designed based on an evaluation by two independent researchers. In the UK, the National Audit Office and the Public Accounts Committee produce independent reports and studies on the evidence and analysis around regulatory measures, including an assessment of the effectiveness of the institutions involved in the development of regulatory policies. In Sweden, the Swedish Agency of Public Management has carried out two assessments of the SBRC, in 2012 and in 2018, in view of a possible mandate change.

Challenges identified in the work of the oversight

In the case studies, the oversight bodies identify a number of challenges that may affect their performance and be the focus of further improvement:

- The application of the proportionality principle in the selection of regulatory measures is difficult to handle.
- A lack of clear and simple quantification methods for the regulators to calculate impacts. Consequently, there is a risk that the opinions of the oversight are also perceived as discretionary.
- Limited involvement in *ex post* evaluation may limit the capacity of oversight bodies to compare the realisation of impacts and quality of evidence provided in RIAs.
- Late submission of RIAs limits the room for adjustments. It is noteworthy that ACTAL was reformed to bring its scrutiny and guidance function ahead in the rule-making process following an external evaluation.
- An oversight body has more impact in the early phase of the regulatory process. However, this phase is typically confidential, making monitoring and publication of the impacts of the oversight body difficult. How to balance the importance of monitoring and of preserving some confidentiality?
- How to balance the focus between support/training and quality assurance?
- How to ensure that oversight serves the quality of evidence in support of policy?

Note

[1] It is currently 20.

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Chapter 2. Nationaler Normenkontrollrat (Germany)

This chapter describes the institutional set-up and activities of the National Regulatory Control Council (Nationaler Normenkontrollrat), established in Germany in 2006.

Short history of the establishment of the oversight body

Demands to cut red tape and shake up Germany's famously legalistic and regulation-heavy administration surged up the domestic policy agenda in Germany from the early 1980s. There was widespread public dissatisfaction with Germany's bureaucratic structures. Among German policy-makers, there was a growing acknowledgement that sweeping structural reforms at home were necessary in order to get Germany back into a competitive position internationally. Heavy-handed regulation and overly bureaucratic administrative practices were seen as part of the problem. Policy makers recognised that a rapidly ageing society could no longer afford to let bureaucracy stifle innovation and economic performance. Hence, the German reform agenda did not stop with an overhaul of labour, social, healthcare and economic policies: the endorsement of new models of public provision and the use of an evidence base to inform regulatory decision-making led to broader efforts to improve the quality of the policy-making process overall.

Competences of the federal government of Germany are primarily focused on drafting legislation whereas implementation and enforcement are usually devolved to non-federal levels of government. State governments, municipalities and other numerous self-administrative bodies organise and exercise these functions only under judicial control, explicitly without supervision by the federal government.

Whilst first oversight functions regarding the general policy co-ordination within the federal government of Germany were instituted in the 1970s, the council of ministers adopted a first regulatory policy checklist for all legislative initiatives of the government in 1984. During the 1990s, procedures for preparing legislative drafts were legally formalised and fed into the system, which scrutinised up to 40 different aspects of potential legislative effects. At the same time, several expert and senior official committees were established for the purpose of simplification.

In 2005, the incoming "Grand Coalition" government agreed to establish an independent national regulatory control body, the Nationaler Normenkontrollrat (NKR); the corresponding English translation is "National Regulatory Control Council". In doing so, the incoming government followed the example of the Netherlands, where the first independent regulatory control body had been established in 2000. The NKR Establishment Act (2006) provides the legal base for the independent role of the NKR and its mandate, which is focused on some of the most relevant aspects of a fully comprehensive system of pre-legislative scrutiny. Building on domestic experience, earlier recommendations of dedicated committees and inspired by international concepts – such as the Standard Cost Model for measuring the impacts of informational obligations, which was initially invented by the Dutch government – and best practice on better regulation, the NKR took up its work in September 2006.

Initially, the remit of the NKR was limited to scrutinise draft legislation at pre-Cabinet stage with a view to information obligations. The NKR was designed to perform independent scrutiny of the German government's regulatory proposals, raising and leveraging the quality of the explanatory memoranda.

The NKR also helped to design a bureaucracy tracking system based at the Federal Statistical Office and monitored the German government's progress on its 25% bureaucracy reduction target for businesses.

Additionally, the NKR initiated several projects aiming at removing bureaucracy from daily-life situations and carried them out together with the Federal Government, the Federal Statistical Office. These projects were:

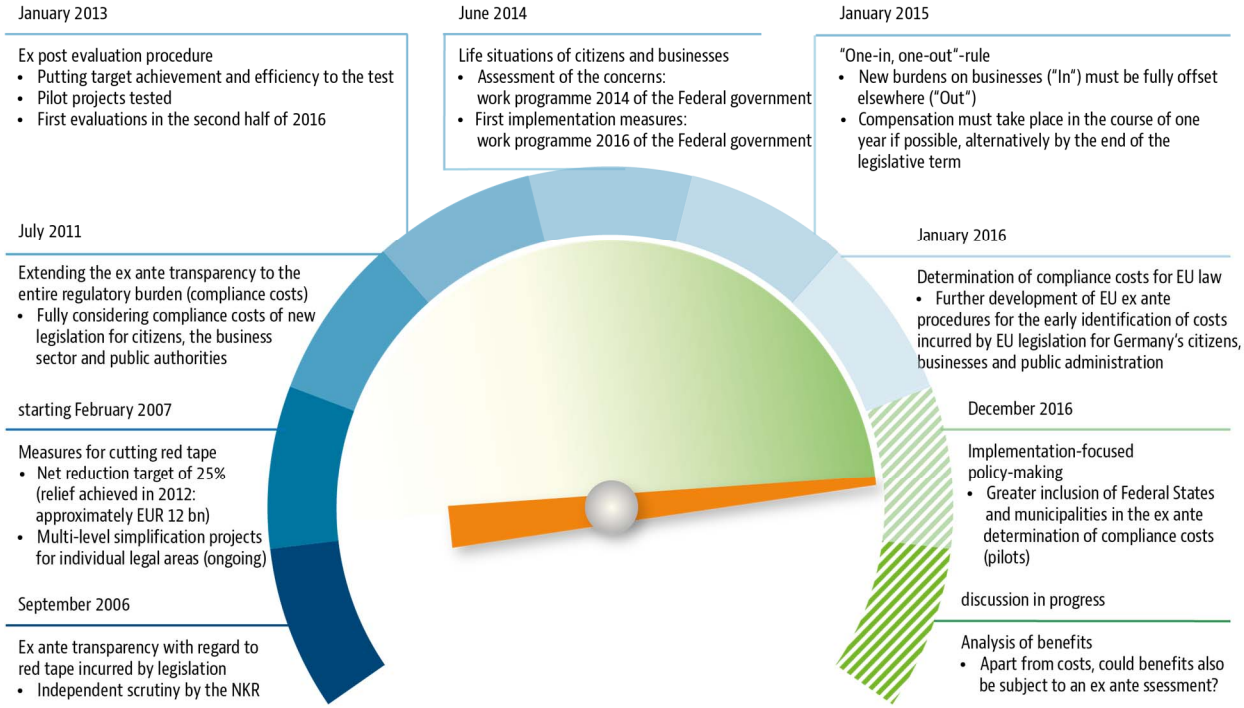
- "Facilitating the application for parental benefits",
- "Facilitating the application for housing benefits"
- "Facilitating the application for student grants"
- "Analysis of the obligation to register according to the EU REACH Regulation with regard to shortcomings"
- "Optimisation of alien entry into Germany"
- "More time for medical treatments" and
- "Maturity of premiums to national social insurance".

In 2011, the mandate of the NKR was extended to include the scrutiny of compliance costs.

In recent years, prompted by NKR proposals, further changes have been introduced to complement the classic quantitative focus on reducing bureaucracy and compliance costs for businesses, public administration and citizens. These include:

- The Federal Government's agreement on Evaluation (2013) to ensure that any regulations exceeding annual compliance costs of EUR 1 million are subjected to evidence-based review.
- The introduction of a stock flow linkage rule (one in, one out, 2015) to ensure that compliance costs to businesses are capped.
- The revised EU *ex ante* procedure (2016) which ensures a systematic approach for considering and avoiding compliance costs stemming from EU legislative acts. If a proposal exceeds the threshold of EUR 35 million in an initial Impact Assessment by the European Commission, the respective lead ministry has to assess the compliance costs incurred by Germany's businesses, citizens and/or public administration.
- The SME-test guidelines (2016) promote SME-friendly policy development and help consider the regulatory impact on SMEs more fully. They encourage policy officials to think of mitigating measures for small businesses when developing new regulatory proposals.
- Erbex Pilots (2017) ensure that efforts to enhance the quality of federal policy decision-making takes sufficient account of costs incurred at *Länder* and Local level.

Figure 2.1. Step by step towards a holistic approach



Institutional framework

Institutional landscape

The German approach of Better Regulation is a Government- and legislation-centred approach. This is due to the fact that the majority of legislative drafts are initiated by Governmental departments. The NKR focusses on specific aspects and complements the existing oversight system, which is constitutionally based on a central co-ordinating role of the Federal Chancellery and clearly defined responsibilities of the Federal Ministries.[1] The Federal Parliament (Bundestag) can initiate draft bills as well. The Bundesrat may also send its own legislative initiatives to the Bundestag. But in most cases, the Government initiates the draft bill and the Federal Parliament adopts it with some amendments after examination by the Bundesrat (if required). Today, about 90% of legislation is drafted by the Federal government (the long-term average is 80%).

Important players and partners for the NKR within the Government are the Federal Government's co-ordinator of better regulation and the reduction of bureaucracy, who is one of the Ministers of State to the Chancellor. This Minister of State to the Chancellor chairs a Committee of State Secretaries representing their ministries in this respect. Furthermore, there is a co-ordinating entity within the German Government, supporting the Government's co-ordinator of better regulation and being responsible for further developing and overseeing the better regulation strategy. This co-ordinating entity is located at the Federal Chancellery and is called the Better Regulation Unit (BRU).The BRU periodically develops programmes to enforce Better Regulation and Bureaucracy Reduction, which are adopted by the Federal Government.

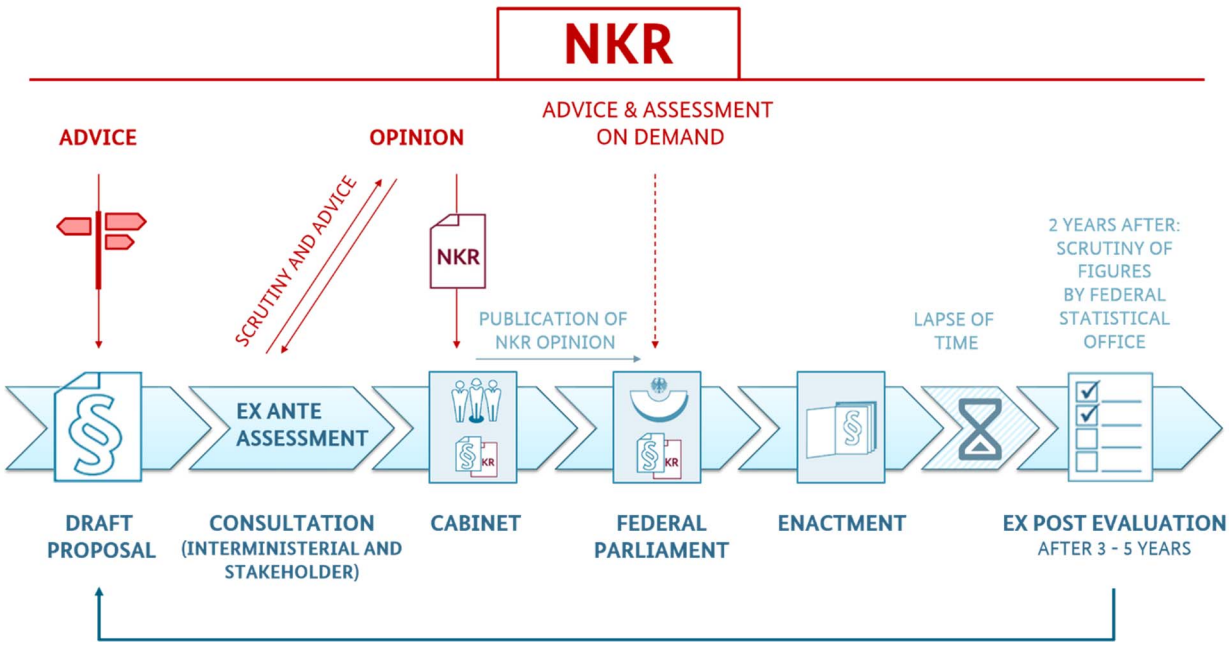
Another important player is the Federal Statistical Office under the supervision of the BRU. The Federal Statistical Office (StBA) provides statistical analyses and measurement of costs necessary for the evidence-based impact assessments on demand. Additionally, the StBA administers the public database of compliance costs (WebSKM, covering nearly 20 000 detailed datasets) and ensures that two years after implementation estimated compliance costs are scrutinised in real life. This practice ensures that future impact assessments can draw on a statistical body of knowledge on how regulatory changes have actually played out in practice.

Furthermore, all ministries have their own units responsible for Better Regulation. The roles of these units differ between ministries: some of them are involved in all aspects of Better Regulation and play an important part in elaborating Impact Assessments whereas others are involved only occasionally.

The Government's Joint Rules of Procedure set out how ministries are supposed to work on a draft proposal of a legislative act. Generally, the policy units in charge of the respective issue elaborate the draft text for the legislative proposal including the impact assessment (the so-called "Referentenentwurf"). This draft is sent to all ministries and Federal Government co-ordinators having a stake in these issues. Afterwards, for the purpose of consultation, it is sent to external stakeholders, including the state governments and the umbrella organisations of about 11 000 municipalities in Germany.

The NKR is involved in the same way as the other ministries in this respect. Every legislative draft proposal needs a formal NKR opinion before being tabled at Cabinet.

Figure 2.2. The NKR's function in the legislative process



After the Cabinet decision, the NKR can provide further advice to the Bundestag and Bundesrat if requested. The Committees of the Bundestag usually ask for further discussion in cases of draft laws that cause high compliance costs and are accompanied by a negative NKR opinion. The type of debate varies: in some cases, the respective committee invites the NKR to participate in the regular committee meeting or the

committee organises an expert hearing and asks the NKR to participate as an expert. In other cases, the respective rapporteur asks the NKR to discuss particular issues on a bilateral basis.

Additionally, both the Bundestag and the Bundesrat may ask the NKR to scrutinise their impact assessments as well, but the share of impact assessments initialised by the Bundestag or Bundesrat is very low in practice.

Governance of the oversight body

To guarantee independence, the NKR was established by law. This ensures that any change to the NKR's mandate requires a public debate in Parliament.

NKR members are nominated by the Federal Government and appointed by the Federal President. The Federal Chancellor appoints one of the NKR members as the Chair. All members have a mandate of five years, while the legislative period is four years only. Re-appointment is possible without any limit.

As the NKR is a non-governmental body, there are several eligibility criteria for NKR members, e.g. they may not belong either to a legislative body or a Federal or State authority, nor may they have a permanent service or agency relationship with such bodies or authorities. Exceptions may be made for university lecturers. Members should have prior experience in legislative matters obtained through serving in state or society institutions, and should have a knowledge of economic affairs. As the position as a NKR board member is on an honorary basis, other professional activities remain possible while serving as an NKR member (except the activities mentioned above). Committee members are paid a lump sum.

Mandate, scope of actions and activities

Mandate and role

The NKR is set up on a statutory basis and performs several functions (see Table 1.1 for overview how the NKR's functions map to the areas of regulatory oversight identified by the OECD). The first and most important one is scrutinising relevant parts of draft impact assessments accompanying governmental legislative proposals for both primary and secondary law.

Secondly, the NKR serves as an adviser to the Federal Government regarding all aspects of Better Regulation and Cutting Red Tape. In the past, this function has been fulfilled both by projects aiming at simplifying certain life events (projects called "facilitating the application of…" –see above) and by providing general strategic advice on how to institute Better Regulation in Germany.

The NKR fills its role as a strategic advisor by an ongoing dialogue with the Committee of the State Secretaries chaired by the Minister of State to the Federal Chancellor. Over the years, this ongoing dialogue initialised the most important improvements of Better Regulation. These improvements were then introduced by agreements widening the statutory basis of the NKR. One well-known example of the latter is the introduction of the 'one in, one out' rule.

Furthermore, the NKR and the Government have an ongoing exchange regarding questions of further development of the underlying methodology.

In collaboration with the BRU and the Federal Statistical Office, the NKR contributes to trainings and workshops offered by, for example, the Federal Academy for Public Administration. Regular meetings with officials from the BRU serve as a forum to discuss methodological issues and further better regulation developments.

The Federal Government and the NKR set up common guidelines on how to assess the direct impact of legislation. The ministries have to use these guidelines for their daily work.

Table 2.1. Mapping of the NKR's tasks to the OECD typology of areas of regulatory oversight

Areas of regulatory oversight	NKR
Quality control (scrutiny of process)	The NKR scrutinises impact assessments by monitoring adequate compliance with the common guidelines regarding compliance costs. The NKR monitors the application of set processes as for example the consultation of stakeholders, the evaluation clause, the SME test, etc. by scrutinising the use of regulatory management tools and challenge if deemed unsatisfactory.
Identifying areas of policy where regulation can be made more effective(scrutiny of substance)	The NKR engages with stakeholders regarding areas in which regulatory costs are excessive, promoting simplification and more practical solutions. Typically, issues arising from such exchanges/reviews include the lack of practical applicability of rules or clarity of legislative objectives, insufficient exploration of e-government potential or a lack of scrutiny of regulatory alternatives. Together with stakeholders, ministries and the Federal Statistical Office, the NKR reviews regulations and regulatory stock causing excessive costs with the aim to introduce less burdensome regulation.
Systematic improvement of regulatory policy(scrutiny of the system)	The NKR continuously proposes changes to the Government that aim at improving the regulatory governance framework. The NKR has been extremely successful in proposing such changes as the introduction of the one in, one out-rule, an ex post evaluation requirement or the EU ex ante ¯procedure attest, all of which originate from NKR proposals. Some of these ideas were initiated by discussions within the context of institutional relations, e.g. co-operation with international fora or co-ordination with other oversight bodies. With regard to other independent oversight bodies, there is an informal network for the purpose of achieving coherent and strong representation at EU and international level and facilitate continuous exchange of ideas. Domestically, the most powerful tool of the NKR for championing systematic regulatory improvements is its annual report to the Government, which is handed over personally to the Federal Chancellor and is publicly available. In this report, the NKR provides an overview of how the key tasks have been fulfilled in the course of the past year. The NKR monitors the performance of the Federal Government on Better Regulation in order to help track success of implementation of regulatory policy. Therefore, the annual report always includes some key demands of the Federal Government for further improvement of performance.
Co-ordination (coherence of the approach in the administration)	Together with the respective Minister of State, the Committee of State Secretaries and the BRU, the NKR promotes a co-ordinated whole of government approach to enhance regulatory quality and encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle: Likewise, together with the respective Minister of State and the BRU, the NKR facilitates and ensures intra-ministerial co-ordination in the application of regulatory management tools as well.
Guidance, advice and support (capacity building in the administration)	Together with the Minister of the State, the Committee of State Secretaries and the BRU, the NKR issues guidance for all aspects of Better Regulation. Together with the BRU, the NKR provides assistance and training to departmental policy officials, regulators and public administrations for applying regulatory policy tools (i.e. carrying out cost impact assessments, disclosing cost impacts and engaging with stakeholders regarding compliance costs).

Source: NKR case study

Scope of actions

The roles assigned to the NKR translate into the following scrutiny processes that the Committee undertakes:

- **Regulatory impact assessment scrutiny**

For every legislative draft proposal tabled at the Cabinet, an NKR opinion is required. The NKR scrutinises the full range of figures and underlying assumptions of the impact assessment with regard to compliance costs for businesses, citizens and public administration. The NKR checks both one-off costs and recurring costs.

The NKR will normally provide initial advice at the pre-consultation stage during the interservice consultation with all ministries. The final opinion is released after the post-consultation (final) stage, when the proposal is ready to be tabled at and adopted by Cabinet (council of ministers). In between these stages, in most cases there is a working-level exchange between NKR Secretariat and lead ministries in order to improve the impact assessment on compliance costs.

The purpose of the opinion is to provide transparency and to inform Cabinet members and members of Bundestag and Bundesrat about the full range of direct costs of a legislative proposal as well as their accuracy, verifiability, fair presentation and conformity with governmental guidelines.

With regard to the "one in, one out" rule, the NKR's task is as follows: The "one in, one out" rule applies to recurring compliance costs to businesses incurred by federal legislation. The NKR's role in this respect is to scrutinise the accuracy of figures regarding recurring compliance costs to businesses. The 'one in, one out' rule stipulates that extra burdens accrued by the lead ministry must be offset by a reduction in burden elsewhere, usually through another piece of legislation by the same ministry. However, if compensation does not seem feasible for a given ministry, it is possible to offset the additional regulatory burden by another Federal ministry.

For regulation of low complexity and only minor impacts, the NKR has introduced a fast track system that deals with legislative proposals in two short steps. If the lead ministry decides the anticipated impacts are minor and the analysts at the NKR secretariat agree that the ministry's explanation is plausible and all relevant parts of the impact assessment are correct, the NKR may decide to refrain from submitting an elaborate opinion. In such cases, the analysts will clear the decision to do so with the NKR rapporteur. The lead ministry will then be notified that the NKR considers the regulatory impact on compliance costs to be minuscule and will not issue an opinion.

- **Scrutiny of evaluation clauses**

All legislation causing more than EUR 1 million of annual compliance costs to businesses, citizens or public administration requires an evaluation clause. The NKR scrutinises whether the legislative proposal contains such a clause. Furthermore, the NKR advises the ministries on how to word evaluation clauses, which ensures that the main objectives of the legislative proposal can be evaluated conclusively. The ministries send their evaluation reports to the NKR and the Federal Chancellery.

- **Scrutiny of other issues**

Scrutiny of alternatives to the proposed legislation, particularly regarding less burdensome procedures, is also part of the NKR mandate, in addition to a comprehensible presentation of the objectives of and necessity for the regulation. The NKR also scrutinises the government's considerations regarding effective date and time limits.

The criteria that all elements of the impact assessments must meet in order to qualify for a positive NKR opinion are set out by the NKR Establishment Act (NKRG) and in the Joint Rules of Procedure of the Federal Ministries.

If critical issues cannot be resolved either at the working level or at the level of State Secretaries or Ministers, the NKR will issue a negative opinion. This opinion will usually be discussed in the Council of ministers and sometimes in the respective Parliamentary committee as well. As NKR opinions are published together with the legislative proposal, which is usually two or three weeks after Cabinet's decision, sometimes the press will

take notice. Examples of such public discussions were the legislative proposals to introduce a national minimum wage, toll charges for passenger cars or for the protection of cultural assets. In some cases, the public debate leads to the amendment of the impact assessment or the legislative proposal in the course of the debate in Parliament.

At the beginning of 2016, the government introduced a new systematic approach to scrutinise EU legislative proposals regarding their impacts on Germany. The main purpose of this process is to identify and to avoid unnecessary burden from the EU level at an early stage of the negotiations (Council Working Groups). The process therefore gives special attention to EU legislative proposals exceeding a threshold of EUR 35 million (annual compliance costs). If an EU impact assessment exceeds this threshold, the German lead ministry has to assess the impacts for Germany. The NKR scrutinises these assessments and may give a respective opinion.

Accountability mechanism – relationships with government and public

According to its statutory provision, the NKR publishes an annual report. This annual report is publicly available and provides a critical and comprehensive view of all relevant aspects of Better Regulation: it contains information about the state of bureaucracy reduction since 2006 and provides an overview of the state of play regarding compliance costs since 2011 and the results of the one-in, one-out rule. Furthermore, it covers developments regarding *ex post* evaluations and the introduction of a comprehensive and systematic approach on eGovernment. It usually gives government a set of respective recommendations on how to improve Better Regulation in the near future as well. The annual report is handed over by the NKR Chair personally to the Federal Chancellor. On occasion, on the day of the publication of the annual report the NKR Chair has been invited to present the report in the Cabinet meeting. The government may provide an opinion on this report, but in practice the Chancellor comments on the NKR report only via press release.

The Federal government has to submit an annual report as well. This report is addressed to the Parliament and focuses on the development of Better Regulation and Bureaucracy Reduction in Germany. The NKR provides a critical opinion to this report validating the government's actions and progress. This opinion is published on the NKR website and therefore publicly available.

In addition to its annual report, the NKR keeps its own database to record important metrics that monitor trends and developments. Summary reports are discussed on a quarterly basis at NKR meetings. Annual performance metrics are presented and discussed at the annual NKR conclave in the winter.

Post-implementation assessments by the StBA provide a check on the accuracy of the quantifications by the departments, which are validated by the NKR.

Minutes of each NKR meeting are circulated among government departments.

All NKR opinions are published after the Bundesrat has published the whole legislative proposal on its website. This is usually done two or three weeks after the Cabinet decision.

Capacities

Human resources and nature of expertise

The NKR is an independent advisory body to the Federal government located at the Federal Chancellery. The Federal Chancellery provides resources and logistical support such as office and meeting facilities.

The Committee itself comprises ten appointed members, including a Chair and a Deputy Chair, with experience and current knowledge of public administration, politics, business, associations and science. Some of the members are retired State Secretaries or former Members of Parliament. Others are lawyers, have an academic background (professor) or have business experience.

The Committee meets every two weeks for half a day. These meetings usually cover both individual casework issues and wider issues such as developments regarding Better Regulation, discussions on upcoming publications, events, etc. All important decisions are made by the Committee as a whole. In the event of severe time constraints, opinions are cleared in a two-step process via email.

The Committee is supported by a secretariat, currently consisting of 15 civil servants. As part of the independence of the NKR, all civil servants work for the NKR and follow the instructions of the NKR only. The NKR is empowered to fill the staff vacancies within the Secretariat on its own authority. Most members of the Secretariat have professional backgrounds in law, administrative science, economics and social science (on the level of an advanced academic degree). The role of the Secretariat is to provide the Committee with analytical and administrative support and to prepare initial drafts of opinions. Draft opinions are referred to the respective rapporteur from the Committee before reaching Committee clearance.

The members of the Committee and of the Secretariat also engage with a variety of stakeholders on the respective levels. This exchange happens both regarding general issues of Better Regulation and regarding particular legislative proposals. General issues are discussed by face-to-face meetings held on a regular basis or by way of speaking engagements at events. Particular aspects of legislative proposals may be discussed by phone calls, face to face meeting or hearings.

Budget

The costs of the NKR are borne by the Federation. The NKR's annual expenses for personnel expenses are about EUR 1.5 million. Travel costs, costs for public events and publications etc. are covered by the Federal Chancellery and the Federal Press Office on demand, as per the law setting up the NKR.

Monitoring and assessment of the impacts and effectiveness of the oversight body

Information collected – impact on the quality of IAs

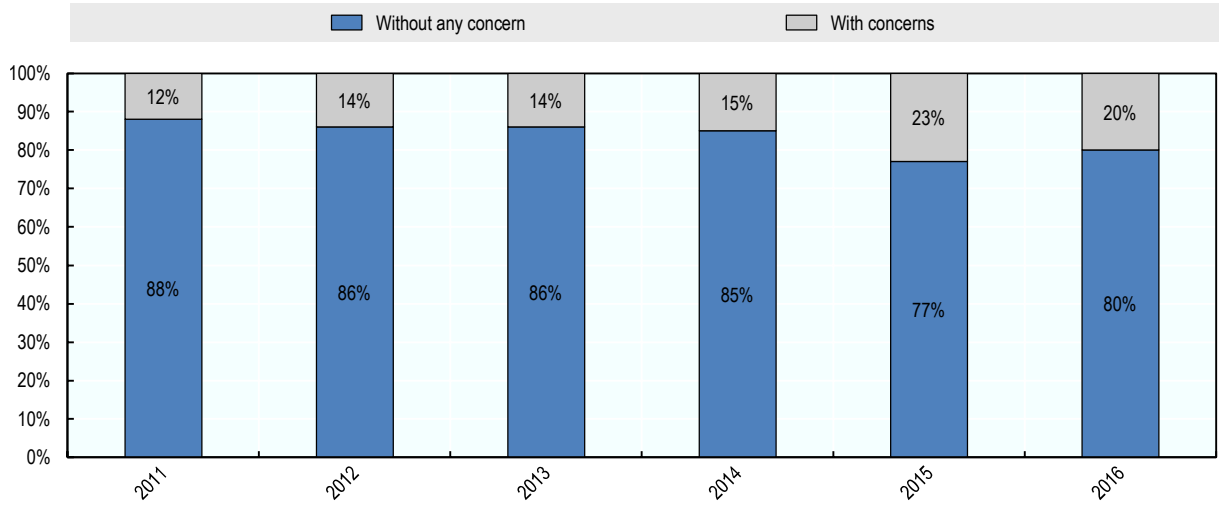
The NKR does not operate a traffic-light-system. The scrutiny process applied by the NKR in Germany is geared towards German legislative culture and traditions. Hence, the NKR participates in the clearance process at the drafting stage like any other department – before legislation is sent to Cabinet. At this stage, the NKR liaises with the department that has drafted the bill or regulation and may also participate in inter-departmental meetings where unresolved issues are discussed. Besides that, NKR

members may suggest meetings with state secretaries if issues cannot be resolved at working level. To ensure that assessments are of high quality, the NKR usually liaises with respective stakeholders at consultation stage prior to adoption by the Cabinet (council of ministers).

In the vast majority of cases, the ministries add – following the advice of the NKR – at least some amendments and improvements regarding the draft impact assessments in the course of the clearance process of the legislative proposal.

Negative opinions are rare, as most issues are sorted out in advance. However, if the NKR does publish a negative opinion, the government has committed itself to submit a government response to the NKR opinion, both of which are published.

Figure 2.3. NKR opinions: breakdown by type of opinion 2011-16



Source: NKR case study.

Although the share of negative opinions has risen since 2011, it is worth noting that the number of issues to be scrutinised by the NKR has risen as well: Concerns may arise from the lack of, for example, a clearly defined objective of the regulation, evaluation clauses or of insufficient consultation of the Stakeholders (including the "*Länder*").

Check of figures by the Federal Statistical Office and ex post *evaluations*

There are two ways to check whether the assessment of figures has been accurate. On the one hand, the Federal Statistical Office should measure the actual burdens of regulations two years after their enactment.

So far, there are a wide range of results. Some figures have proven to be correct, but in most cases they show considerable variation from *ex ante* estimates. Most variation is due to the fact that assumptions made by the department in its *ex ante* assessment were not confirmed in reality. Some variations are based on amendments made by the Bundestag or the Bundesrat.

On the other hand, the correctness of *ex ante* assessments are relevant for the *ex post* evaluations as well. The commitment to conduct *ex post* evaluations was introduced in 2013. It concerns regulations causing annual compliance costs for businesses, citizens or

public administration of at least EUR 1 million. These *ex post* evaluations should take place three to five years after the regulations have entered into force. The NKR has received only a few respective evaluation reports so far. Therefore, due to the relatively low number of cases their outcome cannot be considered representative.

Impact on other issues

Similar to other international regulatory oversight bodies, the NKR works towards a culture change that champions accountability through evidence-based policy development, scrutiny and attention to policy impacts. It aims at setting standards and building impact assessment skills across government. Cultural change is an ongoing process and most improvements happen during the non-public exchange of departments and NKR. But progress is nevertheless visible when draft regulations stemming from the days of the beginning of the government's Better Regulation approach are compared to the current ones: in addition to concrete figures regarding compliance costs, there are explanations concerning alternatives, the objective of the respective regulation and regarding possible simplifications of processes.

The one in, one out-rule that was introduced in the beginning of 2015 on the recommendation of the NKR, has so far proven a success. Since the rule's introduction, the burdens to businesses have not only levelled off but have fallen by about EUR 1.5 billion in annual compliance costs. The NKR's scrutiny of respective figures enhances the credibility of such measures.

With regard to the EU *ex ante* procedure that was only introduced in the beginning of 2016 on the recommendation of the NKR, first results can only be seen after the completion of negotiations on the EU level and when implemented on the national level. But already today, it can be stated that this procedure has enhanced the departments' sensitivity regarding compliance costs of EU legislation.

Institutional evaluation

Due to its set-up and the policy-making culture in Germany, there are few formal institutional evaluations on the performance of the NKR. That said, some aspects are worth noting: the relatively strong position of the NKR ahead of the Cabinet vote is balanced by the propensity of departments to fiercely guard their area of responsibility. Supervision regarding legal matters is performed by the Head of the Federal Chancellery.

Conclusion

In comparison to similar other independent bodies the following features are the most significant ones:

- The NKR operates on a statutory basis. This statutory basis was amended once in 2011 with the widening of the scope from administrative costs to compliance costs.
- The annual report of the NKR is handed over personally by the Chair of the NKR to the Federal Chancellor.
- The NKR has an ongoing exchange with the Committee of State Secretaries responsible for affairs of Better Regulation, chaired by the Minister of State to the Federal Chancellor.

- This ongoing exchange has led to several additional improvements of the Better Regulation approach, e.g. regarding the *ex post* evaluation, the introduction of the one-in, one-out rule and the EU *ex ante* procedure. These improvements have all been introduced upon respective recommendations of the NKR feeding into decisions of the Committee of State Secretaries.

From the NKR point of view, there are a variety of future challenges to strengthen the German approach to Better Regulation. The most important are as follows:

- The one in, one out-rule was introduced in 2015 and has proven to be successful. Therefore, the NKR will stimulate the discussion regarding the further development of the one in, one out rule. Possible issues to discuss might include covering legislation from the EU level and one-off costs.
- The NKR's key finding from past years' experiences is that it takes more resources and determination to address shortcomings in digital transformation. Germany lags far behind other countries as far as digital public services are concerned, thus missing significant opportunities for simplification and saving money. The Online Access Act provides new opportunities for a targeted IT-collaboration of Federal, Länder and local governments. Capitalising on this opportunity is vital – with more resources (digital transformation budget) and greater political will. The NKR will support the Government in tackling this important challenge.
- Another related finding of the NKR is that modernising registries could retain the ability to act thanks to high-performing data management. Government and public administration must retain their ability to act in a case of crisis; they must be able to engage with citizens and businesses efficiently on a daily basis and be customer-oriented. In our increasingly digital age, much depends on access to information and interlinkages. Modernising the fragmented German registry landscape is an indispensable precondition for making digital public services a success. At the same time, basic information from citizens and businesses should be requested only once. In 2017, the NKR developed proposals for gearing data management towards the needs of citizens and businesses. This extends to issues of transparency and control, governing who is authorised to retrieve and use data.
- The NKR will champion quality standards for *ex post* evaluation, thus achieving greater transparency and accountability. Good legislation is simple, easy to understand, targeted and effective. Whether a new provision meets this quality standard will not become clear until it is put into practice. Evaluation three to five years after enactment is indispensable. However, a commonly accepted method is lacking. The NKR has therefore proposed an evaluation method to the Federal government which should become a standard procedure.
- The NKR plans to provide impetus to the discussion on the quantification of benefits, thus sharing insights that have been gleaned from pilots. Legislation does not just incur costs, but also generates benefits. Full analysis and quantification of costs must be extended to include the expected benefits of legislation, even if this demands mastering particular challenges. The current pilots will enable NKR and Federal government to resolve remaining issues swiftly, taking account of international experience.
- The NKR will continue to push for a more active inclusion of the *Länder* and municipalities in the assessments of costs, in order to enhance *ex ante* transparency, practical relevance and accountability. *Länder* and local governments have by far the greatest expertise when it comes to implementing

legislation, as they are responsible for executing Federal legislation in many cases. Yet, their wealth of knowledge is insufficiently taken into account of by federal ministries as they draft new legislation. The NKR expects that the agreed procedure between Federal, *Länder* and local governments will be adhered to conscientiously at Federal level.

- The NKR will prompt the discussion on the further development of the EU *ex ante* procedure. Since January 2016, Federal government and NKR have scrutinised EU proposals and their impact assessments by way of the EU *ex ante* procedure. Experience shows that the quality of EU-level cost impact estimates leaves much to be desired. Given that roughly 50% of legislative compliance costs emanate from Brussels, this will have an effect on Germany. The Federal government must therefore call on the EU Commission to pursue genuine cost transparency and observe established quality standards. Moreover, the findings of the EU *ex ante* procedure should not just be used within the confines of government. Given their importance, it would be appropriate to share these cost estimates with the German Bundestag as well as Bundesrat. Ultimately, credible cost transparency is inseparable from transparency towards Parliament and the public.

Note

[1] See German Grundgesetz (constitution), Article 65 (Power to determine policy guidelines – Department and collegiate responsibility): "The Federal Chancellor shall determine and be responsible for the general guidelines of policy. Within these limits, each Federal Minister shall conduct the affairs of his department independently and on his own responsibility. The Federal Government shall resolve differences of opinion between Federal Ministers. The Federal Chancellor shall conduct the proceedings of the Federal Government in accordance with rules of procedure adopted by the Government and approved by the Federal President." And Article 62 (Composition of the Federal Government): "The Federal Government shall consist of the Federal Chancellor and the Federal Ministers".

Chapter 3. Finnish Council of Regulatory Impact Analysis

This chapter describes the institutional setup and activities of the Finnish Council of Regulatory Impact Analysis, which has been established in 2015.

Establishment

There has been a long-standing increase in attention on improving the quality of legislation and regulation in Finland. The Finnish Council of Regulatory Impact Analysis was established in response to this general policy objective, and especially to improve the impact analyses that are prepared as part of bill drafting. Despite developments in guidelines for public officials on bill drafting and impact assessments in the past decade, various expert bodies and scholars expressed concerns over the state of evidence-based decision-making and the preparation of policies. This included the impact assessments of government proposals not always fully serving the information needs of decision-making. With a view to addressing the issue, the National Audit Office, alongside other actors such as the OECD, recommended establishing an independent impact assessment expert body in the country in its Annual Report 2014. The Audit Committee of Parliament also took a positive view on the issue, which was further elaborated in a Prime Minister's Office-led project tasked with reforming the Government steering framework in 2015.

Against this background, establishing a body charged with the task of ensuring the high-quality impact assessment of legislation within the Government was included in Prime Minister Juha Sipilä's Government Programme of May 2015. Among a more general emphasis on well-researched information as the basis of policy-making, the impact assessment body was one of the measures aimed at furthering the Government Programme's key project of improving legal provisions. The wider project's goal is regulation that is enabling, deregulation and the reduction of administrative burden, thereby easing the everyday lives of citizens, boosting competitiveness and promoting market access and digitalisation.

On this basis, an independent Council of Regulatory Impact Analysis responsible for issuing statements on government proposals and their regulatory impact assessments was established in December 2015. In April 2016, the Government appointed the Council for its first term of office running from 15 April 2016 to 14 April 2019. The Council started its work as planned in the spring of 2016, selecting 21 government proposals for scrutiny during the year.

Institutional framework

The institutional framework of the oversight body is laid down in Government Decree 1735/2015 on the Council of Regulatory Impact Analysis. The Council is an impartial and independent body. It is independent from all political influence in its scrutiny work and selects the government proposals on which it will focus. The secretariat of the Council is situated within the Government at the Prime Minister's Office.

The Council is set up as a committee and governed by its members, its working method and management structure being collegial. The government plenary session – the meeting of ministers that takes the most important decisions falling within the purview of the Finnish Government – appoints a chairperson and a maximum of eight members to the Council. The Council then elects two vice-chairpersons from among its members. The term of the Council is three years and its membership appointments are based on personal expertise. Members are selected by the Government directly, but a public stakeholder consultation round to put forward membership proposals was organised when the first and current Council was appointed. The only formal membership criteria are that the Council as a whole must have expertise in legislative drafting and the necessary expertise to assess different impact areas. While serving as members of the Council, the persons

may not represent any stakeholder organisation but they may be employed by such organisations. Current members' other activities range from positions in academia to interest groups, public service and business. However, as members of the Council they act as independent experts that have a responsibility to recuse themselves from assessing legislative proposals where conflicts of interest may arise.

The Decree on the Council of Regulatory Impact Analysis further stipulates that the Prime Minister's Office appoints secretaries and possible permanent experts to the Council. To date, the Prime Minister's Office has appointed two full-time secretaries and one permanent expert to the Council, who are civil servants organisationally placed within the Government Session Unit of the Prime Minister's Office. The two full-time secretaries are responsible for the bulk of the daily work of the Council, including drafting its statements on the basis of debates and decisions in Council meetings.

The Council's work can be seen as complementary to the work of other institutions involved in scrutinising regulatory quality. Other relevant institutional actors with oversight functions include, for example, the National Audit Office, which conducts inter alia *ex post* performance audits of the financial management of the state. In addition, the Chancellor of Justice and the Constitutional Law Committee of Parliament monitor the constitutionality of legislation, a task not included in the mandate of the Council of Regulatory Impact Analysis. The Chancellor of Justice and the Constitutional Law Committee of Parliament intervene in the bill drafting process at a later stage than the Council, as they principally review finalised government proposals, whereas the Council analyses draft government proposals. Within the administration, the Ministry of Justice co-ordinates cross-sectoral co-operation conducted between the ministries in order to develop law drafting.

Mandate, scope of actions and activities

According to the Government Decree on the Council of Regulatory Impact Analysis, the Council has a range of different responsibilities. These are summarised in Table 3.1 according to the OECD typology of key regulatory oversight tasks.

Table 3.1. Mapping of FCRIA tasks to the OECD typology of areas of regulatory oversight

Areas of regulatory oversight	FCRIA
Quality control (scrutiny of process)	Issuing statements on impact assessments that are included in draft government proposals for legislation to be adopted by Parliament; Issuing statements on the impact assessments of other draft legislation such as significant decree-level provisions or EU legislation. The scrutiny covers economic impacts, impacts on public authorities, environmental impacts and wider impacts on society.
Identifying areas of policy where regulation can be made more effective(scrutiny of substance)	No
Systematic improvement of regulatory policy(scrutiny of the system)	Putting forward proposals for improving the quality of bill drafting and, in particular, the impact assessments of government proposals; Following the development of the quality of impact assessments and evaluating the effectiveness of its own activities; Submitting a report of its activities every year to the Prime Minister's Office
Co-ordination (coherence of the approach in the administration)	Promote a whole of government, co-ordinated approach to regulatory quality
Guidance, advice and support(capacity building in the administration)	No

Source: FCRIA case study.

The principal task of the Council is to improve the quality of bill drafting and, in particular, the impact assessments of legislative proposals. The Council mainly issues statements on government proposals for legislation to be adopted by Parliament and on their regulatory impact assessments, but it may also issue statements on the impact assessments of other draft legislation, including significant decree-level provisions or the regulatory impact of EU legislation. It is worth noting that the Council is not responsible for conducting impact assessments but it analyses proposed assessments and makes suggestions for improvement. The suggestions are based on issued and up-dated guidance on how to analyse the impact of bill drafting and legislative proposals, most notably the Bill Drafting Instructions and Impact Assessment Guidelines adopted by the Government in 2004 and 2007, respectively. In practice, the Council's statements principally comment on the contents and quality of the presented impact assessment, but also some questions of a more procedural nature related to compliance with issued guidelines, such as whether the recommended categorisation of different impact areas have been followed, are reviewed.

The Council selects independently the government proposals which it will evaluate. In selecting proposals for closer scrutiny, however, the Council makes use of the Government's legislative planning as well as legislative initiatives put forward in the Meeting of the Permanent Secretaries, a standing co-operative body for the permanent secretaries of the various ministries. The selection is done on a case-by-case basis from all legislative proposals under preparation at a given time, the main selection criteria being the proposal's economic and societal significance. In addition, the Council aims at covering as many ministries as possible in its work, as well as assessing draft legislation of different sizes and scope. While the Council decides independently which proposals it will scrutinise, the Prime Minister's Office set a target indicator for the secretariat of the Council to issue approximately 35 statements in 2017. This corresponds to between 10 and 20% of all annually issued government proposals, depending on the total number of proposals in a given year.

The Council's statements provide an analysis of whether the government proposal includes an adequate description of the main objectives, intended impacts, impact mechanisms and estimated costs and benefits (on households, businesses, public finances, and the national economy generally). In addition to economic impacts, other impact areas such as on the environment, authorities and society are also evaluated. Furthermore, the statements analyse whether the justifications of the government proposal are sustainable and transparent in terms of adequate knowledge-base. Key questions include:

- Have the main costs and benefits been identified?
- Has the allocation of costs and benefits been described?
- Have the main impact mechanisms and channels been described?
- Has the total magnitude of costs and benefits been described?
- Has the uncertainty of impact assessments been described, for instance by utilising ranges for quantitative assessments?
- Does the proposal include considerations of how to assess the impacts of legislation after adoption?

The Council thus evaluates how impact assessments have been carried out in draft legislation, including the methods and sources of information on which the assessments are based on. The statements also seek to draw attention to studies and assessment methods, which could be used to improve the impact assessment before the government proposal is issued. The Council also aims at close co-operation with the ministries on a

more general level to improve the quality of impact assessments, for instance through ministry working groups on the development of law drafting and better regulation.

The stage in the development of legislation where the Council is involved is after a draft proposal has been on a stakeholder consultation round. The relevant ministry is requested to provide the Council with an as finalised version as possible of the proposal in question, including implementing any possible changes stemming from the stakeholder consultation round. The Council will then have about four weeks to prepare its analysis. After the Council has issued its statement, the ministry typically finalises the proposal within one to three months, after which the final proposal is submitted to Parliament. Ministries do not resubmit revised proposals for a second assessment to the Council, which thus analyses the same proposal only once – at the stage in the development of legislation before the draft is finalised.

As regards sanctioning functions, the Council's statements are not binding for the ministries, and it does not have the power to stop legislative proposals from proceeding to the next stage if it deems that quality standards for impact assessments have not been met. If a government proposal has been considered in the Council, a note of the procedure will be made under the item 'preparation of the matter' in the final government proposal, which is submitted to Parliament. The proposal must also include a mention of how the Council's statement has been taken into account. The statements issued by the Council are published 24 hours after their adoption. During the parliamentary consideration of government proposals, the secretaries of the Council have occasionally been called to committee hearings as experts when scrutinised proposals have been under debate. Furthermore, statements of the Council have been referred to in plenary session debates and utilised in committee statements.

During this initial phase of its operation, the Council has had to prioritise its tasks due to limited resources. It has mainly focused on the economic impact evaluations of government proposals, but other impacts such as for that on the environment, authorities and equality have been evaluated. Moreover, the Council has focused on developing its internal working methods and processes, as well as co-operation with ministries and other stakeholders through ministry working groups and more informal exchanges of information for instance with research institutes. Additionally, the Council has sought to raise awareness of its work and the importance of impact assessments in good law drafting for instance by taking actively part in ministry workshops and seminars. The Council has so far not made use of its full mandate in, for example, assessing whether the impact of legislation has been as intended following the entry into force of statutes.

Capacities

Members of the Council of Regulatory Impact Analysis assemble approximately once everythree weeks to debate and adopt statements. They are remunerated for meetings but are not employed by the Council, as membership of the Council is not a full-time occupation. A secretariat of two Senior Ministerial Advisers for Regulatory Impact Analysis is devoted full-time to support the Council in preparing and presenting its statements. In practice, the secretariat is responsible for the bulk of the daily work of the Council. Additionally, one Senior Government Adviser serves part-time as a permanent expert to the Council, participating in its meetings and supporting its activities especially in relation to co-operation between the Council and the administration. The great majority of the Council's resources are deployed to preparing statements on impact assessments included in draft government proposals.

The nature of the Council's competence in legislative preparation is broad. All members are economists or lawyers by training with professional backgrounds in academia, interest groups, public service or business. Both of the Council's secretaries are economists.

Parliament budgeted approximately EUR 250 000 for the Council's work in 2016. The same amount has been included in central government spending limits for upcoming years. Most of the appropriation is spent on the secretariat's labour costs. Other significant costs include Council members' remunerations and other overheads such as travel costs related to international co-operation.

Monitoring and assessment of impacts and effectiveness

As the Council of Regulatory Impact Analysis has been in full activity for only one and a half years, there is limited information available on its impacts and effectiveness. The early stages of the Council's activities will be assessed in 2018 in a research project under the Government's analysis, assessment and research activities, which are research projects that seek to generate information that supports decision-making, working practices and management by knowledge. In addition, the Council submits a public report[1] of its activities every year to the Prime Minister's Office, which includes information on the fulfilment of its mandate and evaluations of the impact of its work. The Council also tracks the number of government proposals it reviews annually. The findings of the Annual Review have been noted in the media. However, the Council has received more media attention in relation to individual statements.

In assessing the impact of its work, the Council distinguishes two key viewpoints: impacts on individual government proposals under scrutiny and impacts on the quality of bill drafting on a more general level. First, the Council tracks and reports compliance with its individual statements by assessing whether final government proposals have been amended in accordance with the Council's recommendations in its Annual Reviews. Follow-up data collected by the Council indicate that the compliance rate varies between proposals, but a rough estimate is that a little less than two thirds of the Council's recommendations for improvement were partly or completely taken into account in 2016.

Second, the Council seeks to assess its impact on the quality of bill drafting on a more general level. In this regard, an important question is what kind of influence the Council's statements or indeed existence has had on proposals that are in the process of being drafted. These indirect impacts could be analysed to some extent by the aforementioned research project on the early stages of the Council's activities that will be carried out in 2018.

Important considerations in assessing the Council's impact on the overall bill drafting process include whether i) the quality of impact assessments improves over time; ii) impact assessments guide the bill drafting processes early and strongly enough; iii) impact assessments improve participation opportunities for stakeholders and other interested parties by bringing information to their use that they would not have been able to obtain independently; and iv) the administration utilises external expertise after encountering a lack of information or know-how in carrying out impact assessments.

In its Annual Review 2016, the Council noted that a significant part of the impact assessments it analysed had considerable shortcomings. Common weaknesses in impact assessments included shortcomings in quantitative assessments and comparisons of options as well as describing impact mechanisms and channels. A study by Keinänen (in Finnish language only)[2] has also suggested that government proposals highlight rather

poorly how the Council's statements have been taken into account in the final proposal. One key challenge for the Council's work is that ministries might not always have enough time to thoroughly edit the draft proposal on the basis of the Council's statement. In 2016, final government proposals were issued between three and fourteen weeks after the Council had issued its statement.

Conclusion

While a lot of work thus remains to be done to improve the quality of bill drafting and impact assessments, the Council's first year provides a strong springboard for future work. Early successes for the Council include becoming a well-known actor within the Government and administration in a short period of time. The Council has also received a favourable reception in Parliament and positive publicity in the media. The majority of feedback on the Council's statements from different sides and stakeholders has been positive.

Notes

[1] The Annual Review for 2016, www.vnk.fi/documents/10616/1851227/Finnish+Council+of+Regulatory+Impact+Analysis+Annual+Review+2016/c367fbba-c0f3-4b6d-abe5-81ead1227046.

[2] Keinänen Anssi and Halonen Miia (2017), Mikä vaivaa vaikutusten arviointia? – Vaikutusten arvioinnin puutteet lainsäädännön arviointineuvoston havaitsemana ja lausuntojen huomioiminen hallituksen esityksissä. (What ails impact assessment? – Deficiencies in impact assessment as observed by the Council of Regulatory Impact Analysis and responsiveness of government proposals to the Council's statements). Edilex 2017/4, www.edilex.fi/artikkelit/17378.

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Chapter 4. Czech Republic Regulatory Impact Assessment Board

This chapter describes the institutional setup and activities of the Regulatory Impact Assessment Board, which has been established in the Czech Republic in 2011.

Short history of the establishment of the oversight body

In the Czech Republic, the first attempt to implement the concept of better regulation was connected with Prime Minister Klaus, who tried to reduce the administrative burden in the 1990s. He created a so-called 'Anti-bureaucratic Commission'. Its members were politicians and high-ranking civil servants. This institutional change was not fully accepted by the public administration (Staronová et al., 2007). The Legislative Rules of Government approved under Government Resolution No. 188 of 19 March 1998, as amended, have imposed a requirement that all legislative proposals (legislative intentions, bills, draft governmental orders, draft ministerial decrees) should include an analysis of the impacts on the economy, business environment, state and other public budgets, environment as well as the social impacts (including impacts on families and specific social groups such as the socially disadvantaged, disabled and national minorities), impacts on prohibition of discrimination and equality between men and women, impacts on security and defence of the state and an assessment of corruption risks. In 2005, an Action Plan for Reducing Administrative Burden on Businesses was adopted. Since 2007, the Ministry of Interior was responsible for implementing the process of Regulatory Impact Assessment. A new body, the inter-departmental committee on quality review of RIA (RIA Committee), consisting of representatives and/or experts of ministries, was established in 2007 to oversee the process of RIA.

However, the practice revealed that such a body did not correctly fulfil the expected control role as its functioning only echoed the statements of central state bodies in the previous round of interdepartmental commenting. This finding revealed the need for an independent body.

Therefore, the Regulatory Impact Assessment Board (RIAB hereinafter) was established by the Government Resolution No. 768 of 19 October 2011 as the body entitled to do a quality review of submitted RIA reports accompanying draft legislation in the Czech Republic.

Institutional framework

The RIAB is one of the working commissions[1] of the Government Legislative Council (GLC), which is the main advisory body to the Government of the Czech Republic overseeing the quality of the Government's legislative work.

The GLC has been established under § 28a of Act of the Czech National Council No. 2/1969 Coll. on the establishment of ministries and other central governmental authorities of the Czech Republic, of 8 January 1969, as amended. There is no formal requirement regarding the number of members (members of the GLC are nominated by the Government). Currently, the GLC consists of 34 profiled legal experts (the overwhelming majority of the members are external experts[2] performing work for the GLC for symbolic compensation only) and its work is governed by the Rules of Procedure approved by the Government of the Czech Republic. The composition of the GLC and its working commissions which is made up of external experts, serves as a guarantee of its independence.

The Chair of the GLC is a member of the Government of the Czech Republic. The position is currently held by the Minister of Justice. The GLC oversees the quality of the draft legislation before it is presented to the Government, in particular, whether the draft laws are in compliance with the Constitution and other laws, international treaties and

EU legislation as well as the overall necessity, clarity and unambiguity of the draft legislation. However, the minister in his role as chair of the Government Legislative Council plays rather the role of a moderator trying to find consensus for the final statement of the GLC (which is only advisory in nature but with a highly respected status in the Government of the Czech Republic).

RIAB members are not members of the GLC; they are members of just one of the nine working commissions of GLC. Another guarantee of independence, besides its composition of external experts, is that the RIAB members report potential conflict of interests at the RIAB meetings.

The activities and position of the nine working commissions of GLC are not co-ordinated (based on the idea of independence). The overall statement of the GLC reflects the debate at the GLC meeting and the opinions issued by the working commissions.

Mandate, scope of actions and activities

The primary role of the RIAB is the quality review of RIA reports accompanying draft legislation prepared by ministries and other central governmental authorities. The scope of quality control exercised by the RIAB covers two fields:

i) It evaluates the overall quality and adherence to the procedures as defined in the RIA Guidelines, e.g.:

- Problem analysis and the identification of desired changes; options of regulatory intervention; cost and benefit of interventions; choice of optimal options.
- Evaluation of administrative burdens imposed on businesses (a separate additional methodology in force since 2007); quantification required if data is available, otherwise a qualitative description of proposed changes is required.
- The opinion (statement) of the RIAB is issued concerning the quality and objectivity of the findings from the RIA process as described by the drafting authority in the RIA report but not to the principles of a draft law itself.
- Implementation of an integrated approach to the impact assessment (i.e. evaluation of economic, social and environmental impacts simultaneously).

ii) Besides the primary quality review, the RIAB is also entitled to:

- Undertake consultation concerning aspects of the RIA during the preparatory and drafting phase of RIA reports – if requested by the drafting authority; the opinion of the members of the RIAB is however not binding to the drafting authority at this stage of the process. The RIAB members may be consulted by drafting authorities during the preparation of the RIA. The RIAB is sometimes contacted by external stakeholders with a proposal to receive more detailed information on the background and impacts of the proposed legislation. The RIAB members report these contacts at the RIAB meetings.
- Based on the evaluation of "Overviews of Impacts" (provided to the drafting authorities in the form of a template which they are supposed to fill in and send to the Chair of the GLC), the RIAB issues its opinions as to which of the planned pieces of draft legislation as proposed by the ministries and other central governmental authorities should undergo a regular RIA process.
- When in the "Overview of Impacts" new and major impacts are identified in the following areas: state and other public budgets; administrative burdens for public authorities; regulatory costs for businesses and citizens; competitiveness;

economic and legal relations between public authorities and/or private subjects. The suggestions of RIAB are to be approved later as the binding obligation in the Plan of Legislative Work of the Government, respectively in the Plan of Preparation of Decrees and officially published. The Plan of Legislative Work of the Government (with clear indication to which pieces of draft legislation the RIA obligation is applied) is then approved (usually in mid-December) by the Government. The Plan of Preparation of Decrees (with clear indication to which decrees is the RIA obligatory) has to be approved by the Chair of GLC.

- Within this competence, RIAB may propose to change the obligation to prepare RIA, contrary to the proposal of a drafting authority. In a situation where the drafting authority opposes this change, the discrepancy may be solved in the latest stage at the level of the Government. Figure 4.1 illustrates the role of the RIAB in the regulatory cycle.

The guiding document for RIA elaboration accompanying draft legislation is the mandatory RIA Guidelines approved by Government Resolution No. 922 of 14 December 2011, as amended.[3] This is quite a detailed prescription for the structure of RIA (following the EU Impact Assessment Guidelines as one of its sources of inspiration). This document sets criteria for the RIAB for its scrutiny.

In its assessment, the RIAB emphasises not only the formal fulfilment of specific steps and elements of RIA Guidelines but also the overall coherence among the elements of RIA: problem analysis and identification of desired changes, options of the regulatory intervention, cost and benefits of the interventions and the choice of the optimal option. Special focus of RIAB is put on the assessment of the consultation process and its participatory dimension.

The RIAB never comments on the articulated legislative proposal or legislative intention itself, its position is based on the assessment of compliance with the requirements for RIA as prescribed by the RIA Guidelines.

The RIAB has to act within this governance structure and has had to learn to communicate with legal experts as well as develop ways of communication with the legal community. This working modus of RIAB directs its attention not only towards the impacts of the proposed legislation, but first and foremost the problems that are to be solved in addition to the options that are (or should be) proposed.

The RIAB considers RIA reports to draft legislative proposals approved in the Plan of Legislative Work of the Government and in the Plan of Preparation of Decrees with the obligation to undergo the RIA. Additionally, the RIAB evaluates RIA reports to those draft legislative proposals which were not foreseen in the Plans and which did not receive an exemption from the RIA. An exemption from RIA may only be arranged via an official request addressed to the Chair of the GLC accompanied by the Overview of Impacts submitted by the drafting authority.

Only a certain proportion of draft legislation undergoes RIA (approximately 40%). The remaining proposals in the legislative process are either submitted without RIA (based on governmental decision) or are proposed as parliamentary initiatives or amendments, for which RIA is generally not required.[4]

Figure 4.1. Regulatory cycle in the Czech Republic and the role of the RIAB

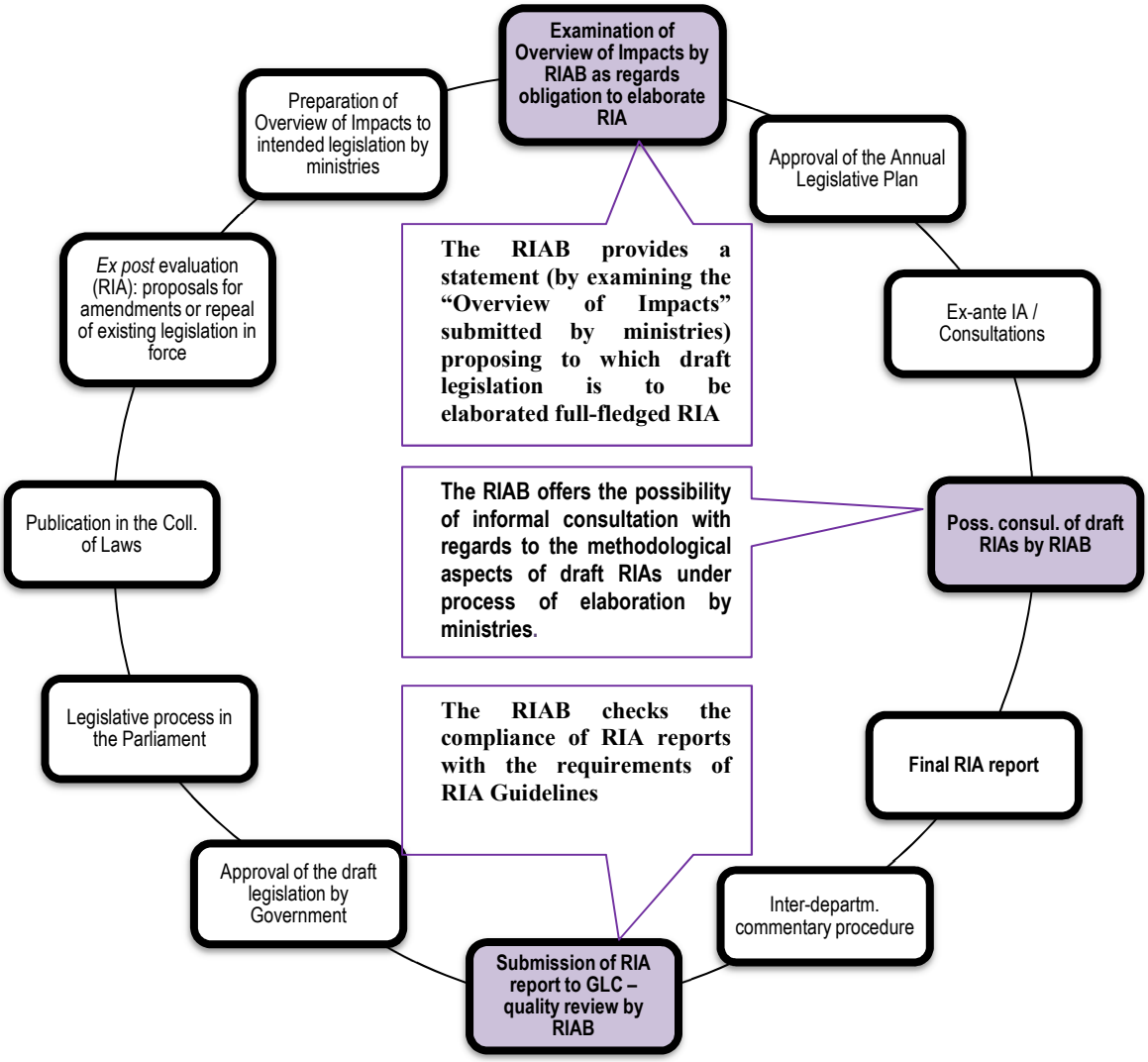

Table 4.1. Share of draft legislation undergoing RIA

Year	Government's draft legislation[1]	Government's draft legislation with RIA	% of proposals with RIA to government's draft legislation	Primary legislation proposed by other subjects	% of proposals with RIA to total proposals
2012	148	93	63%	97	38%
2013	168	85	51%	93	33%
2014	152	83	55%	71	37%
2015	201	121	60%	57	47%
2016	188	126	67%	90	45%

1. Government's draft legislation includes legislative intentions, bills and draft governmental orders. The figures contain the drafts which were submitted and approved by the Government.

When assessing the quality of RIA reports, the RIAB may issue four different opinions:

- The RIAB recommends the GLC issue a statement in which the Government is advised to approve the draft legislation.
- The RIAB recommends the GLC issue a statement in which the Government is advised to approve the draft legislation under the condition that recommendatory comments are accepted.
- The RIAB recommends the GLC suspend the hearing until the draft legislation is revised based on the fundamental comments.
- The RIAB recommends the GLC issue a statement in which the Government is advised to reject the draft legislation due to the fundamental comments.

The opinions are made publicly available (on the special website http://ria.vlada.cz). The opinion of the RIAB is not binding within the legislative process, for the GLC or the Government. The Government can adopt the legislative proposal despite the negative opinion of the RIAB.

There are no formal requirements for the RIAB to report back to the Government. However, equivalent data on annual activities of the RIAB are included in the annual report of the GLC. The reports are submitted to the Government of the Czech Republic and are publicly available.

Table 4.2. Mapping of RIAB tasks to the OECD typology of areas of regulatory oversight

Areas of regulatory oversight	RIAB
Quality control (scrutiny of process)	Quality review of RIA reports accompanying draft legislation prepared by ministries and other central governmental authorities
Identifying areas of policy where regulation can be made more effective(scrutiny of substance)	No
Systematic improvement of regulatory policy(scrutiny of the system)	No
Co-ordination (coherence of the approach in the administration)	No
Guidance, advice and support(capacity building in the administration)	The RIAB offers the possibility of informal consultation with regards to the methodological aspects of draft RIAs under process of elaboration by ministries.

Source: RIAB case study.

Capacities

The RIAB consists of 18 external experts mostly economists, lawyers, representatives of business associations, academics and other experts. The composition of the RIAB follows current trends in society as well as the economy, so new members with a specialisation on eGovernment, digital economy and social affairs were nominated in 2016. The nomination of new members for the RIAB is not formalised in a structured process and it lies within the discretion of the Chair of the GLC. There is no time limit for the mandate – it is ongoing with regards to the role of the GLC as the permanent body.

The RIAB usually meets every three weeks with a rather variable meeting programme structure, depending on the planned submission of the legislative proposal (usually two-six RIAs accompanying legislative proposals are in the programme).

The internal process of decision-making within the RIAB is not prescribed by any formal rules. It is based on general consensus of RIAB members who all share the strong belief that the RIA is of key importance for regulatory oversight in the Czech Republic. The assignment of the task to elaborate the opinion (statement) of RIAB to the RIA quality (identification of rapporteur) is co-ordinated by the Chair, who communicates case by case with RIAB members. There is no formal distribution of regulatory fields or ministries among RIAB members. However, the Chair usually respects the expert knowledge of RIAB members. Within this communication, the RIAB members report potential conflicts of interest.

The rapporteur elaborates a draft version of the statement, which is distributed via e-mail to all RIAB members at least one day before the RIAB meeting where the RIA accompanying the legislative proposal should be discussed. The RIA Unit of the Office of the Government is responsible for the preparation of all paper documentation (programme, printed materials related to the legislative proposal, printed draft statements) for the meeting. Usually, the employees of the RIA unit participate at the meeting of the RIAB. Before the official part of the meeting, the members of the RIAB discuss the draft statement internally and present their personal expert view. During the official RIAB meeting, every draft statement of the RIAB is subject to discussion between RIAB members and the representatives of the institution or ministry who presents the RIA and the legislative draft. The discussion with the representatives of the proposing institution can contribute to the clarification of some open questions and partly modify the draft statement of the RIAB towards less or more strict findings. The final statement of the RIAB is delivered via the internal portal of the Government (electronic Library of the Legislative Process) within a few days after the RIAB meeting, authorised by the Chair. The formulation of the final version of the statement is reached via consensus, which is usually reached very smoothly.

The RIAB does not have its own budget. The activities of the GLC and its working commissions (including the RIAB) are covered from the state budget (Chapter 304 – Office of the Government of the Czech Republic).[5] In 2016, the overall cost for the remuneration of work for all GLC members including members of the 9 working commissions (approx. 150 people) were CZK 3 000 000. The amount of remuneration to individual members of the GLC and its working commissions is determined in the form of hourly rates.

The activities of the RIAB are supported by the Regulatory Impact Assessment Department of the Office of the Government of the Czech Republic and its Unit for Co-ordination of Regulatory Impact Assessment Process (the RIA Unit). The RIA Unit consists of eight civil servants (including the Head of the Unit and an administrative assistant) with different academic backgrounds (law, economics, politics, international relations and European studies). The main role of the RIA Unit consists of conceptual and co-ordination activities of the RIA process. This includes the elaboration of governance framework leading to systematic *ex post* evaluations of the approved legislative acts or the elaboration of various methodologies covering topics such as the prevention of gold-plating[6] or the quantification of compliance costs. Furthermore, the RIA Unit critically assesses and comments on both legislative and non-legislative materials proposed by the ministries as well as other central governmental authorities during the interdepartmental comments procedure (before any material is submitted to the GLC and its working commissions) and provides methodical assistance to the proposers of new legislation. Finally, the RIA Unit is responsible for better regulation agenda/regulatory policies of the Czech Government at the European and international level.

The processes of assessing the quality of RIA by the RIA Unit (as part of the Office of the Government) and the RIAB (as the independent body) are separate and independent. The assessment by the RIA Unit is part of the standard interdepartmental comments procedure and is also included in the final document called "Settlement of Comments" which the drafting authority has to deliver as an obligatory part of the legislative process. This document is an important source for the RIAB to assess the consultation process. The RIAB opinion is independent within the legislative process and might be different from the comments of the governmental RIA Unit.

Monitoring and assessment of the impacts and effectiveness of the oversight body

From the perspective of RIAB members, the key factor contributing to its successful work is the promotion of the concept of regulatory impact assessment in the governance structure of the Czech Republic. Within the traditional political processes, it is a relatively new element in political culture, which has the potential to influence the legislative process towards an economic perspective, to contribute to stakeholder engagement in the decision-making process and to implement elements of evidence-based policy in the overall regulatory framework.

The main challenges are (i) the acceptance of RIAB position and opinions as an obligatory part of the legislative process with decisive power (stopping the legislative process in cases where the RIA is unsatisfactory) and (ii) the elaboration of the RIA for parliamentary amendments (for which there is no obligatory RIA procedure, but they can change the details of the legislative proposal significantly).

The GLC issues an annual report which provides overall information on the work of its working commissions, including the RIAB. The report is also published on the official website of the Office of the Government of the Czech Republic. Statistics with regards to the number of impact assessments scrutinised by the RIAB and draft legislation discussed by the GLC can be found in the report. The RIAB has published its own report only in 2012 and 2013. In the Czech Republic, there is neither a systematic scheme for the assessment of the effectiveness of the RIAB and the RIA process, nor a systematic focus by Czech academics on the (critical) assessment of the RIAB and the RIA process. Only a few analyses on these issues exist (see e.g. Final report on analyses of the implementation and effectiveness of the existing RIA process in the Czech Republic[7]).

The RIA process in the Czech Republic is subject to benchmarking by international bodies (World Bank, (2018)[8] OECD and some non-governmental organisations). The OECD Regulatory Policy Outlook 2015 concluded that "[t]he quality of government RIAs improved significantly subsequent to the establishment of the [RIA] Board" (OECD 2015, p. 152). In 2015, the Bertelsmann Foundation published the Sustainable Governance Indicators (SGI).[9] The RIA in the Czech Republic achieved a good ranking in terms of RIA application and the quality of the RIA process but a rather low ranking related to the sustainability check – . The latter examines whether RIAs also analyse a regulation's impacts on sustainability.

The RIA Unit initiated activities on the elaboration of a methodology and process leading to systematic *ex post* evaluations of the approved legislative acts. This framework is .currently being prepared. The RIAB was actively involved in the process of the design of the *ex post* evaluation scheme in the Czech Republic and should be part of the ex post evaluation procedure.

Concluding remarks

The RIAB has recently undergone several important changes to stabilise and promote its role in the law-making process. Since 2016, its personnel capacities have been strengthened by broadening its expertise base. The number of board members has also grown significantly in comparison to other working commissions of the GLC.

A simple classification of the RIAB's opinions has also been introduced to send a clear message to those preparing draft legislation and RIA reports. This will also be used for statistical purposes.

In order to share their first-hand experience with regulatory impact assessment, RIAB members will be part of discussions on the future direction of the national regulatory impact assessment process. Recently, they have also been involved in a working group on *ex post* evaluation methodology.

At the international level, the RIAB continues to be strongly involved in networking, experience sharing and promoting the added value of external and independent regulatory scrutiny within the framework of RegWatchEurope.

Notes

[1] Currently, there are 9 working commissions of GLC: Commission on Public Law I – Commission on Administrative Law No. 1, Commission on Public Law I – Commission on Administrative Law No. 2, Commission on Public Law I – Commission on Administrative Law No. 3, Commission on Public Law II – Finance Law, Commission on Public Law III – Labour Law and Social Affairs, Commission on Public Law IV – European Law, Commission on Private Law, Commission on Penal Law, Commission/Board on Regulatory Impact Assessment.

[2] With the exception of the Chair (who is a member of the Government), two of three Vice-Chairs and one member of the GLC (who are civil servants).

[3] www.vlada.cz/assets/ppov/lrv/ria/aktualne/oz_ria_-novela_2016_uplne-zneni-final.pdf.

[4] Regardless of the RIA requirement, all legislative proposals prepared by ministries and other central governmental authorities (legislative intentions, bills, draft governmental orders, draft ministerial decrees) should include an analysis of the impacts on the economy, business environment, state and other public budgets, environment as well as the social impacts (including impacts on families and specific social groups such as socially disadvantaged, disabled and national minorities), impacts on prohibition of discrimination and equality between men and women, impacts on security and defence of the state and assessment of corruption risks (This repeats body text).. These are part of a publicly available explanatory memorandum accompanying draft legislation. However, they are usually not scrutinised by the RIAB.

[5] Expenses of the RIA Unit, as an integral part of the Office of the Government of the Czech Republic, are covered from the same chapter of the state budget.

[6] In co-operation with the Department of the Office of the Government of the Czech Republic for Compatibility with EU Law.

[7] www.vlada.cz/assets/ppov/lrv/ria/aktualne/Zaverecna-zprava-z-evaluace-ucinnosti-RIA_final.pdf

[8] http://rulemaking.worldbank.org/

[9] The SGI examines 41 countries (EU and/or OECD members). The assessment is based on three sets of indicators: Policy Performance, Democracy and Governance. The RIA is covered by the

Evidence-based Instruments indicators, which are part of the Governance pillar. The concept of SGI is based on the assumption that good governance and sustainable development go hand-in-hand. According to the concept presented, the SGI Sustainable governance "is anchored in leaders adopting a long-term view of public policies that consider the interests of future generations" (Bertelsmann Stiftung, 2015).

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Chapter 5. The Swedish Better Regulation Council (SBRC)

This chapter describes the institutional setup and activities of the Swedish Better Regulation Council, which has been established in 2008.

A short history of the establishment of the oversight body

As part of the then governing government's work on better regulation for businesses, the Swedish Better Regulation Council (SBRC) was established in 2008 as a committee of inquiry. The SBRC was established to ensure that impact assessments were conducted with high quality and to assess whether new and amended statutes have been drafted in a simple way and at a relatively low administrative cost. In the directive for the committee (Dir. 2008:57) it was stated that regulators did not always follow the requirements for an impact assessment and a -new organisation was necessary to improve the quality of impact assessments. These points were similar to those made when Sweden, amongst others, was reviewed by the OECD for its better regulation practices (OECD, 2010). Given this background, and due to the then governing government's aim that the administrative costs of regulations in 2010 should decrease by 25% and to achieve a tangible change in the daily operations of businesses, the Council was established.

In 2008, when the SBRC was established, it was set up as a temporary committee with a time frame until December 2010. However, in September 2010 the time frame was extended until 2014. Its mandate was to assess the quality of impact assessments of proposed statutes that may have effects on businesses' working conditions, competitiveness or conditions in general. The Council also assessed if the proposals could reach its purpose in a simple, and at relatively low administrative cost for businesses. The mandate also specified that the Council follow the development of better regulation and provide information and advice that could make regulation efficient and effective. SBRC also had training sessions for civil servants and committees of inquiry as well as gave support to committees of inquiry regarding regulatory impact assessments for businesses. In 2011, the mandate was expanded and since then the Council also should, upon request, scrutinise impact assessments accompanying proposals from the EU.

Since 2015, the Council has become a permanent body under the auspices of the Swedish Agency for Economic and Regional Growth. The change also included a change in the mandate. From the year 2015, the SBRC assess only the quality of impact assessments and, upon request, assess impact assessments on EU-regulation. The training and support activities that the Council previously had were passed to the part of the Agency for Economic and Regional Growth in charge of impact assessment support.

Institutional framework

The Government Offices form a single, integrated public authority comprising the Prime Minister's Office, the government ministries and the Office for Administrative Affairs. The ministries are responsible for their respective policy areas. However, a large portion of the government ministries' workload is delegated to different government agencies or to committees of inquiry which are a sort of temporary/time limited agency. The delegation includes proposals of policy making, proposals of laws and decrees (which have to be decided by the Parliament or the Government) and many agencies also have the authority to decide on their own regulation.

As shown in Table 5.1, below, the Ministry of Enterprise and Innovation is responsible for the area of impact assessments and better regulation in general and co-ordinates this work within the Government Offices. The Swedish Agency for Economic and Regional Growth and the National Financial Management Authority are responsible for methodological development, advice and training in regards to what an impact assessment should contain. The Agency for Economic and Regional Growth is

specifically responsible for the area of business impacts and the co-ordination of regulatory impact assessments in Sweden which include general IA guidelines and training sessions. The National Financial Management Authority is responsible for providing IA guidelines and training with regards to assessing impacts on public authorities/administrations, while other agencies specialise on impacts within their different fields. Since the Agency for Economic and Regional Growth has, and previously also had, the co-ordinating role, there was co-operation between the Council and the Agency, even before the Council was placed under the auspices of the Agency. The Council also has the ability to comment on some of the guidance that the Agency provides to, where possible, achieve consensus. When it comes to reduction targets the Agency has a mission from the government to track the administrative and other costs for businesses. This is done with help from the Swedish Better Regulation Council, since it is the personnel who work for the Council that reports cases that may have significant impacts on the costs for businesses to the Agency. However, this task mainly involves identifying specific proposals for the Agency to look at closer only.

Table 5.1. Institutional framework for regulatory impact assessment in Sweden

Institution	Description/connection to other institutions
Ministry of Enterprise and Innovation	The Ministry is responsible for better regulation including the area of impact assessments. A continuous dialogue is conducted between the Ministry and the SBRC regarding the quality of RIA and possible measures that may enhance the quality of RIA, such as improved guidelines.
The Swedish Agency for Economic and Regional Growth	The Agency works to strengthen the competitiveness of companies in various ways. It reports to the Ministry of Enterprise and Innovation. It is, amongst other things, responsible for, and the co-ordinator of, support, training and method development concerning impact assessments. It is also the employer of the SBRC secretariat. The SBRC operates under the umbrella of the Agency.
The Swedish National Financial Management Authority	The Authority is also responsible for support, training and method development concerning impact assessments for public authorities.

The establishment, mission and composition of the Council are found in the Decree with instructions to The Swedish Agency for Economic and Regional Growth (SFS, 2009: 145). In the decree, it is stated that the Agency is responsible for providing the Council with enough resources and that the work is done according to the law, effective and is reported in a satisfactory way. However, the Agency cannot influence the opinions or decisions of the Council since the Council is responsible for its own decisions.

The Swedish Better Regulation Council is independent in its decision making. There is a legal obligation for agencies to refer proposals that may have significant effects on businesses to the SBRC (SFS, 2011:118), thus excluding referral when the proposal is deemed to have small impact on businesses. For the Government Offices, the obligation to refer proposals is set up in the guidelines. The SBRC issues opinions regarding whether the consequences are described sufficiently, resulting in an opinion if the proposal is fit for purpose/meets the requirements of the decree or not. Whether the content of the proposal has a positive or negative impact on businesses is not included in the opinion. The Council is responsible for its own decisions and the opinions cannot be affected by the government or by the Agency for Economical and Regional Growth. The assessment that the Council does is based on the decree on Regulatory Impact assessment (SFS, 2007:1244). All the opinions and impact assessments (including proposals) are published on the Council's website. The results are also published in an annual report, presented to the Ministry. Since the Council's opinions are solely advisory the regulators are not obliged to amend their impact assessments as a result of the opinion. There is also

no obligation for the regulators to re-refer an impact assessment that received a negative opinion, nor is there a "comply or explain" function.

Mandate, scope of actions and activities

The SBRC's task is to scrutinise (*ex ante*) and deliver opinions on the quality of impact assessments of proposed statutes deemed to have significant impact on businesses. For an overview of the SBRC's tasks according to the OECD typology of regulatory oversight areas please see Table 5.2. Regulators determine whether a proposal could have such effects and, if so, submit the proposal and accompanying impact assessment to the SBRC.

Table 5.2. Mapping of SBRC tasks to the OECD typology of areas of regulatory oversight

Areas of regulatory oversight	SBRC
Quality control (scrutiny of process)	The SBRC scrutinises impact assessments that may have significant effects on businesses. The scrutiny is done in reference to the Decree on Regulatory Impact Assessment.
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	The SBRC secretariat points out specific proposals to the Agency for Economic and Regional Growth to support the Agency in tracking the administrative and other costs for businesses.
Systematic improvement of regulatory policy (scrutiny of the system)	The SBRC is part of RegWatchEurope to exchange experience regarding impact assessments. The SBRC presents annual reports to the government.
Co-ordination (coherence of the approach in the administration)	Not carried out by the SBRC.
Guidance, advice and support (capacity building in the administration)	Not carried out by the SBRC.

There are no monetary thresholds for the assessment if the proposal has significant impacts on businesses. Although misjudgments could be made, the SBRC does not know how many, if any, proposals with RIA which should have been analysed by the Council, but were not. In 2017, the Swedish Agency for Economic and Regional Growth has added qualitative aspects in their guidance for the regulator to consider in regards to significant impacts for businesses.

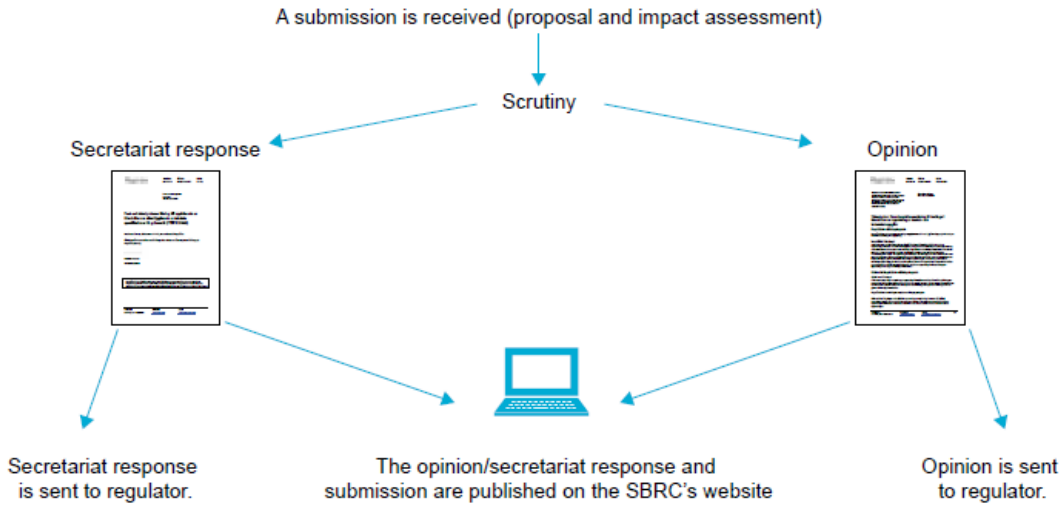
The SBRC's scrutiny of the quality of impact assessments is confined to the impacts on businesses and is based on the requirements stated in Sections 6 and 7 of the Decree on Regulatory Impact Assessment (SFS 2007:1244) (the Decree). It does not comment on any other aspects of proposals. The SBRC also scrutinises impact assessments accompanying proposals from the EU. This is often done when the proposal and impact assessment is sent from the Commission to the other institutions. The aim of the scrutiny is to highlight parts of the proposal with a potentially significant impact on businesses in Sweden, and to give recommendations on what a supplementary Swedish impact assessment should include. The SBRC can thereby provide support to regulators when a new proposal from the EU is presented. Through involvement early on in the process (in reference to when the proposal is being incorporated in Swedish law), the SBRC can contribute to strengthening the Swedish position in the negotiations with the EU regarding the final design of the proposal.

In accordance with the decree, the Council examines if the following have been sufficiently described in the impact assessment:

- The existing problem and what is to be achieved by the proposed legislation.
- The alternative solutions that exist to achieve the desired result and the consequences if no regulation takes place.
- Whether the regulation complies with or goes beyond the obligations arising from Sweden's membership in the EU.
- Whether particular consideration needs to be taken with regard to the date of entry into force and whether there is a need for special informational measures.[1]
- The companies affected with regard to quantity, size and sector.
- What the regulation implies in terms of expenditure of time and the administrative costs of these businesses.
- What the regulation implies in terms of other costs and changes in the activities of these businesses.
- What effects the regulation has on competition conditions for the businesses.
- The way in which the regulation may affect businesses in other aspects.
- Whether special consideration of small businesses must be taken when formulating the regulation.

Depending on the individual case, different parts may have differing relative importance/substance. This is taken into consideration when the Council makes its final and overall opinion on whether the impact assessment meets the requirements set out in the decree. Hence, for an impact assessment to get the opinion 'meets the requirements' not all individual parts need to have been judged to be fit for purpose.

Figure 5.1. The SBRC options



Source: SBRC depiction.

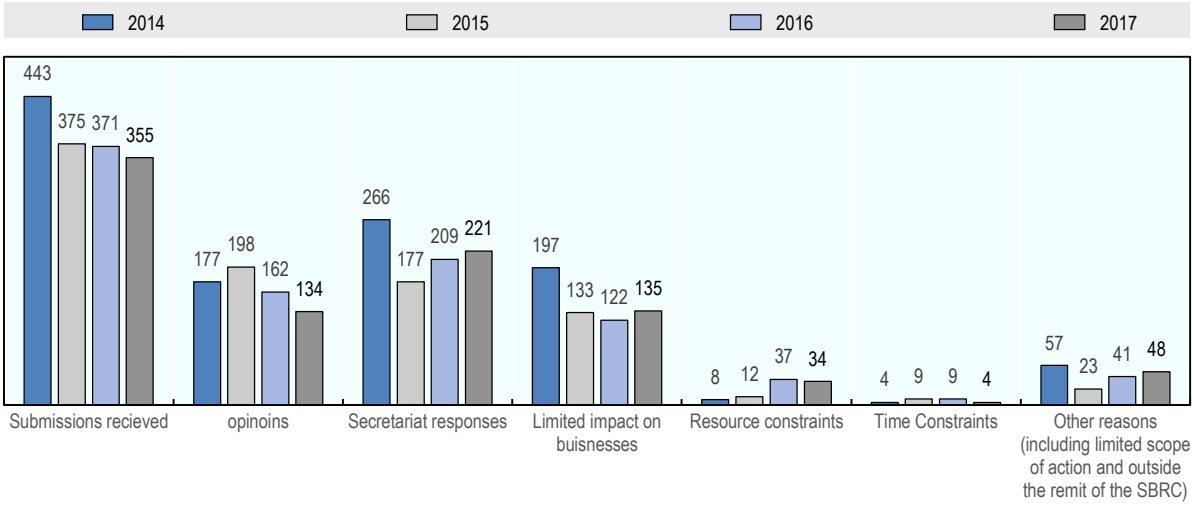
The SBRC can also choose not to deliver an opinion (Figure 5.1). This is mainly done when a proposal is deemed not to have a significant impact on businesses. In such cases the SBRC delivers a "secretariat response". There is no established definition of what constitutes 'significant impact' on businesses. Instead, a judgement is made in each case. For example, what constitutes significant impact can depend on the scope of the administrative burden or other direct or indirect costs a proposal might bring to businesses. It can also depend on the structure of the affected sector or the number or size

of the affected businesses. There are several reasons for secretariat responses but the most common one is limited impact on businesses.

Reasons for secretariat responses:

- Limited impact on businesses, when the Council deems that a proposal does not have enough impact on businesses to prompt an opinion.
- Limited scope of action, when it is clear for the Council that the regulator has not had any scope to contribute to the design of the proposal, e.g. when proposals stem from the EU and where there is no scope for the regulator to independently contribute to the design of the proposal. The scope of the RIA depends on the scope of action available for the Swedish legislator, for example during the implementation of an EU-regulated standard.
- Time constraints, when proposals are submitted to the Council with a shorter response time than two weeks.
- Outside the remit of the SBRC, which, for instance, can be submissions that do not include any proposed statutes
- Resource constraints, which can be used during periods of unusually high work load when the secretariat is unable to prepare drafts on all impact assessments that are submitted to the Council. Also when there are longer periods between board meetings, such as during summer and winter holidays.

Figure 5.2. The SBRC responses



Source: The Swedish Better Regulation Council's Annual reports 2014 (62), 2015 (21), 2016 (16; 23) and 2017 (14; 25).

Before the government takes a position on the recommendations of a committee of inquiry, its report is referred for consideration to relevant bodies. These referral bodies may be central government agencies, special interest groups, local government authorities or other organisations whose activities may be affected by the proposals. If the proposals affect businesses the Swedish Better Regulation Council is one of these bodies. The time when the Council receives impact assessments for laws, decrees and official regulations are similar (general recommendations are not included in the mandate), meaning that in a great majority of cases the Council will receive the proposal and the impact assessment when the regulator sends the proposal for consultation to stakeholders, government

agencies etc. In some governmental agencies, there are internal processes for the impact assessments to be improved or explained before it can proceed internally in the agency if the Council decided that the impact assessment did not meet the requirements. That is however not mandated by law or recommendation from the Council.

Capacities

The members of the Swedish Better Regulation Council are appointed by the government. The Council consists of one chairman, one vice-chairman and three members. The vice-chair and the other members each have two individual replacements.[2] They have backgrounds in law, economics, trade union and business stakeholder organisations. Being part of the Council is part-time for all of them and all are appointed for a specified period. The current members of the Council are appointed for two years. Re-appointment is possible but it is the government's decision. The members are only paid for each meeting they attend, including preparation for the meeting; the chair also has a fixed monthly pay. Members of the Council can get refunded for their loss of income when attending meetings. The Council meets every other week, with a break for summer and winter holidays, to decide on the opinions drafted by the secretariat. There are approximately 20 meetings per year. The Council also meets 1-2 times per semester to discuss relevant questions in-depth.

The Council is assisted by a secretariat that consists of staff from the Better Regulation Unit in the Agency for Economic and Regional Growth. However, only a part of the unit works for the Council. The daily operation, which is dominated by preparing drafts for opinions which the Council later decides on, is led by a Head of the Scrutiny unit. There is an agreement between the Council and the Agency to clarify the separation of the two organisations and the independence of the Council, the agreement includes the responsibilities of the Head of the Scrutiny Unit. The secretariat currently consists of a Head of the Scrutiny Unit, two administrators and six case officers, .all part-time. Other work that the employees of the secretariat (and the Better Regulation Unit – BRU) currently does includes offering support and training in the area of impact assessments, working with guidelines, development of RIA methods and monitor the costs of regulations. At the BRU, other better regulation issues are handled, such as OECD RPC and the EU REFIT Platform. These tasks are done in collaboration with the Ministry of Enterprise and Innovation.

The Council has delegated the daily handling and some decision making (secretariat responses) to the Head of Scrutiny Unit. The delegation of decision making does not include decisions on remits from the Agency for Economic and Regional Growth. In these cases, a draft opinion is always presented to the Council. All of the costs of the secretariat (including office spaces) are covered by the Agency's regular budget, as are the costs for the Council's website, annual reports etc. In addition, an unofficial part of the budget for the Agency is set aside for the Council to finance the costs of the individual members such as salaries and travel expenses.

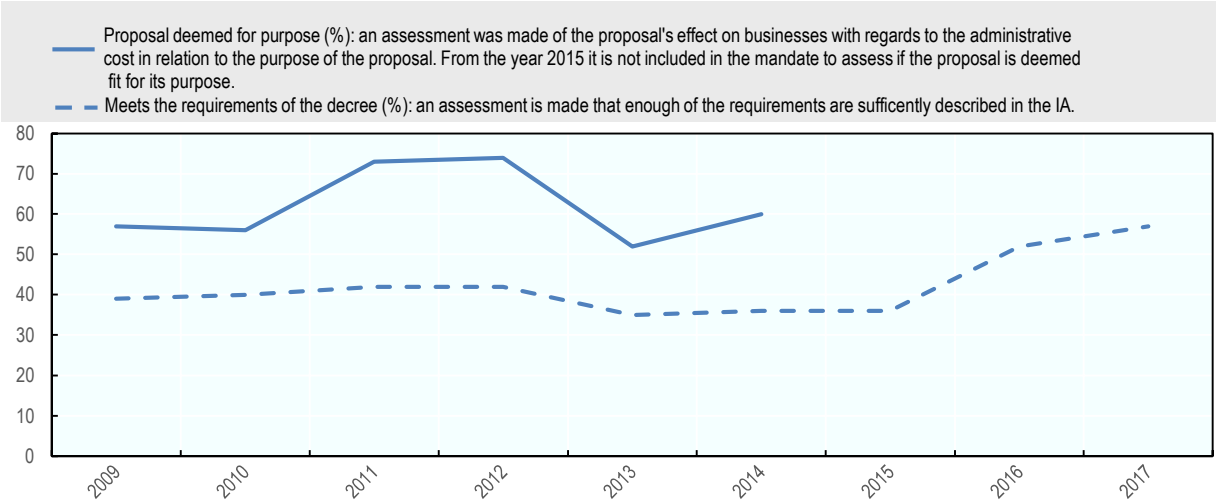
The secretariat is recruited by the Agency through public job listings. Requirements can vary in each listing but university degree in economics, law, political science or other equivalent and at least 3-5 years working experience is often required. For a recruiting process, the Head of Scrutiny unit can, if needed, reason/discuss with the Council for expertise wanted.

Monitoring and assessment of the impacts and effectiveness of the oversight body

Information is collected and presented in an annual report to the Ministry of Enterprise and Innovation. The report is also published on the website in Swedish and English. In the report, statistics can be found on the number of impact assessments received and approved by the Council. As can be seen in the annual report for 2017, the SBRC received 355 submissions, 221 of which prompted secretariat responses (62%) and 134 of which prompted opinions (38%).The statistics are also reported in groups such as government ministries and government agencies; it is also showing each regulators statistic. The Council has no data regarding the total number of RIAs conducted in Sweden, since only RIAs with effects on businesses are submitted to the Council. Since all opinions and statistics are made public they can be used by stakeholders, politicians and others to shed light on the general quality of impact assessments or in other issues. One example of this is in cases when the opinion of the Council is that the IA does not meet the requirements of the ordinance, and the political opposition and/or stakeholder organisations have used the Council's opinion to criticize a proposal for having the wrong political aim and pointed out that the impacts have not been sufficiently described or investigated. If the IA meets the requirements, the regulators have occasionally noted this in their further process.

In accordance with the Council's remit, the review of submissions involved two parts between 2009 and2014. In the first part, the Council evaluated whether the proposal was drafted in such a manner that it achieves its aim in a simple way at a relatively low administrative cost to the businesses affected. This resulted in an approval of, or an objection to, the proposal (see statistics "Proposal deemed for purpose" in Figure 5.3). In the second part, the Council assessed whether the impact assessment meets the requirements of the Decree on Regulatory Impact Assessment (see statistics on "Meets the requirements of the decree" in Figure 5.3). Since 2015, the Council only assesses if the proposal meets the requirements of the decree. The assessment if the proposal is deemed for its purpose is no longer included in the Council's mandate.

Figure 5.3. Statistics of the results of the SBRC's scrutiny



Source: The Swedish Better Regulation Council's Annual reports 2009 (17; 19) 2010 (10; 13), 2011 (11; 14), 2012 (11; 15), 2013 (13; 16), 2014 (60; 62), 2015 (16), and 2016 (6), and 2017 (4).

In 2016 a survey was sent to the regulators that had received opinions from the Council during the spring of 2016. Of the 43 ministries and government agencies that received the survey, 30 responded, mainly agencies. The purpose was to follow up how they view the opinions and how these opinions have influenced their continued work with impact assessments and/or proposals. Seventy percent of the respondents indicated that the opinion of the SBRC had influenced the continued processing of the individual impact assessment and, more surprisingly, some responses indicated that the opinions also influenced the actual proposal. A result from earlier surveys and included in 2016 is that the Council continues to make the opinions more explanatory and helpful for the regulators. There were several surveys conducted before that were also sent to about 40 regulators. However, previous surveys focused on questions regarding the content and layout of the Council's opinions and not how the opinions have influenced the continuing work. Parts of the surveys are presented in annual reports. The Council has also commissioned two interest analyses to get the view of the Council's work from civil servants and business organisations. These are not published but they are summarised in the annual reports (2011 and 2014). The responses have been mainly positive. Some civil servants have criticised that the Council has too much focus on details that are insignificant and therefore cause unnecessary burden on the regulators, but they also acknowledge that the existence of the Council's scrutiny forces them to consider impacts on businesses and therefore bring forward better proposed regulation. The business organisations are very positive of the Council's work but have criticised that the Council does not have enough power and that regulators should not be allowed to go ahead with proposals that have been deemed not fit for purpose. A challenge for the Council is to balance what needs to be presented in the impact assessments without causing unnecessary burdens for the regulators.

The Swedish Agency of Public Management have done two assessments of the Council, one in 2012 which was an evaluation (2012: 27). The one published in 2018 (2018: 1) was an investigation of a possible mandate change.

The Swedish Better Regulation Council is a well-known oversight body that scrutinises impact assessments which highlights the importance of impact assessments. The strengths include transparency since all opinions are made public. The legal obligation for regulators to refer proposals with the accompanying impact assessments to the Council is also a strength. However, there are challenges to face.

Methodology is one of these challenges and the Council has already suggested that the Agency improves the impact assessment guidelines. Insufficient guidance on how to quantify impacts makes it difficult for regulators to do it, resulting in poor quality quantifications, or no quantifications at all. Regulators also struggle to gather the data they need to be able to quantify the regulatory impacts. Therefore, in order to achieve regulatory impact assessments that are fit for purpose, while avoiding unnecessary burden on regulators, it is important to develop standardised quantification methods and to provide tools that can facilitate data collection. In September 2017, the Agency published the first version of updated guidelines,[3] followed by a guide on how to quantify regulatory compliance costs for businesses in December 2017.[4] The Agency will continue to develop and improve the guidelines. The earlier methods and guidelines have been vague and have not provided the Council with an official method to use to assess the impacts. Because of that, there is a risk that the Council's opinions may vary depending on composition,[5] since the internal guidelines for the Council when assessing the quality of impact assessments only prevent greater variations. The Council's (not public) internal guidelines can also easily be altered and they are non-binding. However, since there are

always some original members present at these meetings, as well as the Head of the Scrutiny Unit, to inform how different aspects are usually assessed and why, these issues should not be exaggerated. If there is a dissenting opinion from one or two members of the Council it has to be shown in the published opinions.

The existence of the SBRC entails that *ex ante* impact assessments are conducted. However, even if it is demanded by regulators today to perform *ex post* evaluations, there is not any oversight body or other mechanism to check if it has actually been performed or whether such an evaluation has resulted in a need to adjust the regulation.

Although the opinions for some regulators are part of their internal process to ensure that proposals are supplemented before proceeding further, in a great majority of cases, the Council receives the proposals fairly late in the process, meaning that there is not time for significant adjustments. However, it has been noticed that, in rare cases when the proposals are re-referred due to adjustments, the opinions of the Council have often been considered. Thus, we can see an improvement. Regarding committees of inquiry, the Council gets their remits from the government ministries at a time when committees' time limit often has expired and the committee has ceased to exist. The ministries of the Government are still responsible for those proposals and the impact assessments, so deficient impact assessments therefore mean more work for the responsible ministries unless they decide on a regulation without the full understanding of the impacts. An enhanced demand to only proceed proposals deemed fit for purpose would lead to an improvement as well as receiving the SBRC opinion in an earlier stage. In the SBRC's view, the problem with such a system is that it may delay important regulation. More broadly, there is still a need for a culture change since impact assessments are, for some regulators, the final task when drafting a proposal.

Having a secretariat that serves several principals results in enhanced knowledge and exchange of experience. However, it is also a challenge when there are not enough resources available. A setup with two organisations who share the same staff means that the Council's view on different impacts can easily be incorporated in the Agency's public impact assessment guidelines, training and support, as well as that identified challenge areas can be taken care of within the Agency. However, it also poses a challenge when the same personnel resources are needed for the Council's scrutiny as well as the Agency's promotion regarding impact assessments. There may also be external questions about the independence of the Council because of the setup, even though the different roles and boundaries are quite clear for both the Council and the Agency.

Conclusion

The position of the SBRC in the landscape of impact assessment helps to ensure that the assessments of impacts on businesses are conducted. Work remains to be done though to further improve the quality of impact assessments. Indeed, despite the improvement of the last years, still only about 50% of impact assessments meet legal requirements and regulations are generally adopted without all consequences thoroughly investigated. With the updated guidelines in place, the possibilities for regulators to conduct an impact assessment of high quality have nevertheless increased. As guidance and training are not part of the SBRC's mandate, it will be incumbent to other actors to implement them and promote improvement in the quality of impact assessments.

Notes

[1] For instance, if the proposal requires large investments or setup time it needs to be assessed whether the businesses will be able to comply without unnecessary burden. It could also be information of the need of interim provisions and if the proposal is of such kind that or if businesses or others need to be informed about the upcoming changes in due good time before the regulation enters into force.

[2] From the year 2018 there are four replacements and they are no longer individual for each board member.

[3] The guidelines are available in Swedish on https://tillvaxtverket.se/amnesomraden/forenkling/handledning-for-konsekvensutredning.html.

[4] https://tillvaxtverket.se/download/18.265c8bf216055b2de504dbb3/1514970993502/Ber%C3%A4knng%20av%20f%C3%B6retagens%20kostnader.pdf.

[5] The composition of the Council was quite consistent between 2009-2015, there were two changes of the chair, one member was excused and replaced and a fifth member was added in 2015.

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Chapter 6. Norwegian Better Regulation Council (NBRC)

This chapter describes the institutional setup and activities of the Norwegian Better Regulation Council, which has been established in 2015.

Short history of the establishment of the oversight body

The then newly elected Norwegian government proclaimed in October 2013 that it would establish an independent regulatory scrutiny board on the model of the Swedish Better Regulation Council. The motivation for this move was to ensure that new regulations were fit for purpose and did not increase bureaucracy and administration for business. The Parliament followed up in December 2013 and approved a motion to examine the establishment and operations of a Norwegian Better Regulation Council. The establishment of the Council was co-ordinated with the development of a new version of the national Instructions for Official Studies, which sets the minimum requirements for Regulatory Impact Assessments.-

In addition, in 2012 and 2013 two different governmental studies were published, showing that impact assessments on new regulation in Norway were often inadequate, and consequences for groups such as business were often insufficiently addressed (for details see Box 6.1).

In December 2015, The Norwegian Better Regulation Council (NBRC) was formally established by an Order in Council. The purpose of the NBRC, as outlined in the mandate, is to contribute to lessening the burdens on business from new or altered regulations. The work method, modelled after the Swedish Better Regulation Council, consists of *ex ante* scrutiny of impact assessments of primary and secondary legislation proposals, and general guidance about Better Regulation. The NBRC provides scrutiny to impact assessments from government ministries, as well as other government parties at the stage of the public consultation of each proposal. The casework with scrutinising impact assessments started in June 2016.

Box 6.1. 2012-13 government evaluations of regulatory impact assessments in Norway

In 2012, the Agency for Public Management and eGovernment (Difi), published a report about the ministries' preparation of central government measures, which examined whether the Instructions for Official Studies were applied. The report found that the instructions were not followed on several areas, and pointed to a lack of control and sanctions as one cause for this.

In 2013, The Office of the Auditor General of Norway published a review on the quality of the impact assessments of public policies. The findings were the following:

- Consequences of government policies are not sufficiently described and quantified.
- Cost-benefit analyses are rarely conducted
- Alternative measures are not often described in the decision-making documents.
- Support and guidance to the ministries' work on preparation of central government measures are not sufficiently targeted.
- The organisation of the analysis work within the government ministries is not conducive to an adequate quality of the reports.

Source: Difi-rapport 2012:08: Graves det dypt nok? Om utredningsarbeidet i departementene, Riksrevisjonen 3:10 (2012-2013: Riksrevisjonens undersøkelse av om offentlige tiltak utredes på en tilfredsstillende måte).

Institutional framework

The NBRC is subject to the Norwegian Ministry of Trade, Industry and Fisheries in matters of administration, but is an arm-length body in the work on issuing opinions. The ministry cannot instruct the Council regarding its opinions, nor which cases to look into or in the evaluation of each case. The NBRCs secretariat is located in Hønefoss outside of the capital Oslo. The NBRC is also given a comprehensive budget that covers all types of costs including labour, rent, computer support systems and any reports or studies the NBRC chooses to purchase.

The NBRC is governed by an annual letter of allocation, issued by the Ministry of Trade, Industry and Fisheries. The letter of allocation defines the annual goals and priorities of the NBRC, as well as the given budget. It also outlines how the organisation is expected to track the results of its work and report back in the annual report to the ministry. Throughout the course of each year, there are two formal meetings between the ministry and the NBRC, as part of the governance arrangements.

In addition to the NBRC's *ex ante* analysis, the Ministry of Trade, Industry and Fisheries is responsible for the ongoing work on simplifications for business in existing regulations. The Norwegian Government Agency for Financial Management is responsible for the guidance on the Instructions for Official Studies and cost-benefit analysis in general. This government agency reports to the Ministry of Finance. In addition, the Legislation Department in the Ministry of Justice and Public Security is the legal expertise department serving the Government and the central government administration. The department provides, amongst other things, advice to other ministries on legal issues, especially the interpretation of current legislation and the planning of legislation.

Mandate, scope of actions and activities

The mandate of the NBRC is to contribute to lessening the burdens on business from new or altered regulations. The NBRC focus is on burdens from a wide perspective, not limited to direct costs to business. The Council only addresses regulatory impact assessments that are directly relevant to business. The scope of activities, as defined in the mandate, are the following (for an overview of the NBRC's tasks according to the OECD typology of regulatory oversight areas please see Table 6.1):

- The Council issues advisory opinions during the phase of public hearings. In the opinions, the Council:
  - Evaluates the evidence-base of proposals for new or altered regulations that have consequences for business' operating conditions.
  - Evaluates whether impact assessments have been carried out in accordance with the Norwegian national "Instructions for Official Studies" ("*Utredningsinstruksen*") and the effects on businesses are appropriately accounted for.
  - Can evaluate whether a proposed regulation is likely to fulfil its objective with the least possible cost to business
- In the preparation of regulation originating from EU directives or regulations that can have an effect on Norwegian business, the NBRC can assist responsible ministries, if so desired, to assess adjoining impact assessments.
- Provide general guidance to government administrations, agencies and departments producing business related regulatory impact assessments, to ensure effective regulation.

- Follow the developments and activities in the Better Regulation field, both domestically and internationally.

Table 6.1. Mapping of NBRC tasks to the OECD typology of areas of regulatory oversight

Areas of regulatory oversight	NBRC
Quality control (scrutiny of process)	The NBRC considers the ex ante evidence-base for all draft legislation affecting business' operating conditions prepared by ministries and other central governmental authorities. The NBRC scrutinises impact assessments by monitoring adequate compliance with the Instructions for Official Studies, and assessing the description of impacts for businesses. The NBRC may also point out lack in stakeholder involvement where appropriate. The Council issues advisory opinions in priority cases during the phase of public consultations, challenging unsatisfactory impact assessments with a red stamp, encouraging minor improvements with a yellow stamp and issuing approval with a green stamp.
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	The NBRC evaluates whether a proposed regulation is likely to fulfil its objective with the least possible cost to business. The NBRC will issue its evaluation in the advisory opinions.
Systematic improvement of regulatory policy (scrutiny of the system)	The NBRC is a member of the RegWatchEurope network, to learn and share experiences with oversight bodies in Europe. In the national context, the NBRC emphasises having a close dialogue with the Ministerial project promoting simplification for business, the Norwegian Government Agency for Financial Management (DFØ) and relevant business interest groups, while always making sure to remain an independent, arms-length and external oversight body The NBRC reports on the overall quality of impact assessments relevant to businesses in its annual report, with the aim of encouraging better impact assessments .in the future. The NBRC may also point out important recurring problems observed in the impact assessments evaluated that year.
Co-ordination (coherence of the approach in the administration)	Promoting a whole of government, co-ordinated approach to regulatory quality, the NBRC will highlight lack of co-ordination between government bodies when deemed appropriate in its advisory opinions. The NBRC does not carry out actual co-ordination
Guidance, advice and support (capacity building in the administration)	The NBRC provides general guidance to government administrations, agencies and departments producing business related regulatory impact assessments to ensure effective regulation. The NBRC also contributed suggestions to updates in the national guidelines for assessing impacts to business from regulation in 2017.

Source: NBRC Case study

Advisory opinions during the phase of public consultations

The Council issues opinions during the phase of public consultations. The formal opinion is sent directly to the government body in charge of the proposal, and published on the website of the relevant hearing, alongside the opinions/comments published by other actors. The opinion is also published on the NBRC website.

The NBRC has an advisory role, and therefore does not have the authority to halt regulatory impact assessments it deems to be unfit for purpose. The ministry responsible for the proposal will consider how to react to the opinion of the NBRC. Some ministries have increased the period of public hearing and issued additional information as a response to the opinion from the NBRC. If the proposal is to be presented to Parliament, it is customary to describe the main issues raised in the public consultation, including the opinion from the NBRC.

The NBRC evaluates the *ex ante* evidence-base for all draft legislation affecting business' operating conditions prepared by ministries and other central governmental authorities. The NBRC scrutinises impact assessments by monitoring adequate compliance with the Instructions for Official Studies, and assessing the description of impacts for businesses.

The NBRC emphasises that the costs to small businesses should be considered, bearing in mind that these often will have relatively fewer administrative resources to comply. The NBRC also promotes simplification of rules and regulations, and the application of co-ordinated digital solutions, to reduce the cost of doing business.

The NBRC is equipped with a mandate to evaluate whether a proposed regulation is likely to fulfil its objective with the least possible cost to business. The NBRC may also point out lack in stakeholder involvement where appropriate.

The NBRC does not issue opinions to all proposals relevant to business, but prioritises proposals based on the significance of its potential impact on business and the burdens they impose. The proposals are chosen at the discretion of the Council members.

In 2017, the NBRC considered 244 proposals relevant to its mandate; that is proposals of new or altered primary or secondary legislation, which will affect business. Approximately 66 % of these proposals were national initiatives, while some 34% stemmed from international initiatives, mainly the EU. The NBRC issued 35 opinions in priority cases in 2017.

The secretariat monitors the effect of each opinion on the basis for decision making.

Provide general guidance to ensure effective regulation

The methodology of the NBRC forms the basis for the guidance and casework. It combines the Instructions for Official Studies ("*Utredningsinstruksen*") with the guidance on assessing compliance costs and more general advice on how to evaluate the effects on business of a proposal. This methodology is in development and will be elaborated as the NBRC gains more experience, also following the development in the national framework for how to make good RIAs.

The guidance work of the NBRC is focused around the following dimensions:

- Guidance through written opinions: The opinions aim at being precise in pointing out areas of improvement in the RIAs, and to state clearly what the ministry could do to improve the basis for decision-making. In addition, the opinions are categorised into green, yellow or red, indicating the NBRC's overall evaluation of the impact assessment.
- Guidance through meetings with ministries: When issuing a red opinion, the NBRC asks for a meeting with the ministry responsible. Normally, the meeting is held before the opinion from the NBRC is published. The purpose of the meeting is to engage in dialogue about the opinion and the RIA at hand, and to give guidance to create better impact assessments going forward. The secretariat attends the meeting, communicating the NBRCs opinion in detail and pointing out what could have been done better.
- Guidance through written guidelines: The NBRC contributed in 2017 to the updating of written guidelines on what to consider when conducting regulatory impact assessments for business, which is co-ordinated by the Ministry of Industry, Trade and Fisheries.
- Guidance through the web site (www.regelradet.no): On the NBRC website, there are pointers to guidance material issued by other governmental organisations. In 2017, the NBRC also published general guidance summarised in "Seven steps for better official studies".

Follow the developments and activities in the Better Regulation field

The NBRC is a member of the RegWatchEurope network of regulatory oversight bodies in Europe. Through this network the NBRC gets information on the latest developments in the neighbouring countries, as well as in the EU, and has an opportunity to participate in putting Better Regulation on the public agenda both nationally and internationally. There is also a close contact with the regulatory scrutiny boards in the other Nordic countries, with annual meetings of the secretariats to share best practice and discuss relevant issues.

Assisting responsible ministries in preparation of regulation originating from EU directives or regulations

In preparation of regulation originating from EU directives or regulations that can have an effect on Norwegian business, the NBRC can assist responsible ministries, if so desired, in assessing adjoining impact assessments. In December 2017, the NBRC received such a request, and conducted assistance giving comprehensive written general guidance, combined with two meetings with the ministry (January 2018).

The NBRC must report the effects of its work in its annual report, and is accountable to the Ministry of Industry, Trade and Fisheries.

Capacities

The organisation consists of a Council and a secretariat. The Council, which consists of six members (four ordinary members and two deputy members), has very significant experience in business and academia. Three of the members, including the leader (chair), have a term limit of four years. The remaining Council members, including the vice leader (chair), have a two year term limit. They are appointed by an Order-in-Council and their pay is based on commission. They meet on average once a month. The secretariat, which currently consists of six civil servants, is responsible for the daily operations, such as handling case work, providing general guidance, administration and preparing communications. The main function of the secretariat is to support the Council by drafting opinions that scrutinise regulatory impact assessments. The secretariat also provides general guidance in the field of Better Regulation, and carries out the other tasks outlined in the mandate. The secretariat is multidisciplinary, with academic backgrounds in economics, business administration, law and sociology. The budget of the NBRC in 2017 is approximately NOK 10 million NOK, and renegotiated every year in the national budget. The budget must cover all costs, including salaries, administration, computer systems and rent.

Monitoring and assessment of the impacts and effectiveness of the oversight body

The NBRC issued 20 opinions on regulatory impact assessments in 2016. In 2017, the NBRC has issued 35 opinions in priority cases. Table 6.2 shows the distribution of the opinions in categories green, yellow and red for 2017 and for all opinions in both years:

Table 6.2. Number and percentage of NBRC opinions

Category	2017	Accumulated (2016+2017)
Red (not fit for purpose)	15 (43%)	22 (40%)
Yellow (needs improvement)	13 (37%)	21 (38%)
Green (fit for purpose)	7 (20%)	12 (22%)
Total	35	55

Source: NBRC.

As the NBRC started its casework in June 2016, the regulations underlying many of the impact assessments scrutinised have not been adopted yet. However, we can observe some direct effects in some cases:

- A proposal for a central register for underground cables was stopped[1];
- The evidence basis for decision-making was improved thanks to extended periods of public hearing, including more submitted information to the public hearing in some cases;[2]
- Review of internal routines for RIAs.[3]

These are cases where the NBRC opinion is mentioned as the reason for a change of the proposal or improved base for decision-making. However, we expect that there are also effects of opinions that are not traceable directly in public documents.

To monitor the development of the quality of the RIAs regarding business, the secretariat tracks certain indicators pertaining to the contents of impact assessment put forth in hearings affecting businesses. These indicators are based on an initial check of the proposals and concern the content of the impact assessments. In 2017, the secretariat considered 244 cases and collected a range of statistics.

The secretariat is wholly responsible for the collection of data, and for analysing the results. The results of the monitoring process are reported in the annual report of 2017.

Conclusion

The NBRC has a unique position in the Norwegian government landscape, as it operates as an independent government body in the space between Norwegian business and the central public administration. The organisation is still young, having started its work on impact assessments in June 2016, and has so far dedicated its efforts to produce high-quality public opinions that scrutinise regulatory impact assessments put forth by various government bodies. During this early phase, the NBRC has ascertained that written opinions must be supplemented by dialogue with the government bodies, as well as additional guidance work. In the future, the NBRC will continue to take a clear stance against unnecessary burdens for business, through public opinions and participation in the public debate, fruitful dialogue with both Norwegian business organisations and the Norwegian public administration, and a continued outlook to learn from best practice in other countries.

Notes

[1] Proposition 110 L (2016-2017), Chapter 4.1.4.

[2] For example regarding banning of the use of mineral oil to heat farming facilities and contemporary structures.

[3] Norwegian Maritime Authority.

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Chapter 7. Advisory board ATR, and its predecessor ACTAL (Netherlands)

This chapter describes the institutional setup and activities of the Dutch Adviescollege Toetsing Regeldruk (ATR) established in 2017, as well as its predecessor ACTAL, which was established in 2000.

Short history of the establishment of the oversight body

Businesses lose time and money to comply with information obligations. This not only affects the competitiveness of the Netherlands but also the support for government measures. This understanding formed the rationale for introducing a reduction target in the Netherlands in 1994 and the creation of Actal in 2000.

In 1994, the Netherlands set the first net reduction target on administrative burdens for businesses, of 10%. This measure aimed at gaining better insight into the effects of legislation on their target groups. The target of 10% was achieved in 1997. A majority of Parliament subsequently requested a net reduction of 25%. To professionalise the approach, a Committee chaired by Jan Slechte[1] was established. This committee aimed to give advice to the Minister of Economic Affairs on how to realise a substantial reduction of administrative burdens for businesses when complying with regulation. In order to realise this task the Committee had to:

- conduct an analysis of the administrative burdens weighing on businesses, paying attention to central government as well as provinces and municipalities
- suggest structural approaches to address administrative burdens
- provide examples of how the administrative burden can be reduced in areas perceived as particularly burdensome by business.

In reaction to the report of Committee Slechte,[2] the Dutch government stated that the reduction of administrative burdens should be seen as a continuous process. The aim was to achieve a cultural shift: all those developing legislation within government had to automatically consider the administrative burdens of this legislation and to identify less burdensome alternatives. In support of this cultural change, Actal and a co-ordination unit within each ministry were established. These units were tasked with the oversight of administrative burdens reduction in their respective department. Actal started in 2000 and was responsible for the external quality control.

Actal worked for 17 years. The mandate of Actal changed significantly throughout the years of its existence. The most important changes to the mandates with the relevant triggers are provided in Table 7.1. Given the law[3] upon which Actal was based, it was no longer possible to extend its mandate in 2017. However, the government considered it necessary to maintain an independent advisory and scrutiny board. It therefore established ATR, which started operating on 1 June 2017. Compared to Actal, ATR mainly focuses on the *ex ante* scrutiny of regulatory impact assessments of new legislative proposals. Its mandate allows ATR to intervene much earlier in the regulatory process. The early involvement of ATR is expected to increase the impact of ATR opinions, therefore fostering the reduction of unnecessary regulatory burden in the legislative process.

The mandate of ATR was designed based on an evaluation by two independent researchers,[4] a survey amongst civil servants, and the regulatory burden audit of 2015 carried out by Actal. The outcome of these reviews showed the need for earlier involvement in the rule-making process. This was already possible under Actal – but not a legal requirement. With the establishment of ATR, ministries are now obliged to submit all laws and governmental decrees with compliance costs to ATR. ATR also scrutinises ministerial decrees, but only those with a substantial effect on compliance costs. At the request of Parliament and based on the independent evaluation of Actal, ATR was also given the task to advise governments on signals from society and Parliament on the stock and flow of legislation.

Table 7.1. Major changes in the mandate of ACTAL/ATR

Year	Relevant change	Catalysts for change
2005	Extension to citizens as target group	To maintain support for government intervention. It matched a government approach broadened to citizens to allow for more efficient use of public services.
2006	Extension to existing legislation	To be effective the notion grew that existing legislation needed to be tackled as well.
2008	Introduction of regional governments	Obligations introduced by regional authorities (when enforcing central legislation and as autonomous legislator) were increasingly considered to be as relevant as central government legislation.
	Extension to all forms of compliance costs	Administrative burdens are just a small part of the relevant costs. Extension to all forms of compliance costs matched the new reduction target with a net reduction of EUR250 million on substantive compliance costs in addition to a reduction target for administrative burdens.
2011	Scrutiny on substantial proposals	Introduction of a proportionality principle. No threshold was established to avoid "gaming". Actal as an independent organisation had discretion to decide when to scrutinise a proposal. "Substantive" had various meanings, e.g. based on the level of compliance costs or the irritation level on the target group. The proposals to be scrutinised were selected in meetings with co-ordinating units. In some cases scrutiny occurred upon formal request by the responsible minister.
	Signal function of Actal was introduced	The stakeholder platform chaired by Mr. Wientjes ceased to exist.[1] Its work was taken over by Actal. The aim with this introduction was to be in closer contact with society to ensure a higher level of noticeability of the measures taken.
	The professional as target group is introduced	High political awareness of unnecessary bureaucracy tempering effectiveness of public services such as health care, police, etc. The mandate of Actal focussed on the following sectors: healthcare, education, safety and social security.
2017 ATR	Focus on ex ante scrutiny	To ensure the quality of the better regulation approach, the new advisory board had to refocus on full *ex ante* scrutiny. The principle of proportionality was dropped (i.e. all proposed primary and secondary legislation has to be submitted to ATR). For ministerial decrees the proportionality principle as set out above still applies.
	All other past tasks	Upon request by Parliament, ATR's mandate was to remain as broad as the last mandate of Actal, allowing ATR to address signals from society.
	Signals from policy rules and other legislation from enforcement and executing entities	This new task was introduced at request of Parliament. The trigger was an earlier opinion of Actal on this issue.
	Early involvement	With the new mandate of ATR, the government formalised the intervention of ATR early on in the process (support function). The rationale was that surprises" at the end of the legislative procedure were more difficult to address for departments. Furthermore, civil servants wanted to be able to make better use of the expertise of ATR.

1. This stakeholder's platform was chaired by Mr. Wientjes, also chair of the Confederation of Netherlands Industry and Employers (VNO-NCW). It was called commissie Wientjes. Its task was to table reduction measures and to prioritise the reduction measures of government.

According to the Dutch law governing advisory boards, the 'Kaderwet Adviescolleges', the oversight body has to be evaluated every 4 years. These evaluations provide input for the design of the next mandate. As a consequence, the mandate of the oversight body evolved substantially in the last 17 years. Changes made to the better regulation framework also affected the mandate of the oversight body. Table 7.1 illustrates the major changes made to the mandate of the oversight body.

This case study will focus on ATR. Where reference is made to Actal, it refers to its last mandate.

Institutional framework

ATR (like Actal in the past) is an independent and temporary advisory body located at arm's length from the government. The board consists of three members who work part-time. The members are selected through an open competition procedure based on their

expertise relevant to the advisory board (regulatory burden) and their knowledge of society. These criteria and how the selection process takes place are set by the "Kaderwet Adviescolleges". This law and the ministerial decree give the legal basis to ensure the independence of the oversight body.

The board is supported by a staff and a director. As the oversight body is temporary, they are employed by the Ministry of Economic Affairs. The body decides on the hiring procedures of the staff and on its budget. The board defines its own organisational structure. The only elements that are set by law are that ATR should have a board of three and a director responsible for the staff. All working procedures and internal organisation are defined by the body. The body decides on what it advises on (within its mandate) as well as on the content of these opinions. Neither the Government nor Parliament has influence on the content of an opinion. They can both approach the body for advice.

ATR works in the same institutional setting as Actal before it. Besides ATR, various governmental bodies work together to provide better regulation in the Netherlands:

- The Ministry of Economic Affairs[5] as co-ordinating department: it has account managers in each ministry who do an internal scrutiny of new legislative proposals in terms of regulatory burden.[6] It also sets out the guidelines in close contact with all departments and ATR. Furthermore, the Ministry of Economic Affairs keeps track of the better regulation policy in general and reports to Parliament about progress.
- The unit for judicial affairs and better law making policy of the Ministry of Security and Justice: Ministry of Security and Justice is responsible for the integral assessment framework[7] and the instrument internet consultation. This ministry performs an internal legislative quality assessment of each legal proposal before it can be discussed in the Council of Ministers or adopted.
- A regulatory burden unit in each ministry: each ministry is responsible for the quality of its legislative proposal and of its rule-making process.
- The Netherlands also has five 'High Councils of State': the Senate, the House of Representatives,[8] the Council of State, the Court of Audit and the National Ombudsman. These Councils also contribute to better regulation.
- The Council of State has two primary tasks, carried out by two separate divisions. The Advisory Division advises the government and Parliament on legislation and governance, while the Administrative Jurisdiction Division is the country's highest general administrative court.
- The Netherlands' Court of Audit audits the revenue and expenditure of central government.
- The National Ombudsman assesses complaints about all aspects of public administration, defends the interests of the citizen and monitors the quality of public services in the Netherlands. The body works on ad hoc basis with the Netherlands Court of Audit, the National Ombudsman and the Council of State and can advise both houses of Parliament. There is an agreement with the National Ombudsman to share signals. The ministries send the opinions of the body with the relevant legislative proposal to the Council of State.
- The Netherlands Bureau for Economic Policy Analysis (CPB) looks into the economic effects of regulation and contributes to the evidence-base of regulation. CPB is an independent agency located at arm's length from government. Research at CPB is carried out on CPB's own initiative, or at the request of the government, parliament, individual members of parliament, national trade unions or

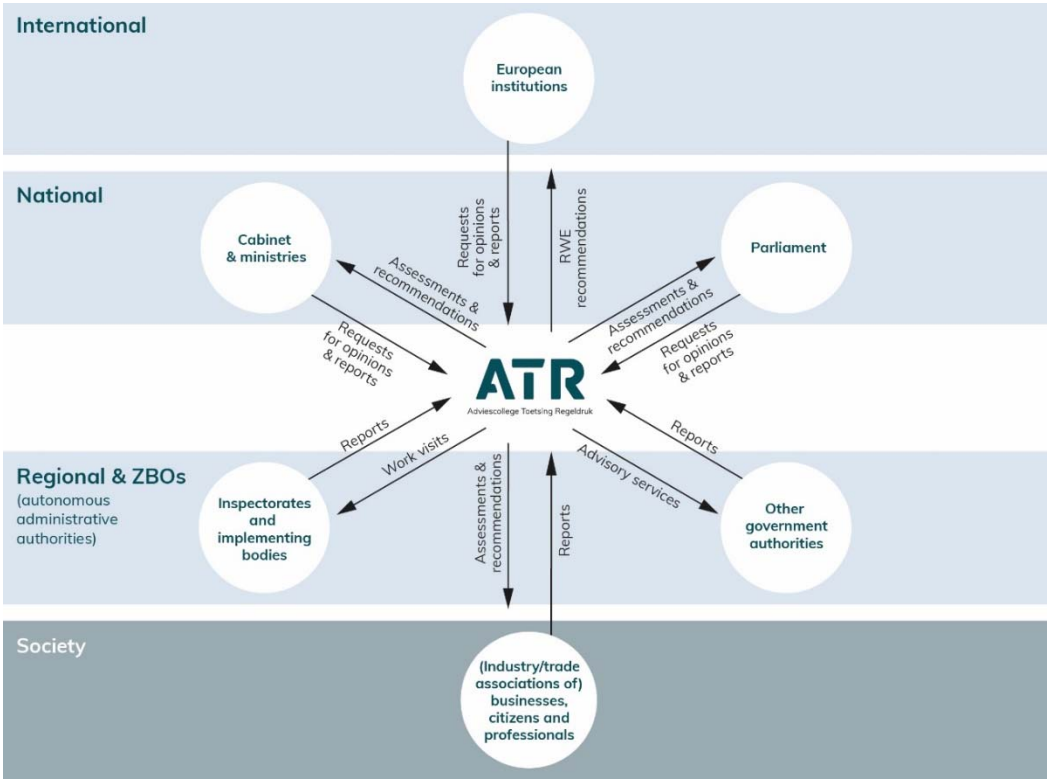
employers' federations. Besides economic forecasting, CPB publications include its analyses of the election manifestos of political parties and societal cost-benefit analyses of infrastructural plans. CPB undertakes quantitative and qualitative analysis in a large number of issue areas. After the elections, CPB is often requested to analyse all or some of the policy proposals put forward during the negotiations for a new government.

The board of Actal had meetings with all ministers to discuss the track record and the state of affairs regarding the opinions on existing legislation every six months. ATR will also meet regularly with each minister and/or secretary of state.

In the past, the government published a progress report on better regulation every six months. These reports stated the progress made on the various pillars on which the better regulation policy was built (i.e. internet consultation; IT projects). It also addressed the progress made on the reduction target. All progress reports had an annex stating the relevant legislative proposals or governmental projects with the ins and outs made explicit for the administrative burdens and substantive compliance costs for all target groups. Actal always issued an advice on these progress reports. The new government also publishes progress reports on which ATR will comment.

At regional level, Actal was involved in the committee for municipalities (VNG) that draws up model bylaws and guidelines. How ATR will pick up the broader mandate on regional governments is not yet decided. However, ATR has been given an explicit mandate to assist all regional governments. Figure 7.1 summarises the playing field of the oversight body.

Figure 7.1. ATR's institutional set-up



Source: ATR.

At the international level, the body principally operates via the RegWatchEurope (RWE) context when dealing with EU institutions. In this environment, an exchange of expertise also takes place. Furthermore, RWE discusses how the European Commission could strengthen its better regulation policy. In addition, collaboration with the Regulatory Scrutiny Board of the European Commission also takes place. ATR (like ACTAL before) sometimes receives requests from members of the European Parliament. It has no role in scrutinising the proposals made by EU institutions. ATR nevertheless looks into EU legislation when it receives signals from Dutch firms on overly burdensome EU legislation or when EU legislation is transposed into Dutch law.

Mandate, scope of actions and activities

The mandate of the ATR in contrast to the last mandate of Actal is explained below following the OECD typology of key tasks of regulatory oversight (for an overview see Table 7.2).

Table 7.2. Mapping of ATR tasks to the OECD typology of areas of regulatory oversight

Areas of regulatory oversight	ATR
Quality control (scrutiny of process)	• *Ex ante* quality control of all legislative proposals from central government, and for ministerial decrees if change has substantive effects for the compliance costs • Scrutinises the quality of the evidence of a legislative proposal on the need to intervene • Scrutinises the impact assessment of the legislative proposal • Addresses less burdensome alternatives in the legislative proposal under scrutiny • Takes into account relevant evaluation results when scrutinizing. Challenge function when evidence is weak
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	• In response to signals from the business community or society generally, advises government on regulatory bottlenecks • Reviews areas of legislation to assess possible areas for reform
Systematic improvement of regulatory policy (scrutiny of the system)	• Promote a whole of government approach for regulatory quality • Collaboration and exchange with other oversight bodies as a member of RegWatchEurope to strengthen better regulation • Dialogue with the National Ombudsman, the Netherlands' Court of Audit and the Council of State
Co-ordination (coherence of the approach in the administration)	• Co-ordinate (and stimulate) with the relevant government parties the adoption of regulatory management tools
Guidance, advice and support (capacity building in the administration)	• Early involvement in rule-making process • Solicited advice to Parliament on legislative initiatives, amendments and on the stock of legislation • Solicited advice to regional and local governments

Quality control

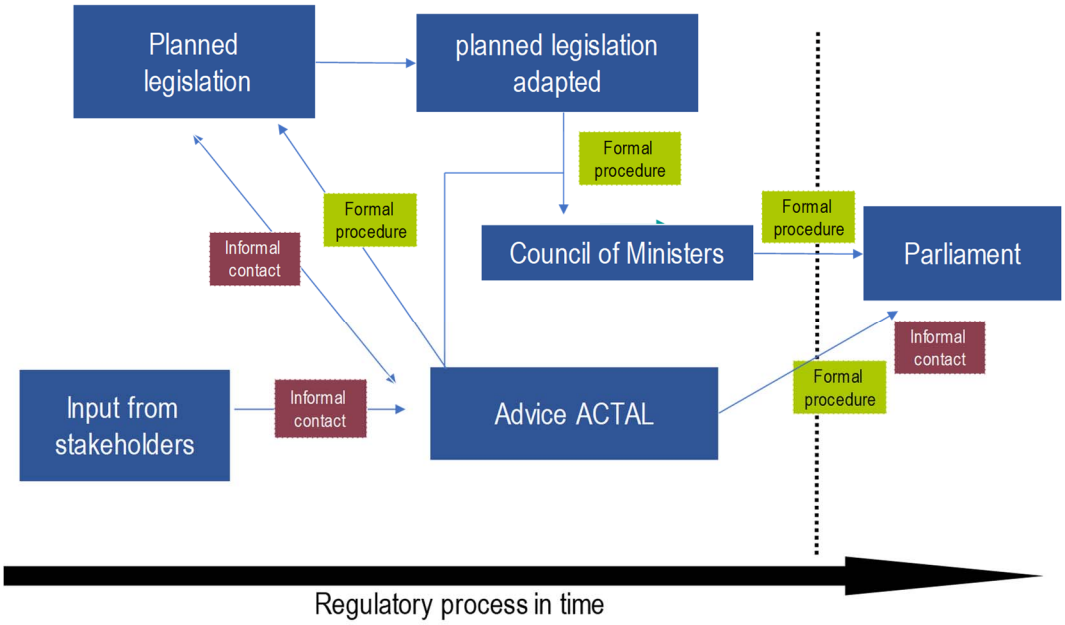
Actal

When assessing legislative proposals, Actal received:

- the legislative proposal
- the explanatory note (with the separate paragraph on compliance costs)[9]
- the calculation of the compliance costs.

When Actal scrutinised a legislative proposal, it first had a meeting with the relevant policy advisor(s) to discuss the proposal and the calculation of the compliance costs and to address possible improvements to make the proposal less burdensome. For more significant proposals that were also made public, Actal would convene expert meetings to ensure that existing bottlenecks stemming from current practice could be taken into consideration. After the informal dialogue, Actal would start the formal scrutiny of the documents and issue an opinion that was made public together with the legislative proposal (i.e. when sent to Parliament by the responsible ministry). The opinion concluded with a dictum. There were four types (fit for purpose, fit for purpose after Actal's opinion has been taken into account, not fit for purpose unless Actal's opinion is taken into account and not fit for purpose). The co-ordinating ministries always received a copy of the opinions to enable them to intervene at the Council of Ministers. Figure 7.2 sets out the scrutiny process.

Figure 7.2. Actal's *ex ante* scrutiny process



Box 7.1. Scrutiny framework of Actal

1. Zero Option
   - What goes wrong without the policy under consideration (i.e. if the Zero Option is adopted)?
2. Less burdensome alternatives
   - Have the effects on regulatory burden been calculated correctly?
   - Has the least burdensome alternative been adopted? If not, why not?
3. Policy, implementation and inspection
   - Have the effects of implementation and inspection been taken into account?

While not a legal requirement, Actal could also advise Parliament in the rulemaking process. Parliament would approach Actal to scrutinise amendments. Over the last few years, this happened approximately five times. Actal scrutinised the amendments made to proposals, using the same framework as it did for the proposals coming from the government. In these cases, the responsible department had to provide the impact assessment on the compliance costs. Actal could comment on the motivation as to why intervention is needed, on the calculations made and if less burdensome alternatives were considered or possible.

Each ministry had a designated regulatory burden co-ordinator. This co-ordinator met regularly with the adviser of Actal. In these meetings, the planned legislative proposals were discussed in order to give Actal the possibility to judge if a proposal needed to be selected for scrutiny. Furthermore, the ministry's track record in reducing regulatory burden as well as Actal's advice on incoming signals from society on regulation in the ministry's area of responsibility were discussed.

Actal has issued two regulatory burden audits. This instrument was introduced in the mandate of 2011 to balance the proportionality principle. Actal would assess the checks and balances that ministries used to assess the regulatory burden of their proposed legislation and scrutinise the final version of legislative proposals as if it was an *ex ante* scrutiny. In this way Actal checked *ex post* if regulatory burden was dealt with in a correct way. The first regulatory burden audit was executed in 2012 and focussed on the ministries[10] issuing most legislative proposals with compliance costs effects. In this audit, Actal assessed the quality of the legislative proposals made in the first year after the new mandate of Actal.[11] The second audit[12] was performed two years later to give ministries enough time to deal with the recommendations of the first audit. In the second audit, Actal also took into account the track record of the proposals already scrutinised *ex ante*. Also, the performance of the ministries was ranked. Two ministries scored well below average. As a result of the audit one of these two ministries changed its course. The minister decided that all legislative proposals had to be sent to Actal for scrutiny. It is currently one of the best performing ministries.

ATR

With the establishment of ATR, the scrutiny process has changed. ATR scrutinises *all* primary legislative proposals and design of general administrative measures/ governmental decrees. It scrutinises ministerial decrees if they have substantial effects on the compliance costs. "Substantive" is not defined in absolute terms to avoid gaming. A possible definition of "substantive" is now under consideration. The expectation is that ATR will also scrutinise the SME test to be introduced by the next government.

Box 7.2. Scrutiny framework of ATR

1. Added value of intervention: Is there a need to intervene as government? Is legislation the most appropriate solution?
2. Are less burdensome alternatives possible within the solution proposed?
3. Is the new or revised regulation congruent with the working processes of the target groups that have to comply to the new obligations?
4. Have all substantive compliance costs been calculated correctly?

Furthermore, ATR focusses on the feasibility of compliance for target groups. Other changes were made to the scrutiny framework to make more explicit to the policy advisors what exactly is scrutinised (see Box 7.2). ATR receives the same documents for scrutiny as Actal. In addition ATR also explicitly takes the evaluation of the policy area under consideration in account, if available.

When scrutinising proposed legislation, there are various phases in which ATR can (at the request of the ministry) or should (are obliged to approach ATR for scrutiny) have a role:

1. Informal phase: the phase in which the problem identification takes place, followed by the analysis of a possible solution. On request from the ministry, ATR can provide informal advice. For larger proposals the expectation is that ATR will be involved early in the process. Some ministries also approach ATR for smaller proposals early in the process as the chances are higher that this will result in a "fit for purpose" opinion during internet consultation.
2. Consultation phase: the proposal is put forward for (online) consultation. The department approaches ATR for advice and sends ATR the calculations. If no consultation takes place, ATR needs to be approached at a comparable moment.
3. Processing phase: The department processes the results of consultation. ATR can be approached for informal advice.
4. Final phase: ATR issues an additional opinion if the content of the proposal has changed significantly after consultation affecting the level of compliance costs. It is up to ATR to decide whether it issues such an additional opinion.[13] ATR makes this decision based on the revised documents sent by the department. In any case, all legislative proposals not yet scrutinised have to be sent for scrutiny to ATR.
5. Parliamentary phase: at the request of Parliament or the responsible minister, ATR can be approached for advice on amendments.

The scrutiny process is as follows:

- ATR receives an overview of all planned proposals to manage its work.
- All legislative proposals, including ministerial decrees, have to be sent to the Board. The Board decides which ministerial decrees are selected for scrutiny.
- The co-ordinator of the relevant ministry informs ATR of the proposals for which early involvement is desired. ATR can also indicate where it wishes to be involved. This will be done for proposals with a large societal impact. Once a proposal is ready for internet consultation, the proposal, the explanatory note and the compliance cost calculations are sent to ATR for scrutiny. In cases where there is no internet consultation it is sent to ATR at a comparable moment. Some ministries time this step together with the 'wetgevingstoets' of the Ministry of Security and Justice.
- The draft opinion is sent to the policy advisor for feedback before a final decision is made by the board.
- In case a negative opinion is expected (not fit for purpose), the co-ordinating ministry (i.e. the Ministry of Economic Affairs) is informed.
- The policy advisor informs ATR how the recommendations will be dealt with. The explanatory memorandum of the final version before adoption will refer to the opinion of ATR and give an overall reaction on the opinion.
- When a proposal is changed after online consultation, the policy advisor contacts ATR to discuss these changes. All necessary documents are sent to ATR to decide

if a supplementary opinion is needed. A second stage of scrutiny may occur if changes made generate substantive compliance costs.

The expertise given to policy advisors in the early phase of the rule-making process has been formalised in the ATR mandate. However, it is up to the ministries to approach ATR for advice. In that phase, ATR will also address the involvement of stakeholders with the policy advisors in the rule-making process. To be more efficient ATR will advise now primarily during internet consultation. With this change not only time is saved, ATR advising earlier in the process makes the timing of its opinions better fit the rule-making procedure.

Each opinion of ATR concludes whether the proposal is fit for purpose. Criteria have been defined to support these conclusions (see Table 7.3 below). The expectation is that ATR produces up to 200-250 *ex ante* opinions per year. ATR intends to issue reports on its findings.

Table 7.3. Criteria for the dicta of ATR

Dictum	Opinion	Criteria
1	Fit for purpose (without further recommendations)	Criteria (all have to be met): Legislation is the best choice of instrument. Less burdensome alternatives have been considered within the proposal when setting policy goals, the executive framework and the supervision/enforcement framework. The less burdensome alternatives have been chosen, or there is a solid motivation when this is not the case. The effects on compliance costs have been fully calculated.
2	Fit for purpose after ATR's opinion has been taken into account	Criteria to deviate from Dictum 1: The calculation of the effects on compliance costs are not fully complete; OR recommendations on the content of the proposal are minor
3	Not fit for purpose unless ATR's opinion is taken into account	Criteria to deviate from Dictum 2: Less burdensome alternatives have been considered. The motivation why these have not been considered is weak; OR the calculations of the compliance costs are far from complete (i.e. complete target groups missing, essential obligations not calculated)
4	Not fit for purpose	Criteria to deviate from Dictum 3: There is no evidence of a structural problem; OR legislation is not the best solution; OR no less burdensome alternatives have been considered. OR the compliance costs are not calculated or have not been made on the level of the obligations.

Scrutiny of substance

Actal

Actal had a formal role to advise government on areas of policy where regulation could be made more effective based on "signals" from society. Actal received signals from society from the signal function at the Ministry of Economic Affairs ("Antwoord voor Bedrijven") and from meetings with stakeholders. Figure 7.3 sets out the working procedure.

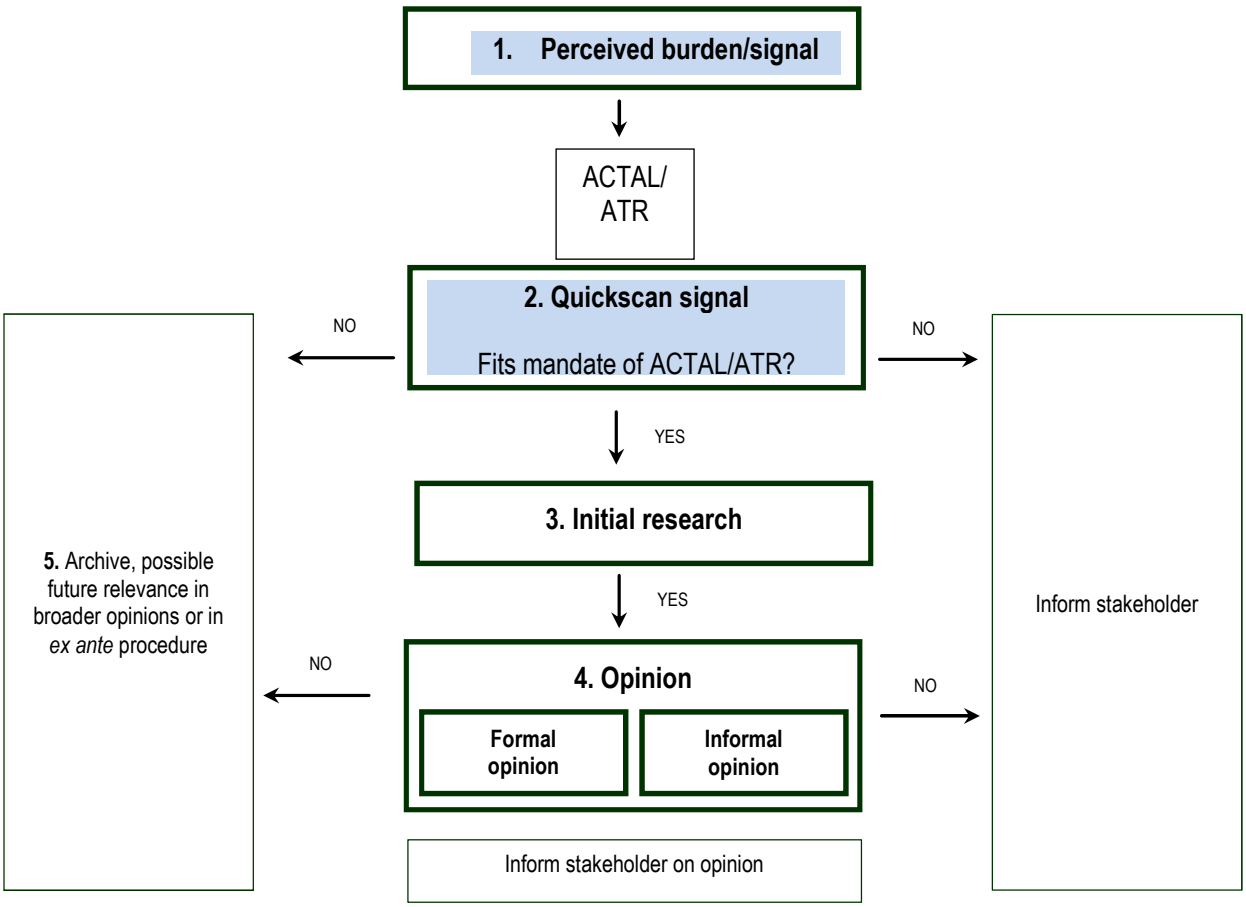
Figure 7.3 outlines the way in which Actal dealt with signals from society. After Actal received a signal (Step 1), a quick scan was done to verify that the substance of the signal fitted the mandate of Actal. If this was not the case and if relevant, Actal informed the stakeholder which government body he could address instead. Then Actal verified if the signal had the potential for an opinion, where for instance less burdensome alternatives could be considered (Step 2). If this was the case (Step 3), Actal researched the signal and the relevant ministry was informed. The following elements were looked at during this research:

- Is the problem caused by regulation?
- Is it a structural problem?
- Are there less burdensome alternatives?

If the signal was caused by regulation, had a structural nature and less burdensome alternatives were possible, Actal looked into a possible opinion (Step 4). There were two types of opinions (informal or formal). If Actal received a complex signal or a set of signals addressing the same legislative domain, a strategic opinion would be initiated. An example is the opinion on the logistics sector or on normalisation.

In Actal's experience, a lot of time is needed to capture the essence of signals and to provide relevant solutions. Through the years, Actal has gained experience on how to deal with these more efficiently. Consequently, a quick scan and the initial research were introduced into the working process.

Figure 7.3. Signals from society



ATR

The mandate of ATR also includes the ability to address bottlenecks in existing legislation. Parliament demanded this when the draft mandate of ATR was tabled. However, the core task of ATR is *ex ante* scrutiny. Furthermore, a business platform will be set up by the Ministry of Economic Affairs to address bottlenecks. Figure 7.3 will nevertheless still form the basis for the signal task of ATR. Based on the signals received and the findings in the *ex ante* procedure, the board may select some larger advisory

projects looking at legislative domains and/or legislative instruments. ATR will still issue opinions on specific signals if these cannot be dealt with in the near future in the *ex ante* phase.

Scrutiny of the system

Actal

Actal had the formal task of advising government on the better regulation system. In the past, opinions were, for instance, issued on the need to introduce an impact assessment system assessing both costs and benefits of proposals, on increasing the transparency of the rule-making process when transposing EU legislation or on the introduction of common commencement dates. Furthermore, Actal also advised on the need for a structured *ex post* evaluation methodology linking the *ex ante* to the *ex post* phase.

Past Cabinets issued progress reports on better regulation every six months. Actal issued an opinion on these reports assessing the progress made and, where relevant, providing recommendations. The progress reports and the opinions of Actal were discussed in Parliament.

Actal was one of the initiators of RegWatchEurope (RWE), which aims both to exchange expertise and to seek opportunities to strengthen the EU better regulation approach. Interested countries can approach RWE for information on external oversight. RWE also collaborates with the RSB to enhance the quality of the national and European scrutiny process.

ATR

ATR has no formal task to advise on the system of better regulation. However, Parliament can approach ATR for advice.

ATR will also continue collaborating in RWE.

Guidance

While initially Actal provided training and was actively involved in the writing of the methodology/handbook, it had no formal role in its later mandates in training and guidance. The Dutch government is currently writing a new handbook on how to calculate compliance costs in order to make it more accessible to policy advisors. The Ministry of Economic Affairs is in the lead. As a member of the project group, ATR provides inputs.

Capacities

The board of ATR consists of three members. These members have a political background, as well as extensive knowledge of compliance costs faced by target groups (firms, citizens, professionals). They are selected through an open application procedure. The selection criteria are defined by Kaderwet Adviescolleges. The Chair and members of the board are appointed by Cabinet.

The staff consists of a director, 8 senior policy advisors and 2 supporting staff. The oversight body is independent, in the sense that it has a high degree of budgetary autonomy. Furthermore, the body defines its own working procedures and internal organisation. ATR annual budget is € 1.7 million. This covers all costs: human resources,

travel expenses, IT-infrastructure, etc. ATR budget is defined by the Minister of Economic Affairs for the period of the mandate. The director controls the budget of the body. The specific mandate of the director is defined by the Ministry of Economic Affairs through an internal procedure.

Monitoring and assessment of the impacts and effectiveness of the oversight body

Kaderwet Adviescolleges states that the oversight body has to be evaluated every 4 years.[14] All evaluations of Actal were performed by an external party commissioned by Actal. The responsibility for the last evaluation of Actal (2015) was passed on to an external committee.

The evaluation showed the added value of external scrutiny. This stems from the interviews held and the case analysis done by Berenschot. External scrutiny keeps the departments accountable for the commitments made. The signal role of Actal (addressing burdens experienced by stakeholders from existing legislation) is strongly supported by society. The fact that Actal issued its opinions in the later stages of the regulatory process did raise some tension with the respective ministries. They often had insufficient room for manoeuvre and in these later stages could not address the issues raised in the opinions of ATR.

After the 2015 evaluation, the Ministry of Economic Affairs and the Ministry of Interior and Kingdom Relations also initiated an evaluation of Actal stemming from the central budget rules that state that each policy field has to be evaluated every 4-7 years.[15] This evaluation was based on interviews with policy advisors, external stakeholders were not interviewed. It concluded that the Actal opinions had limited impact. Most of Actal's impact occurred in the confidential phase (early phase of the regulatory process). The evaluation recommended that the scrutiny should take place in the early stages of the regulatory process. This would also provide an impetus to strengthen the role of the scrutiny body as a centre of expertise that provides help and support to policymakers.

A third evaluation was done by the Internal Audit Office of the Dutch government (Auditdienst Rijk, ADR). ADR performed an audit on the activities of Actal.[16] It concluded that Actal executed its tasks efficiently and effectively.

Box 7.3. Actal's final evaluation in 2015

An independent committee of two experts (Jan Willem Weck, former Director General, and Wim Voermans, Professor of Constitutional and Administrative law at Leiden University) together with Berenschot evaluated Actal. The evaluation period was 2011-2015. In this period Actal issued 31 *ex ante* opinions, 28 pieces of strategic advice, 23 opinions stemming from signals and one regulatory burden audit.

The evaluation consisted of desk research and 35 interviews with stakeholders (from government, Parliament, business associations). The evaluation addressed the following questions:

1. Did Actal successfully execute its legal mission?
2. Did Actal operate efficiently?
3. Did Actal address in an adequate way the recommendations of the 2010 evaluation?

The main conclusions from the evaluation were:

- Stakeholders are positive that external scrutiny on compliance costs take place.
- Parliament finds the Actal opinions useful, solid and independent.
- Actal opinions have contributed to decreasing the level of compliance costs for all target groups.
- Policy advisors find the opinions of Actal useful.
- Co-ordinating ministries and units are critical to Actal. This may affect Actal's position in the future.
- The ongoing uncertainty given the temporary status of Actal and the hiring procedures that need to be followed can affect the level of independence and the quality of the staff.

Source: Evaluatie Actal, 2015.

ATR is currently engaged in a dialogue with ministries in order to determine the indicators to monitor its impacts. Actal did not have such indicators. Inputs on these indicators from the most relevant stakeholders will be sought through a strategic session. Furthermore, ATR will introduce a feedback procedure to assess the procedure once the *ex ante* scrutiny of a proposal is finalised. The staff of the ministry will provide feedback to ATR or vice versa. After each scrutiny procedure, there is the possibility of having a feedback meeting between ATR, the policy advisors and the co-ordinator. All procedures with ministries are being defined. Every six months the collaboration will be evaluated.

Challenges faced

Between Actal and ATR, the Netherlands cumulate more than 17 years of experience of external oversight. This section addresses the main challenges for *ex ante* scrutiny during this period of time.

Proportionality

One recurring challenge is the principle of proportionality, its application and effect. After years of full scrutiny, the mandate of 2011 introduced the principle of proportionality. Only proposals with a substantive effect had to go through Actal. Actal made the selection and had to initiate the process. While this was welcomed by policymakers engaged in legislation with only a minor impact on regulatory burden, it meant that Actal was perceived by policy advisors as an extra hurdle in the policy-making process. The lessons learned are now addressed in the new mandate of ATR. For the ministerial decrees the principle still applies, but the initiation of the scrutiny process is better embedded. All types of legislation initiated by central government have to be submitted for scrutiny by ATR. Ministerial decrees can be dealt with in the fast track procedure if its impact on compliance costs is not substantial.

Expert versus scrutiniser

ATR combines two roles - centre of expertise and scrutinising body. Both roles demand different skills. As a centre of expertise, ATR provides help to ministries when drawing up new or revising existing legislation. As a scrutinising body, ATR assesses whether ministries have provided conclusive evidence on the need for new or revised legislation

and on the regulatory burden that accompanies this legislation. While the focus of Actal was more on scrutiny, ATR will put more emphasis on the transfer of knowledge and expertise.

Visibility and transparency

A supervisory body has more impact in the early phase of the regulatory process. This is the confidential phase. Due to this confidentiality, the impact of the supervisory body is not clear to the general public. Actal did not keep track of its impact in this phase. ATR is currently looking into how its impact in the early stages of the regulatory process can be monitored and made visible to the general public (including Parliament and stakeholders).

Conclusion

In the Dutch experience, external and independent scrutiny has had substantial added value. One of the lessons learned is that such scrutiny can best take place in the early phases of the legislative process. In this phase, ministries can benefit from the expertise of the oversight body. However, the oversight body should also be allowed to scrutinise the final version of legislative proposals.

A second lesson from the Dutch experience is that over time, Parliament and stakeholders in society have increased their appreciation of the role played by the oversight body. Consequently, Parliament and the business community have been very supportive of a strong mandate for ATR.

One of the challenges that ATR faces now is how it can continue to demonstrate its added value for society as a whole while scrutinising in the early (and often confidential) phases of the legislative process.

Notes

[1] Jan Slechte was Chairman of Shell Nederland N.V.

[2] Regels zonder overlast, 2000.

[3] Kaderwet Adviescolleges.

[4] Mr. Weck and Prof. Voermans, see: www.actal.nl/evaluatie-actal-2015/.

[5] The Ministry of Interior and Kingdom Relation was a co-ordinating ministry. Their future involvement will depend on the coalition agreement of the new Cabinet.

[6] From 2000-2017, the Netherlands had a net reduction target on compliance costs. It will be up to the next coalition if there will be a target for the coming four years.

[7] The so-called Integraal Afwegingskader (IAK).

[8] The Senate and the House of Representatives are referred to as Parliament in this case study.

[9] Each legislative proposal has an explanatory note. This note informs all stakeholders (during internet consultation) on the purpose and effects of the proposal. Guidelines set out what an explanatory note should consist of i.e. the problem analysis; the major elements of the proposal; the relation to other (higher) legislation; the financial effects, the effects on the compliance costs; how execution and inspection takes form, etc. (www.kcwj.nl/kennisbank/schrijfwijzer-memorie-

van-toelichting). The note also summarises the reactions received during internet consultation. Parliament receives with every proposal the explanatory note.

[10] Health, Social Affairs; Finance; Economic Affairs; Interior; Justice, Foreign Affairs, Education, Infrastructure and Environment.

[11] Actal, Minder Haagsche bureaucratie, meer maatschappelijk effect, 2012.

[12] Actal, Scherp op regeldruk, 2015.

[13] No criteria have yet been set to determine under what conditions a second opinion is needed. This will be done by the beginning of 2018.

[14] Regioplan, Impactonderzoek Actal, 2002; Regioplan, Evaluatie van Actal, 2003; Berenschot, evaluatie Actal 2003-2006, 2007; KplusV organisatieadvies, Evaluatie Actal 2007-2010, 2010; Berenschot, Evaluatie Actal, 2015.

[15] Kwink Groep, Kwaliteit en impact van de adviezen van Actal, 2016.

[16] Auditdienst Rijk, Rapport Evaluatie Doelmatigheid Actal, 2016.

Reference

Actal (2015), “Evaluatie Actal 2015”, www.actal.nl/evaluatie-actal-2015/ (accessed 19 September 2018).

Chapter 8. Regulatory Policy Committee (United Kingdom)

This chapter describes the institutional setup and activities of the Regulatory Policy Committee, which has been established in the United Kingdom in 2009.

The establishment and history of the RPC

Better regulation has been a theme and priority of the UK Government since the late 1980s. It was initially introduced to increase the quality of the policy making process. However, it was not until debates on regulatory budgeting began in 2008-9 that the RPC was established. In 2007, following concerns raised by the National Audit Office, the UK government saw a need for improving the quality of the evidence-base behind policy making. This, alongside the then Labour Government's desire for regulatory budgeting of Departments, generated a need for the evidence on business cost reduction figures to be verified by a body independent of government. Although the government did not go on to commit to regulatory budgeting, the RPC was established with an informal mandate to examine this evidence base and began by validating Government's Regulatory Impact Assessments (IAs). This non-statutory mandate meant the role of the RPC could easily evolve as the political landscape developed. At the time, although there was no obligation for RPC validation in order to advance departmental proposals, the quality of IAs still noticeably increased.

Following the General Election in 2010, the new Coalition Government established an emphasis on reducing the regulatory burden on business. The following commitments were made as part of the new Reducing Regulation Strategy:

- *A new approach* via two aims; that policy making uses regulation only as a last resort and to identify opportunities to diminish the burden of existing regulation.
- *Bringing deregulatory incentives into the public eye;* incentivising departments to quantify the benefits as well as the costs of new regulations. Later, it became an obligation for RPC opinions to be published, providing more transparency.
- *The One-in, one–out* (OIOO) rule. This meant that, when departments introduced new legislation which bore a cost to business, the department would have to remove or modify existing regulation to the value of GBP 1 for each pound of cost imposed. This was later followed by the *one-in, two-out* rule, obliging GBP 2 of savings on existing regulation for every additional pound cost imposed. This has since evolved into the statutory provision that the government will cut the burden of regulation by GBP 10 billion during the 2015-20 Parliament.

To implement it successfully, this strategy had to be supported by an increasing amount of evidence. The Government began to produce more quantitative figures reflecting the financial impacts on business. For each new regulatory provision, the government sought to monetise its anticipated effects through accompanying IAs. The RPC became the vehicle for scrutinising these IAs; ensuring evidence was maintained at a high standard. This was followed by the introduction of a compulsory requirement for IAs to gain a "fit for purpose" opinion from the RPC before a Department could proceed further with a policy proposal.

Gradually, further changes to the better regulation strategy have taken place which have affected the scope and work of the RPC, such as:

- *Small and Micro Business Assessments (SaMBA)* – introduced in 2013 after a moratorium on the regulation of small and micro enterprises (SMEs) to an end. This ensured that departments gave full consideration of the impacts for SMEs when introducing new regulatory proposals.

- *Post-Implementation Reviews (PIRs)* – an obligation that the legislation implementing a measure should be reviewed after five years, with reviews also scrutinised by the RPC. PIRs assessed the accuracy of original IAs, and judged whether it was appropriate to continue implementing a given regulation.
- *A Fast Track* and *Regulatory Triage System* – the system of light touch scrutiny for deregulatory and low-cost regulatory measures. Measures which are eligible for fast-track do not need an RPC opinion at an early stage (consultation). However, they must achieve a fit for purpose opinion at final stage.

The RPC's governance, independence and wider institutional landscape

Institutional context

The RPC works amongst a group of bodies across Whitehall that helps to deliver the Government's Better Regulation Agenda. These bodies and their description are provided in Table 8.1.

Table 8.1. Institutional framework for regulatory policy in the United Kingdom

Institution	Description
Dept for Business Energy and Industrial Strategy	The sponsoring department for the RPC. The RPC Secretariat is housed in close proximity to the Department's main Westminster offices and secretariat staff are civil servants formally within BEIS. The Committee and stakeholders meet in the Department regularly.
Better Regulation Executive	A BEIS unit responsible for advising ministers on the better regulation strategy. It leads delivery of the regulatory reform agenda across government and co-ordinates efforts to reduce the regulatory burden on business. BRE supports the RPC in fulfilling its responsibilities, by agreeing that the RPC may publish records of its own work on a six monthly basis and "protecting" the RPC's independence, ensuring departments do not exert pressure on the RPC or its staff. BRE is also the sponsoring body for the RPC, responsible for the recruitment and retention of RPC Secretariat staff. BRE also serves as the first point of contact for the RPC with the wider BEIS department. In turn, BRE also informs and advises the RPC on relevant Government policy, providing guidance where required. Notably, BRE has produced the Better Regulation Framework, a document outlining the Government's principles on regulation and detailing how RPC scrutiny should be conducted. BRE also monitors the RPC's budgetary and casework performance and advise relevant ministers on what objectives are reasonable for the RPC. The RPC in turn is expected to advise BRE on any concerns it has regarding the process around better regulation and explain such concerns to Ministers directly when required. Together, the RPC and BRE are expected to provide consistent messages to the stakeholder community on the BIT and other deregulatory initiatives, co-ordinating where appropriate. They also meet frequently to allow BRE to update the RPC on developments in government police and aid implementation of the framework.
Reducing Regulation Sub-Committee	A cabinet committee overseeing government policy on better regulation. RRC clearance is required for all regulatory measures where a cost to business is imposed or removed. This ensures regulation is used as a last resort, and that new regulation is clear, proportionate and comes at the minimum cost to business. For measures that need clearance from the RRC, a "fit for purpose" opinion needs to first be obtained from the RPC (aside from in exceptional circumstances at consultation stage only and for measures that are eligible for the fast track).
Departmental BRUs	A team of civil servants within each department. They serve to advise policy teams on the better regulation agenda and act as the first port of call for regulation-related questions, such as on the process of taking an IA through the RPC for approval. They also perform this function for regulators that report against the BIT target and are sponsored by their individual departments. The RPC and BRUs regularly engage with one another to provide advice on submissions and the submission process
Regulatory Delivery	A directorate within BEIS which seeks to ensure that regulation is effectively delivered whilst reducing the burdens on business and minimising costs. Regulatory Delivery advises ministers on policy; maintains dialogue with businesses, ensuring they have a degree of influence over the policy-making process; and works with individual regulators to solve localised concerns.

Governance of the RPC

The RPC is made up of eight committee members, comprising: a chair; two economists; four generalists (one of whom has trade union experience and two of whom have business experience), and a legal expert. Members are selected for their experience and current knowledge of business, employee, consumer and economic issues. The Chair and members have to declare any professional and personal interests that might conflict with their responsibilities as Committee members and are required not to comment on impact assessments where there is a conflict of interest.

The Committee works part-time, for fifty hours per month, clearing and scrutinising opinions via email. The Committee also meets approximately every 50 days a year, giving them a chance to meet face-to-face, hear from stakeholders, and receive any updates from their sponsor, the Better Regulation Executive. A methodology sub-group of committee and secretariat members also discuss methodological issues that arise from casework and have broader application.

The Committee engages with a variety of stakeholders through speaking engagements at events, face-to-face meetings with key stakeholders and via social media.

The Committee is recruited by open competition following rules set out by the commissioner for public appointments. Committee tenures last between two and four years and can be reappointed once without open competition before they must be re-recruited through the same application process. The Secretary of State for Business, Energy and Industrial Strategy (BEIS) appoints all committee members.

The Committee is supported by a secretariat of some twenty two civil servants in March 2018 (and increasing), including policy officials, economists and analytical staff. The Secretariat is made up of civil servants employed by the Department for Business, Energy and Industrial Strategy (BEIS). The Committee are not civil servants and are independently appointed, with no affiliation to government.

The secretariat staff complete the majority of the analysis of impact assessments and the initial drafting of opinions. They also provide corporate support to the Committee. Draft opinions are submitted to the Committee lead, along with the associated impact assessment, for them to edit and/or approve the draft opinion. Any amendments or comments made by the Committee lead are dealt with by the Secretariat until the Committee lead is happy with the draft. The draft opinion is then sent to all Committee members for their comments and clearance. The Secretariat deals with any comments and re-drafting. Once all Committee members are in agreement, the opinion is finally signed off by the Chair.

The RPC as an advisory non-departmental public body is sponsored by the Department for BEIS. The RPC receives its funding by budgetary delegation within BEIS's financial framework. This is contained within the overall budget envelope for its sponsor, BRE, and is reported to Parliament as a consolidated budget within BRE's budget. The 2016/2017 RPC's budget was GBP 1million, with major costs covered including Pay (GBP 820 600), Honorarium payments (GBP 118 000), Office and travel costs (GBP 24 400).

Features of independence

The RPC is an independent advisory non-departmental public body (NDPB). This is defined as not being accountable to ministers on opinion outcomes and allowing the RPC to promote its work separately to the government. The RPC is accountable to Parliament through the Department's Principal Accounting Officer. The RPC is also accountable to the Secretary of State for BEIS, but *only on issues relating to its efficiency, performance and for the way it uses public funds*.

Although committee members are appointed by a government minister, they do not answer to the Government. Independence allows the RPC to engage with stakeholders across society separately to the government. This permits the RPC to publicise opinions to, and receive feedback from, business members, backbench MPs and civil society groups. This is important in assuring wider society of the high quality of government IAs.

The RPC rules only on the evidence presented to it and does not comment on the policy content of the measures it sees. This is a necessary feature of the RPC's independence as, under the UK Parliamentary system, it helps preserve the cabinet's role as the executive responsible for policy decision-making.

Independence from government allows for:

- An enhanced driver for cultural change – both on the use of evidence and on reducing regulation;
- A counter against the bias towards regulation, and against "optimism bias" in assessments;
- Increased transparency around evidence and the Government's use of it;
- External expertise on regulatory impacts on business and civic organisations;
- Improved credibility for the government's regulatory framework.

However, for some activities (for example performance, budget and finance), the RPC is deemed a partner organisation of the Department for BEIS. It therefore contributes to centrally commissioned returns from the Department. On HR and finance matters, RPC staff also follow standard departmental rules.

A working relationship also exists to some degree between the RPC and the Secretary of State for BEIS. The Minister is responsible to Parliament for the activities of bodies sponsored by his/her department, and will therefore take a keen interest in such publications by the RPC. He/she will have regular discussions with the Chair to allow the RPC to raise matters of policy in confidence.

Mandate and role

The RPC undertakes scrutiny functions that are both administrative and statutory in nature, with room for overlap between the two categories.

Administrative scrutiny relates to the delivery of the better regulation agenda and BRE's Better Regulation Framework, with the ultimate goal of improving the quality of regulation. Administrative scrutiny relates to the functions of the RPC to deliver opinions qualifying legislation. Statutory scrutiny relates to the RPC's role as the Independent Verification Body (IVB) for the Business Impact Target (BIT) (see below).

Table 8.2. Areas of RPC regulatory oversight

Areas of regulatory oversight	Key tasks undertaken by the RPC
Quality control (scrutiny of process)	Monitor policy assessments for adequate compliance against the Better Regulation Framework (BRFM). Scrutinise impact assessments against the BRFM and issue red opinions if the quality of analysis behind calculation of the impacts on business is poor. Scrutinise ex post regulatory assessments and post-implementation reviews against the BRFM, and issue red opinions if necessary
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	N/A – the RPC focuses only on quality of evidence. It does, however, comment on whether the evidence in post-hoc reviews of substance is sufficient to support the conclusions drawn.
Systematic improvement of regulatory policy (scrutiny of the system)	The RPC reports annually to the government and the public on the overall quality of regulatory impact assessments across government and on the features of the system that support – or mitigate against – improving the quality of evidential support for Ministerial decision-making.
Co-ordination (coherence of the approach in the administration)	N/A
Guidance, advice and support (capacity building in the administration)	The RPC issues opinions on all RIAs it reviews, including a "quality of submission" section with suggestions for improvement. The RPC secretariat meets with Departmental Better Regulation Units and policy officials to discuss individual RIAs and promote methods of best-practice in RIAs across government. The RPC has its own online answer page to frequently asked questions.1

1. http://regulatorypolicycommittee.weebly.com/.

RPC Opinions

The provision of an RPC *fit for purpose* opinion for qualifying legislation is a requirement, although not a legal one, within this framework (see Figure 8.1 for what qualifies as a regulation requiring RPC verification). Under the 2015-17 Better Regulation Framework, this meant that all RIAs and PIRs that required ministerial agreement needed an RPC opinion.

RRC clearance and RPC "fit for purpose" opinions are needed at both the "consultation" and "final" stages of the policy development process. Consultation stage takes place when a policy is in development. Opinions at this stage check calculations on the expected impacts of a proposal and whether Departments have gathered appropriate and sufficient evidence from affected stakeholders. Consultation IAs must also explore multiple options, including alternatives to regulation, and these proposals are assessed by the RPC to determine whether they are adequate in addressing the policy's objectives.

Final stage opinions assess consultation methodology and whether Departments accurately and robustly capture the expected impacts on business. RPC scrutiny also examines whether the full range of costs and benefits have been taken into account. The opinion also looks at whether the Department has assessed the impacts on SMEs sufficiently through a Small and Micro Business Assessment (SaMBA). For those measures in place and with a review clause, post-implementation reviews require RPC opinions and RRC clearance. For the assessment of a final stage IA, only the assessment of the Business Impact Target can affect the colour of the RPC opinion (for details see Table 8.4).

Once an opinion has been completed by the RPC, they will send it to the Department. The Department will then complete a write-round (a process whereby clearance is sought to proceed with the regulation from all government departments, confirming that a "fit for purpose" opinion has also been received from the RPC). Once cleared, the Department

will proceed with laying the regulations – this can take some time and is bound by the parliamentary timetable, but once in progress, the Department will publish the impact assessment, alongside the RPC opinion. The RPC will also publish the opinion on their website, along with the impact assessment.

However, a Minister can agree to a regulation proceeding even if the RPC has not given it a 'fit for purpose' opinion. This is rare, but does happen. For example, there are a few consultation stage IAs that have not passed RPC scrutiny, but are later accepted into law. The IA associated with ballot thresholds in public sector strikes, a component of the Trade Union bill, received a red-rating. Another two IAs associated with separate components of the same bill, related to plans around picketing and the hiring of temporary workers, also received red ratings. However, the final stage IA associated with the entire Trade Union Act was viewed as fit for purpose, and the bill became law in 2016. There were no other red-rated opinions accepted into law during the previous parliament.

Figure 8.1. Flowchart detailing whether a regulatory provision requires RPC verification

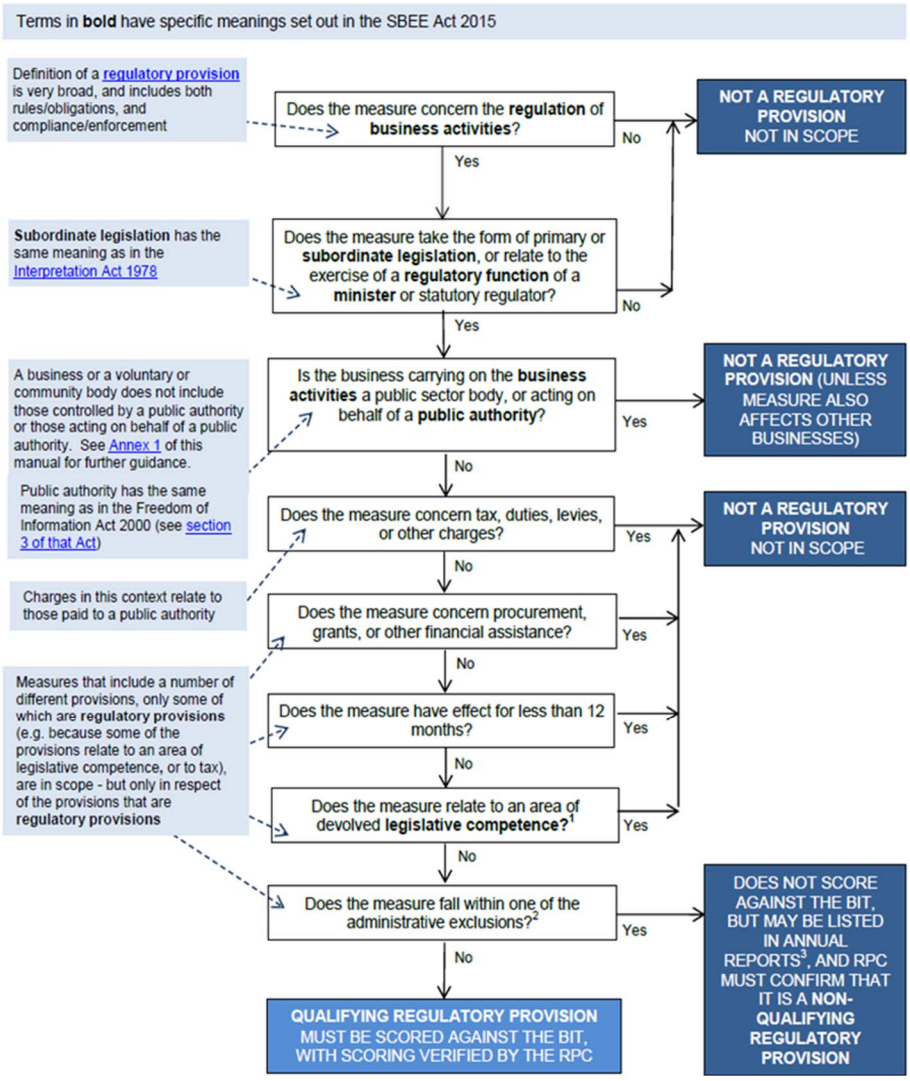
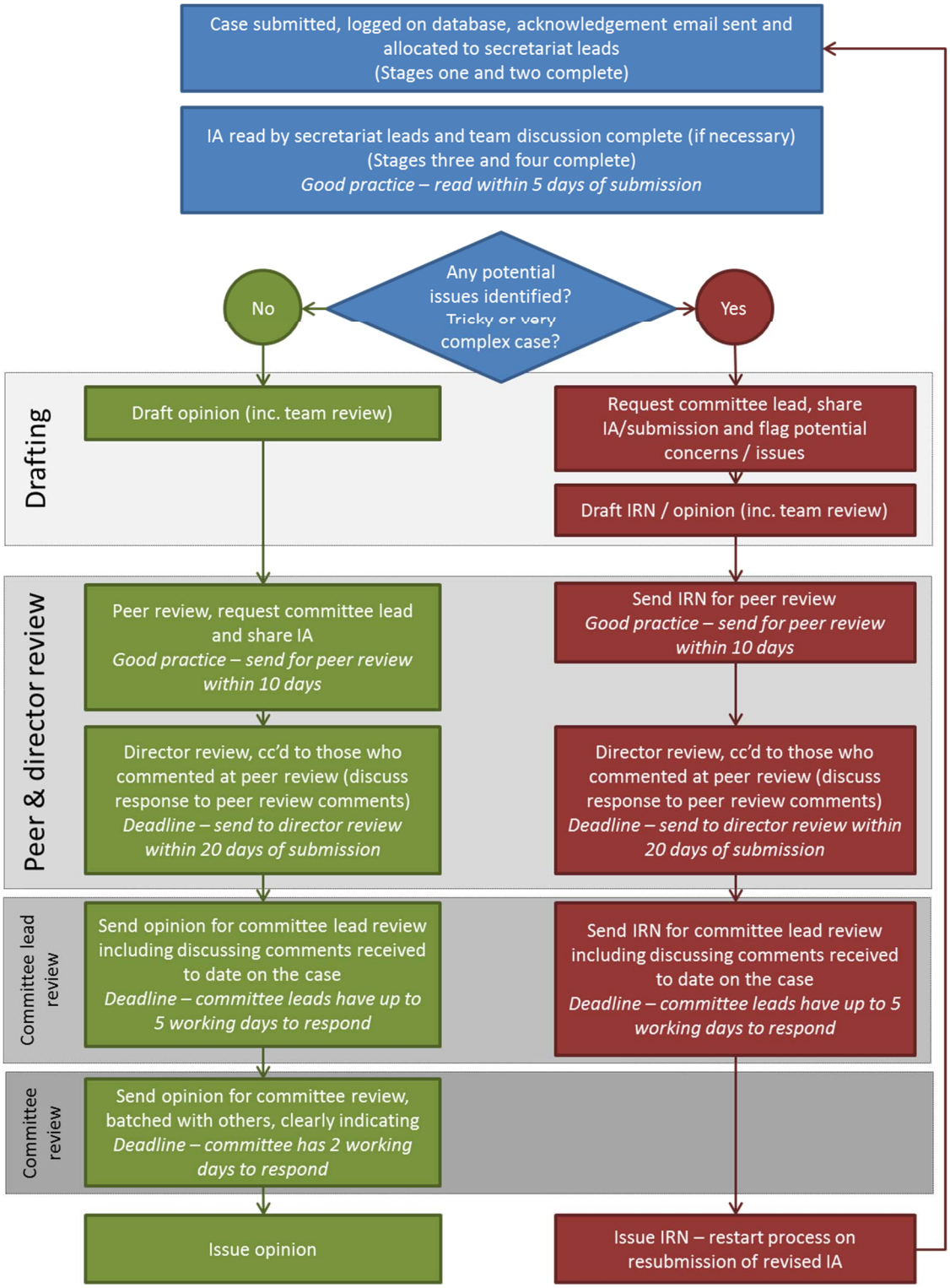


Figure 8.2. Flowchart detailing the internal RPC scrutiny process



Source: RPC internal guidance.

Independent Verification Body for the Business Impact Target (BIT)

The RPC validates the Business Impact Target Score of all measures that qualify under the BIT (during the 2015-17 Parliament, these were all measures aside from administrative exclusion categories, covering regulations and directives from the EU; regulation that applies during civil emergencies; price controls; pro-competition measures; the National Living Wage, measures that implement components of the National Minimum Wage or Misuse of Drugs Act; or large infrastructure projects).

The RPC was selected to perform this function for the expected parliamentary period from 2015 to 2020; in fact the parliament ended in June 2017 and the Independent Verification Body for the Parliament beginning in 2017 has yet to be appointed at the time of writing. The RPC validated assessments which show whether the government will achieve its statutory obligation to reduce the burden of by GBP 10 billion during the Parliament.[1] The *Small Business, Enterprise and Employment Act 2015* (SBEE Act 2015) specified that there should be a cross-government target affecting all departments. *The Enterprise Act 2016* further extended this obligation to include the activities of regulatory bodies under the BIT. The RPC gauges whether measures need to be scored against the BIT, and checks the costs and benefits calculated. To be scored against the BIT, a measure needs RPC clearance. Figure 8.1 explains how to identify if a policy proposal needs to be measured against the BIT and verified by the RPC.

Additionally, the RPC verifies those assessments of significant regulatory provisions which fall outside of the BIT (non-qualifying regulatory provisions).

In conclusion, RPC's scrutiny can be divided into the categories highlighted in Table 8.3.

Table 8.3. Areas of RPC scrutiny

Role	For what Legislation?	The Role of RPC Scrutiny	Are F4P/Validated Opinions needed?
IA	Any measure needing RRC clearance	The RPC scrutinises the quality of evidence and analysis of the impact assessment that supports the regulatory measure(s). As part of that scrutiny, the EANDCB (equivalent annual net direct cost to business figures), showing the economic impact of the measure on business, is verified. The RPC will normally need to see measures at pre-consultation and post-consultation stages. If measures are not deemed fit-for-purpose initially, they are given a notice of RPC concerns with the submission. They are then encouraged to resubmit a revised IA, or receive a red-rating.	At consultation and final stages for IAs, and final stage only for fast-track measures.
PIR	Measures with a review clause or a significant impact[2]	RPC scrutinises the evidence on the effectiveness of the measure and determines whether it should continue or be amended.	All PIRs
BIT Validation	Qualifying Regulatory provisions[3] from Depts. and Regulators	The RPC verifies the calculation of the "Business Impact Target" score. In these cases, the RPC can only issue red-opinions if the calculation of the cost to business is not clearly explained, backed with sufficient quality evidence, or is incorrect.	Only measures where the impacts can contribute towards the BIT.
NQRP Confirmation	Non-qualifying regulatory provisions	For legislative measures that fall within one of the administrative exclusion categories, the role of the RPC is to confirm that the measure is "non-qualifying".	On all regular NQRP assurance statements

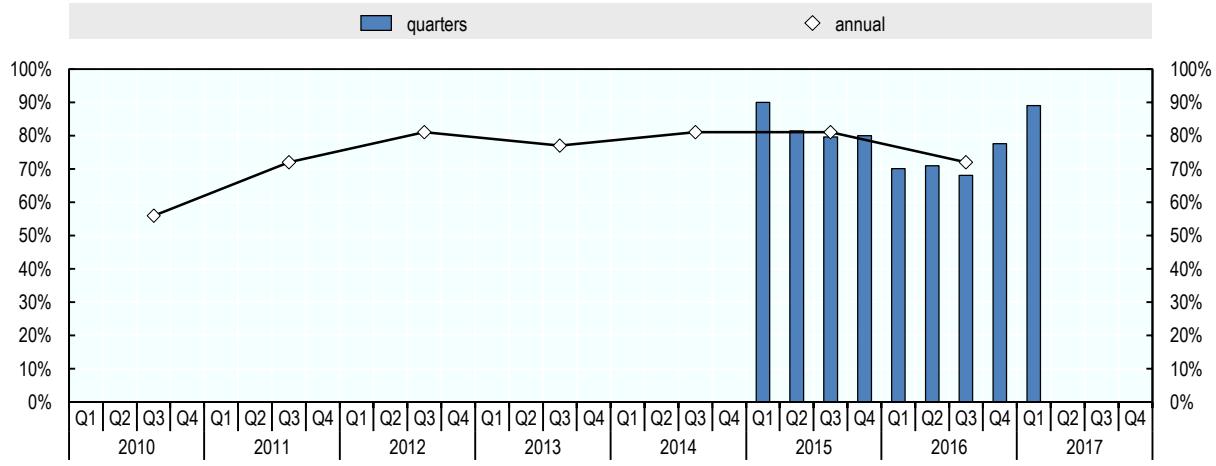
Monitoring IA Scrutiny and the Effectiveness of the RPC

The RPC's methodology is based on assessment of RIAs against RPC recommendations used when scrutinising IAs, which involves seven main criteria (set out at the top Table 8.4). It is against these criteria that the RPC assesses evidence and analysis. In Table 8.4, blue text indicates that an issue makes a submission "not fit for purpose", hence why the RPC considers the evidence used and methodology applied as not suitable for the IA (or PIR) to go ahead.

The RPC seeks to set high standards of regulatory scrutiny and to build Departmental capability in the production of evidence supporting policy. The RPC therefore monitors Departments' submissions in two main metrics to assess their quality. These are:

- ***The number of initial submissions receiving a "fit for purpose" rating:*** on this basis departments can be ranked and compared. Comparisons between departments can be very granular in nature and include breakdowns according to "red-rated points". This also enables the comparison of performance over time (Figure 8.3). Figure 8.4 showcases a good example of how the RPC breaks down data on the submission-quality of consultation-stage IAs, in this case according to Department and red-rated point.
- ***The accuracy of department's estimates on the impact of the measure***: calculating the difference between the estimated annual net cost to business by departments and the RPC validated figure.

Figure 8.3. Quality of departmental submissions since 2010, assessed through (first time fit) for purpose ratings (Quarterly data introduced in 2015)



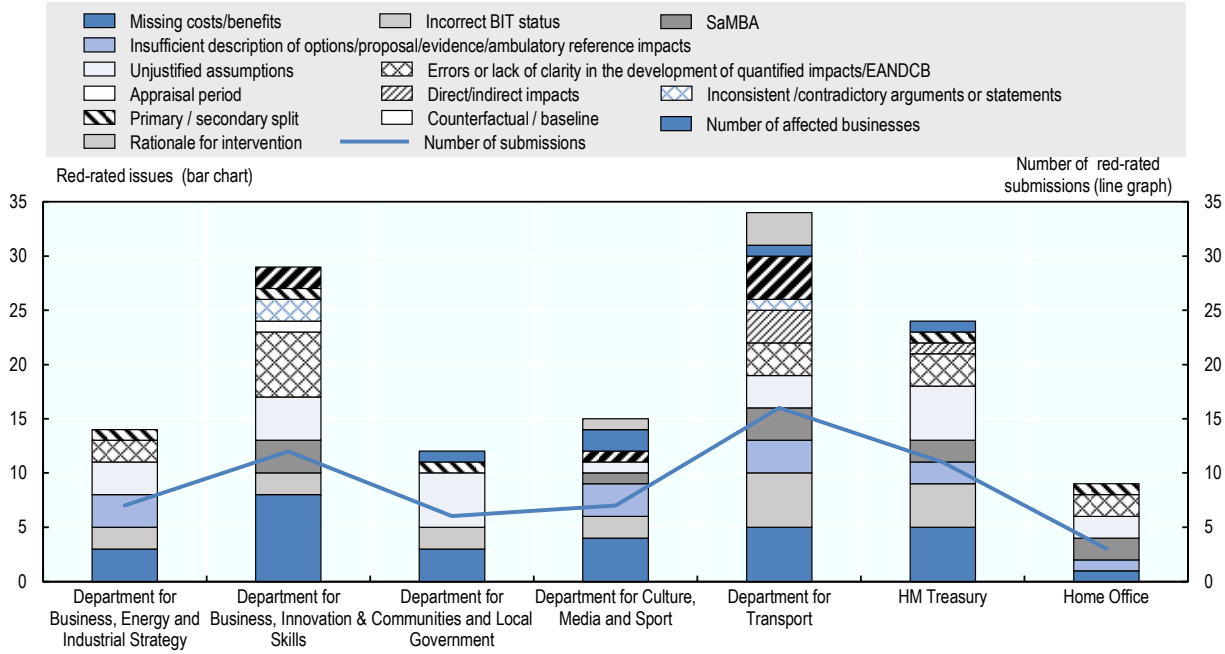
Source: RPC Review of Government IA capability, 2016.

Table 8.4. Benchmarking criteria for RIAs

Recommendations / Route and Stage	Don't presume regulation is the answer	Take time and effort to consider all the options	Make sure you have substantive evidence	Produce reliable estimates of costs and benefits	Assess non-monetary impacts thoroughly	Explain and present results clearly	Understand the real cost to business and civil society of regulation (base for BIT classification)	Seek to minimise the burdens on small and micro businesses
Consultation stage IA	Rationale for intervention and market failure must be set out and scale of the problem explained. All of the realistic/feasible options, including alternatives to regulation must be considered and assessed to an appropriate level of detail.		All major impacts of the proposal to be identified. Clear analysis of the scale of the problem and likely impacts to inform meaningful consultation with stakeholders. RPC may highlight areas where the department should seek more evidence from consultees.		All impacts must be described to an appropriate level of detail.	The terminology and analysis must be clear and accessible.	Full monetisation is not required… but RPC must normally be able to confirm BIT status.	A sufficient SaMBA must be included providing: - Information on the numbers of small businesses affected. - Initial consideration of applying exemption and mitigation. - Discussion of how much of the policy objective might be sacrificed by applying a full exemption; and how much of the overall cost to business is expected to fall on small businesses.
Final stage IA	In addition to the above, the chosen option should be narrowed down by the final stage and justified.		Impacts on business must be presented in a way that enables RPC to validate that the EANDCB figure is a robust best estimate of the likely direct impact on business or civil society organisation. RPC will also comment on the assessment of non-business impacts.		All impacts should be described thoroughly and clearly. This could only affect the colour of the opinion if it relates to BIT assessment	RPC must be able to follow the calculations for the EANDCB. Presentation more generally can be commented upon.	RPC must be able to confirm the BIT status and the EANDCB figure.	A sufficient SaMBA must be included with analysis on: - Final assessment of the number of small businesses affected. - Fuller consideration of the impact of applying an exemption and mitigation, to support the decision being taken, including: - An assessment of the proportion of the benefit of the policy that would be sacrificed by applying a full exemption; and the proportion of the overall cost to business expected to fall on small businesses. If no estimates are provided, explain why this is not possible / proportionate.

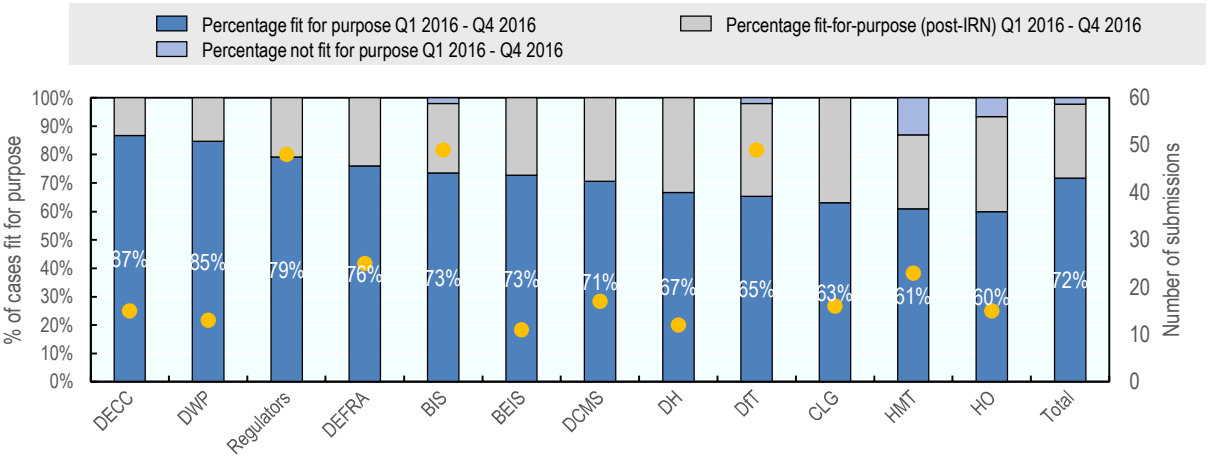
Note: Blue text indicates that an issue makes a submission "not fit for purpose".

Figure 8.4. Reasons why submissions were not fit for purpose, by Department 2016



Source: RPC's Review of Government IA Capability in 2016.

Figure 8.5. Quality of departmental submissions in 2016



Source: RPC's Review of Government IA Capability in 2016.

The RPC issues an annual performance report[4] summarising Departments' performance for stakeholders across government and in civil society. It discusses current challenges faced in IA production and possible ways to overcome them.

In addition, the RPC undertakes actions to improve government capability in undertaking regulatory appraisal. These actions include:

- IA Training and workshops;

- Quarterly meetings with departmental BRUs to discuss performance and other issues;
- Publications (including "case histories"[5] and case study examples are published on RPC webpage, along with guidance);
- Regular "drop-in" sessions with the BRUs to pick up any issues;
- Pre-submission and post-IRN meetings to give departments guidance before they submit an impact assessment.

Information on departmental performance is published, and is used by business and civil society organisations to ensure that better law-making remains on the government's agenda. The transparent publication of performance also incentivises Departments to improve their use of evidence.

The RPC tracks information on the quality of its own performance, such as statistics on its turnaround times for casework. Opinions are ordinarily provided to the Department within 30 working days of their submission. Fast track cases are returned within 10 working days of submission.

The rise in IA quality and its subsequent maintenance also serves as an indicator of the RPC's effectiveness. Since the RPC's remit was expanded in 2010, the quality of IAs has risen and been maintained at a higher level compared to previous years.

There has been an overall reduction in the compliance costs for businesses of regulation. Under the one-in-one-out programme, introduced by the Coalition Government (2010-15), regulations which imposed a direct net cost to business (referred to as an "IN") had to be offset by removing existing regulation with an equivalent or higher value (an "OUT"). This was based on the cost of regulation to business, rather than the number of measures: if a new regulation imposes GBP 1 million of costs on businesses, any number of regulations may be removed to offset the cost, provided that the savings are at least GBP 1 million. The RPC served to validate cost and benefit estimates under this regime with the Equivalent Annual Net Cost to Business metric.

At the close of the OIOO programme on 31 December 2012, the target of offsetting any new cost of regulation by introducing burden reduction measures had been exceeded, with a GBP 1.193 billion net reduction in costs to business. The Government therefore doubled its ambition in January 2013, setting Departments a target of providing GBP 2 worth of "OUTs" for every GBP worth of regulatory "Ins". By the end of the programme, OIOO and OITO had delivered over GBP 2 billion of annual net savings or GBP 10 billion of cumulative savings.

The 2015-17 Conservative government aimed for similar achievements following this, launching the Business Impact Target – a statutory duty for Government to produce GBP 10 billion in regulatory savings over the expected parliamentary term. The RPC served as the independent verification body for this purpose, validating the impacts of regulatory INs and OUTs.

In the first year of operation, the Government delivered GBP 885 million of savings against the target.

During the 2010-15 Parliament, the RPC improved the accuracy of departmental estimates of the costs and benefits of regulatory proposals by a minimum of GBP 585 million each year.[6] Almost all the estimated costs and benefits revised by the RPC following scrutiny resulted in a higher estimate of the costs to business or a lower estimate of the cost savings.

During the 2016-17 financial year, the RPC made minimal corrections to qualifying measures' EANDCB scores (totalling GBP 1 million over the year, and an average revision of GBP 6.75 million, for each quarter). However it made substantial corrections to the IAs of non-qualifying legislation EANDCB figures: totalling GBP 167 million over the year (with an average revision for each quarter of GBP 98.25 million).[7]

Quality of RPC performance – external assessment

The RPC conducts a quarterly survey of departments and regulators who have submitted cases to offer feedback on their service received and the quality of the opinion returned to them. Additionally, quarterly sponsorship meetings take place between BEIS and the RPC. These meetings look at the management information around the RPC's performance. The questions asked cover the timeliness of opinions; whether the Department agrees with the Opinion; whether it is clear and helpful in a number of respects; and whether overall the Department is satisfied with its engagement with the RPC.

The RPC's latest corporate report shows an increase in Departments' stating that the RPC's opinions were "clearly written" (from 77% to 84%). However, clarity around the RPC process and methodology remained fairly consistent (decreasing from 83% to 81% and increasing from 85% to 87%, respectively). Departmental satisfaction declined by a point score of 0.2 to 6.9 (on a scale of 10, where 10 is very satisfied).

Qualitative feedback from departments tended to praise the RPC's engagement with them through informal pre-submission meetings or the initial-review process. Departments expressed concern over the length of the validation process and the burden scrutiny places on policy teams, particularly for small measures. The RPC is currently working with the Government to ensure that scrutiny is focused on the highest impact measures, and is promoting its proportionality guidance across Whitehall. It is also reducing the length of the validation process.

Other external bodies, such as the National Audit Office and the Public Accounts Committee, produce independent reports and studies on the evidence and analysis around regulatory measures (Box 8.1). They assess the effectiveness of the institutions involved in the development of regulatory policies.

Stakeholder feedback is another important measure of the RPCs performance. Feedback has come from across the business community and wider civil society (Box 8.2).

Box 8.1. Examples of external evaluations

The National Audit Office's report on the Business Impact Target[8] criticised the BIT for excluding "over GBP 8 billion in costs to businesses during this Parliament" in 2016, many times greater than the GBP 0.9 billion of savings it includes. It also called for greater *ex post* evaluation of regulation, which reduces the opportunities to learn from past experience. It advocated increasing consideration of social impacts and evaluation of the burden introduced by the existing stock of legislation.

The Public Accounts Committee report on Better Regulation,[9] completed in 2016, also advocated expanding the analysis of policy impacts to consider wider society and introducing greater requirements to monitor and evaluate legislation following its implementation.

Box 8.2. Examples of stakeholder feedback

Josh Hardie, CBI Deputy Director-General:

"The Regulatory Policy Committee plays a crucial role in holding government to account on its deregulatory commitments. Thanks to its scrutiny, businesses can be confident that regulation is grounded in a strong evidence base."

Simon Walker, Director General at the Institute of Directors:

"The Regulatory Policy Committee serves a valuable purpose in scrutinising the cost of government regulation on businesses. Whitehall departments continue to generate significant burdens for firms, so it is very important the RPC is there holding ministers' feet to the fire. With the United Kingdom's pending departure from the EU, there may well be a shake-up in business regulation over the coming years, making the RPC's role even more important."

Stakeholders also praised the appointment of the RPC as the government's IVB in the past:

Mike Cherry, Policy Director at the Federation of Small Businesses:

"We are pleased to see the Regulatory Policy Committee get the legislative backstop it has long deserved. In our manifesto, FSB called for a more powerful RPC. It will now provide the transparent, accountable and independent challenge needed to push the better regulation agenda right across all parts of government."

Frances O'Grady, Trade Union Congress General Secretary:

"We welcome this move, which will help protect the public interest. Regulation and deregulation may sound like exciting topics, but bad regulation can be harmful for both workers and employers – and it can infringe civil liberties. Putting the Committee on a formal statutory footing will help ensure that politicians respect the importance of its independent scrutiny and judgement."

Conclusion and the RPC in the future

The RPC has continually adapted and responded to the needs of business, government and the UK since its inception. A range of future prospects and challenges lie ahead that could see the RPC evolve.

Whilst the RPC has served as the Independent Verification Body for the BIT target between 2015 and 2017, the Government has yet to appoint an IVB for the current parliamentary term. Although it is statutorily obliged to do this, the role may not go to the RPC.

The fact that the RPC's mandate is not embedded in law has allowed the RPC to adapt easily to the government-of-the-day's requirements, for example serving as the IVB. In the future, the scope of regulatory scrutiny may shift. This could see IAs paying increasing attention to wider societal or environmental costs as well as the burden on business. The RPC currently scrutinises many IAs that factor in the impact of a regulation to society, yet it does not produce red-rated opinions on these grounds.

The role of the RPC during the process of exiting the EU is currently undecided also. The first May government published details of its Great Repeal Bill, which will transpose EU legislation onto British statute books following the UK's departure from the EU. Following this, the Government will be able to gradually repeal that legislation which may no longer be desirable to the United Kingdom. The RPC could play a vital part in fulfilling these duties, using its experience in analysing the business burden of regulation to advise on what legislation should be amended, repealed or improved.

Notes

[1] The Government's BIT target for Parliamentary term 2015-2020 has been announced to be "saving of GBP 10 billion to business and voluntary or community bodies from qualifying measures that come into force or cease to be in force during this Parliament"

[2] Measures with a significant impact are those with a gross cost greater than GBP 1 million in a given year.

[3] Numerous administrative exclusions do apply. These were formed in the SBEE Act 2015 and include measures that regulate public bodies, tax/tax administration, temporary measures, grants and financial assistance and procurement. Administrative exclusions include EU legislation and international commitments.

[4] Our most recent report can be found at: www.gov.uk/government/publications/rpc-report-review-of-government-impact-assessment-capability (retrieved: 14 March 2017)

[5] RPC "Case Histories", www.regulatorypolicycommittee.weebly.com/case-histories.html.

[6] RPC Performance Report of 2010-15 Parliament, pg 23, www.gov.uk/government/uploads/system/uploads/attachment_data/file/415102/2015_03_03_RPC_Annual_Report_2014_website_copy_revised_2015_03_19.pdf.

[7] https://www.gov.uk/government/publications/rpc-corporate-report-16-17.

[8] www.nao.org.uk/wp-content/uploads/2016/06/The-Business-Impact-Target-cutting-the-cost-of-regulation.pdf.

[9] https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/487/487.pdf.

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Chapter 9. European Commission Regulatory Scrutiny Board

This chapter describes the institutional setup and activities of the European Commission Regulatory Scrutiny Board, which has replaced its predecessor, the Impact Assessment Board, in 2015.

Short history of the establishment of the oversight body

The European Commission initiates almost all EU legislation. One part of preparing initiatives is to tell lawmakers about the impacts that different solutions might have. Impact assessments are regularly informed by evaluations of existing legislation. Both come before new legislation is put together.

At the Commission, impact assessments present policy problems, justify why the EU should act, and examine alternative courses of action. They assess likely economic, social and environmental impacts. An impact assessment thus informs policy makers' deliberations. The impact assessment becomes available to the public after the College of Commissioners proposes a course of action. It also helps to inform European Parliament and Council deliberations on the Commission's proposal.

The higher quality the impact assessment, the better prepared policymakers will be when they decide what to do, if anything. The Commission's better regulation agenda[1] requires that new proposals that are likely to have significant impact are accompanied by impact assessments. These should explore how policy goals can be achieved in the most efficient way without imposing unnecessary burdens.

Impact assessments take a specific form and follow certain guidelines. There are several required components and procedural steps. These provide structure while also giving Commission services (career civil servants of operational departments) the leeway to custom tailor impact assessments. In particular, the work is launched by an inception impact assessment that is published to attract external feedback. A public consultation then follows. Impact assessments are also normally preceded or accompanied by evaluations of the existing regulatory framework.

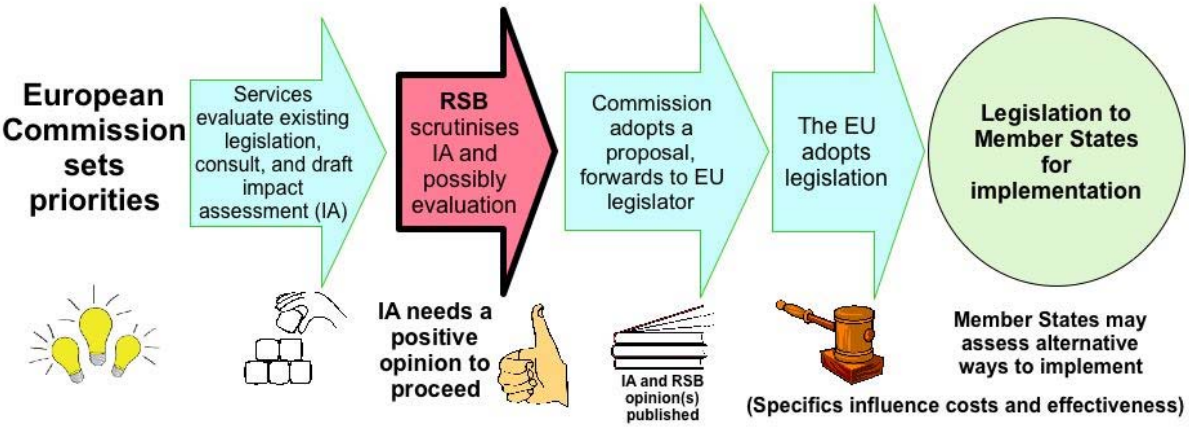
The role of the Regulatory Scrutiny Board (RSB) is to provide expert and arm's length central quality control of every draft impact assessment submitted to them as well as of major retrospective evaluations. The RSB was established by a Decision of the President in May 2015, replacing an earlier Impact Assessment Board (IAB) that had been operating since 2006. The decision to replace the IAB with the RSB stems from the Juncker Commission's focus on further strengthening better regulation. Broadly, the objective is to restore citizens' confidence in the EU's ability to deliver high quality legislation. This is also a priority for the European Parliament and the Council. In 2015, the Juncker Commission introduced a package of measures to this end (the Better Regulation agenda), and the RSB was a part of that package. The first new RSB members started work in early 2016, with additional members joining in the ensuing months.

The RSB reports directly to the President of the Commission, whereas the IAB reported to the Secretariat-General. Compared to the body that it replaced, the RSB offers greater safeguards of independence, is better resourced, and has a broader mandate. In particular, the RSB's predecessor operated as a peer review body and reviewed impact assessments only. Senior managers from within the Commission served on a part-time basis to review impact assessments from other Directorates-General. By contrast, the seven RSB members serve full time on non-renewable terms. In addition to impact assessments, the RSB also reviews selected evaluations of existing policies and legislation. Three RSB members are recruited from outside the Commission.

Institutional framework

The RSB is tightly integrated into the policymaking process. Figure 9.1 illustrates how the RSB exercises its quality control function at a formative stage of the EU legislative process for primary legislation.

Figure 9.1. RSB in the EU institutional framework



Priorities for EU legislation are set at the political level. The work programme then determines how those priorities are followed up. To ensure focus, the launch of work on possible new initiatives requires agreement at the political level and a determination of whether or not an impact assessment is needed.[2] If it is, services will evaluate the status quo and assess likely impacts of various approaches. The RSB scrutinises the work of the services to ensure that the political level is well informed with regard to relevant issues. Examples of such issues include the case for new or revised legislation at the EU level, likely costs and benefits of alternative solutions, views of stakeholders, coherence with other EU legislation, and risks and uncertainties surrounding political decisions.

Any initiative that is subject to an impact assessment needs a positive Board opinion on its impact assessment before the College of Commissioners will formally consider it. A positive Board opinion does not mean that an impact assessment has all of the answers. It should, however, be transparent about what is known, what is not known and where political decisions are required.

If the Board issues a negative opinion, it pauses the progress of the initiative. It signals that the Board wants to see the impact assessment report a second time. The opinion will spell out shortcomings and what services need to do to address them. Services revise the impact assessment report and resubmit it to the Board for a second opinion. The rules of procedure of the Board provide in principle for maximum two submissions. If the second Board opinion is also negative, the matter must be referred to the Commission's political level. The Commission can ask that the initiative be reconsidered or decide nevertheless to take action, possibly after adjustments. It is then committed to explain transparently the reasons behind its decision (see Box 9.1 on second negative opinions).

Box 9.1. Considerations for the RSB to issue a second negative opinion

When the RSB receives an impact assessment for the first time and gives it a negative opinion, the services rework the report and resubmit. Sometimes a resubmission will still have shortcomings. What does the RSB consider before issuing a second negative opinion?

A second negative opinion is in principle final. It is a serious matter, because the procedure requires that a report gets a positive Board opinion before it can advance. A second negative opinion signals that the Board considers that the revised impact assessment still is not fit for purpose. Problems remain, and the lead service should seek the appropriate political guidance on whether and under which conditions this initiative may proceed further.

To date, the RSB has issued second negative opinions on four occasions. These opinions appear to have prompted the political level to actively reassess the proposed approaches. In one case the Commission decided that the impact assessment was not necessary and clarified that the proposal was reflecting the expert advice of a regulatory agency. In the remaining three cases the Commission considered it opportune to go ahead with revised proposals, with rationales laid out in explanatory memoranda to the proposals and in Annex 1 of each final impact assessment.

In the most recent instance, the political level of the Commission requested the Board review one more revised version of an impact assessment that examined options on sustainable finance. The Board did so, noted modifications that addressed its earlier concerns, and issued a positive opinion, albeit with reservations.

Once services receive a positive opinion from the RSB, they finalise the impact assessment and the Commission may propose legislation. The Commission's proposal, the final impact assessment and the RSB opinion(s) are made public and pave the way for decision by the EU legislator. If legislation is adopted, this goes to Member States for transposition into national laws (if necessary) and implementation. Member States could face widely different contexts, so at a national level the costs and the benefits may show a lot of variation.

The RSB thus plays a central role at a formative stage, before EU legislative proposals are drafted and well before the decision process of the EU legislator is completed. To play its role effectively, it is essential that the RSB has at least arm’s length independence in its scrutiny, is well-informed, internally respected and credible.

Board members are senior officials with considerable experience. All RSB members are appointed by the College of Commissioners upon a proposal of the President, after having consulted the First Vice-President. To help ensure independence, Board members serve for a fixed non-renewable period of three years and have no policy responsibilities within the Commission.

Upon being appointed, all members of the Board are subject to the staff regulations that govern the conditions of employment of officials and other servants of the European Union. They are also subject to the Commission's code on good administrative behaviour. These lay down strict rules on ethics, confidentiality and conflict of interest. The Board reports directly to the President of the Commission and is administratively attached to the

Commission's Secretariat-General. A 15-person Unit of the Secretariat-General serves as the Board Secretariat on a part-time basis. This arrangement promotes effective co-ordination between the Board and Commission services. The Secretariat-General co-ordinates how services execute on the Better Regulation agenda, and the RSB functions as a central body for independent quality control.[3]

The Board normally has a formal meeting every two weeks to address generally three to five files. Additional ad hoc meetings are also regularly organised to cope with any unforeseen and urgent scrutiny requirements. At these meetings, Commission services respond to Board members' questions on draft impact assessments and evaluations that the Board is scrutinising. The Board issues its written opinions generally within three working days of meeting.

With regard to downstream users of impact assessments, the RSB interacts several times each year with other EU bodies working on better regulation issues, including the European Parliament's Impact Assessment Unit, the Committee on the Regions, the Economic and Social Committee, and others. This takes the form of informal exchanges of views on general issues, rather than on any specific cases. The RSB is interested in the views of those who rely on impact assessments for information with regard to their perceptions of quality. The RSB also welcomes opportunities to clarify its approach and activities, and to explain in general terms what it is seeing.

Mandate, scope of actions and activities

Formally, the Board is accountable to the political level of the Commission. Concretely, it provides advice and feedback to the services preparing policy initiatives. It prepares its opinions independently from any national or European institution, body, office or agency. To this end, the Board reviews the quality of draft impact assessment reports and staff working documents of major retrospective evaluations,[4] taking into account the Commission's Better Regulation Guidelines. Table 9.1 summarises the role of the RSB in the system.

The Board's opinions on impact assessment reports are not assessments of the legislative proposals, as these are presented and decided only later. The RSB assesses: whether an impact assessment report is fit for its purpose, which is to inform policy makers; how well does it examine alternative ways to address the problems targeted by each initiative?; and has the report adequately gathered, organised and presented the best available evidence regarding significant impacts and political trade-offs? The RSB does not see the legislative proposal when assessing the impact assessment. It also does not decide whether or not an initiative requires an impact assessment. This is a task of the Secretariat General.

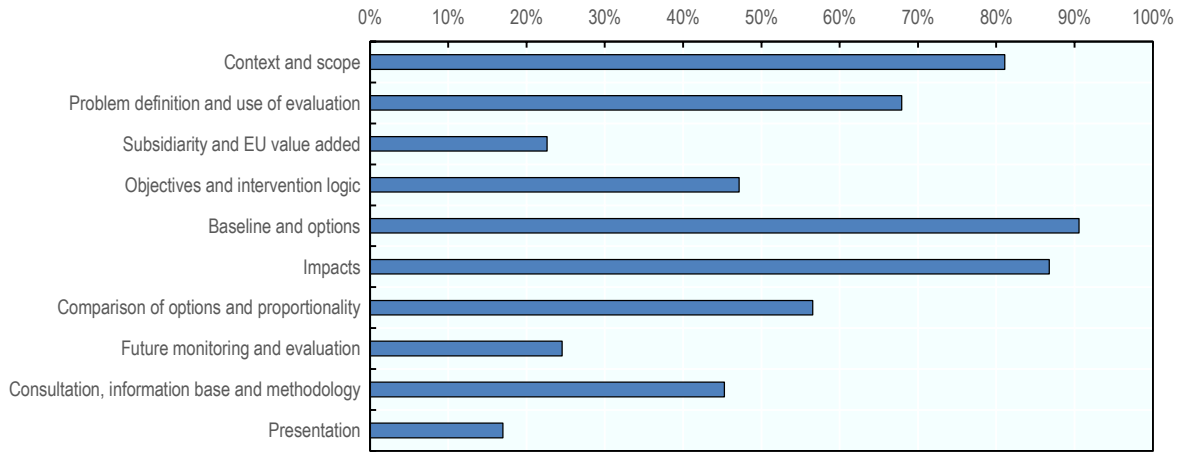
All Board members read all files. The Board deliberates on each case and decides on the overall rating by simple majority vote.[5] The Board seeks to reach as many decisions as possible by consensus. Not all decisions are unanimous, but final opinions ultimately reflect the nuanced views and concerns of the entire Board. The Board's opinions are made available promptly to the relevant services, the Secretariat-General and to the political level. They are an integral part of the file considered by the College and are made public in parallel with the adoption of the related initiative.

Table 9.1. Areas and tasks of regulatory oversight

Areas of regulatory oversight (generic for any scrutiny body)	RSB activities
Quality control (scrutiny of process)	The RSB assesses fitness for purpose of impact assessments and selected evaluations. The RSB does not review legislative texts.
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	The RSB does not provide input on what initiatives the Commission should take up, evaluate or make subject to an impact assessment. The RSB reviews how stakeholder views are collected and used in policy making, but does not consult stakeholders directly on regulatory matters.
Systematic improvement of regulatory policy (scrutiny of the system)	The RSB advises the Secretariat-General on how to improve the system for impact assessments and evaluations. The RSB also interacts with the European institutions, international fora and Member State counterparts, sharing experiences from its scrutiny work. The RSB publishes an annual report and organises an annual conference to feed a broader debate on better regulation with academia and stakeholders.
Co-ordination (coherence of the approach in the administration)	The RSB conducts upstream meetings with Commission services to ensure common understandings of impact assessment and evaluation processes and problems. The Secretariat-General also participates in these meetings and is responsible for co-ordination across the Commission.
Guidance, advice and support(capacity building in the administration)	The Secretariat-General is responsible for providing guidelines, assistance and training to Commission services. The RSB provides regular input to the Secretariat-General with regard to how guidelines and guidance are working in practice, and may suggest changes if some elements seem prone to quality problems. The RSB also conducts upstream meetings with Commission services.

Figure 9.2 shows which issues the Board has most frequently raised in its opinions on impact assessments. In 2017, at least 80% of impact assessments had shortcomings with regard to baseline and options, analysis of impacts and context and scope. A large majority also had shortcomings with regard to problem definition and use of evaluation.

Figure 9.2. Issues raised in Board opinions of impact assessments, January-December 2017



The Board's opinions thus accompany the draft initiative together with the impact assessment throughout the Commission's political decision making. After the Commission adopts a proposal, it publishes the impact assessment and the related Board opinion or opinions online, and formally transmits the proposal and impact assessment to the Legislator. This way, Board opinions help to inform Council and European Parliament decision-makers, Member States and the public in general.

In conducting its work, the RSB follows written rules of procedure, which are publicly available on the Commission's website.[6] It also publishes an annual business plan that presents the work planning for the calendar year ahead, and an annual report that accounts *ex post* for its activities in the preceding calendar year.

From the outset, the RSB has worked to build a system that promotes transparency and accountability. The system should also facilitate continual learning and improvement. Besides scrutinising and issuing opinions on impact assessments and evaluations, the RSB proactively took the following initiatives in 2017:

- The RSB monitors separately several quality dimensions of reports that it reviews, at the various stages of its involvement. This allows for more systematic and detailed analysis of improvements that the process has generated. Initial analysis confirms that quality ratings of impact assessments are higher and less variable at the end of the process than at the beginning, with weaker reports showing the greatest improvement.
- The RSB has offered to hold upstream meetings with Commission services if they request it, to discuss complicated files well in advance of Board scrutiny. The initiative has proven popular with most services, and a growing share of files have benefited from such early discussions.
- Based on an updated better regulation toolbox, the RSB has introduced a template for assessing quantification, and has disseminated this to the services. Use of the template has already resulted in a marked improvement in transparency and levels of quantification of costs and benefits.

Capacities

The Board has seven full-time members, serving three-year non-renewable terms. All are senior temporary or permanent officials of the Commission. The Chair has the rank of Director General. The Chair and three members are Commission career officials with institutional familiarity and extensive experience working on a wide range of EU policy issues. They are all appointed following an open internal competition. The three remaining members are externally recruited on the basis of proven expertise in impact assessment, *ex post* evaluation and regulatory policy generally, covering macroeconomics, microeconomics and social and environmental policies. Requirements include at least 15 years of relevant experience of which at least 5 in a high level advisory position. Recruitment takes place through an open hiring process. The Board's work is supported by two full-time assistants and the unit in the Secretariat-General that serves as the Board Secretariat on a part time basis. The secretariat interfaces with the services and provides them with guidance, training and schedule planning. It receives files and assists the Board with first drafts of quality checklists and opinions. The Board examines all files and issues its opinions on reports.

Overall, the resources available to the Board are thus seven full-time Board members and eight full-time equivalent staff members.

Monitoring and assessment of the impacts and effectiveness of the oversight body

The RSB has identified three key performance indicators (KPIs) against which it can be assessed annually. The KPIs provide a mechanism for monitoring how the RSB is making use of its resources. The three KPIs are as follows:

- The number of impact assessments and evaluations scrutinised
- On-time delivery of RSB opinions
- How much the impact assessments improved in quality following interactions with the Board.

How has the Board performed on the basis of these metrics? By the end of 2016 the RSB had reviewed 60 impact assessments and 7 major evaluations. In 2017 the Board reviewed 53 impact assessments and 17 evaluations. To this can be added 21 second opinions delivered on cases that received negative opinions and were resubmitted to the Board. The RSB has delivered its first opinions within three working days of Board meetings, and second opinions on or before each date promised.

Starting in 2017, the Board has also developed indicators to track the quality of impact assessments. These indicators apply to ten areas, including problem definition and use of evaluation, subsidiarity and EU value added, baseline and options, impacts, proportionality, consultation, information base and methodology.[7] Use of these indicators will better enable the Board to report on improvements in better regulation practices, both following Board scrutiny and over time. Preliminary analysis delivers the following key findings:

- Impact assessments that were sent to the Board were of very mixed quality.
- Impact assessments improved considerably following Board opinions. The weakest impact assessments tended to improve the most. The final quality of impact assessments that ultimately received a Board positive opinion was both better and less variable.
- Services seem to have taken Board criticism of first submissions especially seriously when the first opinion was negative.

Board opinions carry considerable weight, for reasons that are both procedural and transparency related. The decision process requires a positive opinion, and opinions are available first internally and eventually also externally. This combination provides strong incentives to deliver high quality from the outset. The *ex post* transparency also makes any Board concerns hard to ignore.

Commitments under the Interinstitutional Agreement on Better Law-Making[8] and actual practice show that the European Parliament and the Council value the Commission's impact assessments and the accompanying views of the RSB. Members of Parliament and of the Council have frequently referred to findings of impact assessments, and to RSB opinions as well as raised questions when some legislative proposals were not accompanied by impact assessments.[9]

The Board anticipates that its activities will be reviewed around the time that the terms of current board members end in 2019. To facilitate such a review, the Board has developed an intervention logic that charts the different channels through which the RSB is thought to have an impact on the quality of EU regulation. The RSB is systematically collecting evidence to document how each of these channels appears to be working.

Once the Commission finalises and publishes impact assessments, these are subject to outside parties' scrutiny. The European Parliament and the Council may comment publicly on the quality of impact assessments. Likewise, oversight bodies at the Member State level and other stakeholders sometimes take an interest in some impact assessments. Comments from these outside parties provide users' views on the quality of reports that the RSB has scrutinised. As such, these views are valuable and helpful to the RSB. Since

these are views from downstream in the process, they are in a position to offer additional and more specific information about at least some stakeholder concerns. They may also provide more detailed information on expected benefits vs implementation costs in specific countries.

Conclusion

The RSB looks mainly at primary legislation and is very close to the policymaking process. It is part of the Commission's holistic approach to better regulation This means that it concerns itself not just with issues of quantification and regulatory burden, but also EU value added, proportionality, problem definition and use of evaluation. The RSB thus examines impacts, including the benefits of policies more generally.

The RSB intervenes upstream where decisions are being made. Its input improves both the file under consideration and the process of producing high-quality impact assessments and evaluations. Its strength is in its ability to pause the process. This also emphasises its responsibility to deliver high-quality scrutiny.

The revised structure and added resources of the RSB gives it more firepower and makes it a more professional and focused body than the IAB that preceded it. Overall, this has helped to deliver measurably better impact assessments. A stricter adherence to the 'evaluate 'first' principle and a more systematic involvement of stakeholders have been important drivers of this trend.

The RSB pays a lot of attention to evaluations. In the regulatory cycle, evaluations have a place both upstream and downstream to impact assessments. Strengthening evaluations and integrating them better with impact assessments thus feeds into higher-quality regulation. Institutionally the RSB is well-placed to help evaluations contribute more effectively to learning.

Institutionally the RSB has a broad overview of policy proposals across the Commission. This allowed the RSB to contribute constructively to, for example, the Multiannual Financial Framework exercise of long-term budgetary planning for 2021-27. Similar opportunities to contribute to wide-ranging exercises may also emerge in the future.

Notes

[1] See COM(2015) 215 Better regulation for better results: of 19.5.2015. The better regulation approach is built around impact assessment, evaluation and stakeholder consultation.

[2] According to the Better Regulation Toolbox, an impact assessment is required when the expected economic, environmental or social impacts of EU action are likely to be significant. For more details, see www.ec.europa.eu/info/files/better-regulation-toolbox-9_en. The Secretariat-General and the cabinet of the First Vice-President are responsible for ensuring that impact assessments are carried out in cases where they are required.

[3] For more information on how the RSB works, see Chapter 1 of the RSB Annual Report 2016, available at https://ec.europa.eu/info/sites/info/files/2016-rsb-report_en.pdf.

[4] The RSB selects the evaluations it will review. Considerations include the size and scope of what is being evaluated, and how the evaluation will feed into upcoming political decisions.

[5] Of the members present, including the Chair and excluding any members who abstain. The quorum (4 members) must be reached. In the event of a tie, the Chair's vote is decisive.

[6] https://ec.europa.eu/info/sites/info/files/regulatory-scrutiny-board-rules-of-procedure_en.pdf.

[7] See Figure 9.2 for an illustration of how this is reflected in opinions. The Board has also developed quality performance indicators for evaluations. Specifically, the Board has been considering design and methodology, effectiveness and efficiency, relevance and EU value added, coherence, validity of conclusions and presentation.

[8] See http://eur-lex.europa.eu/legal-content/en/txt/?uri=uriserv:oj.l_.2016.123.01.0001.01.eng&toc=oj:l:2016:123:toc,%20articles%2013%20and%2014.

[9] Chapter 1 of the EC Better Regulation Guidelines describes some possible exceptions to better regulation requirements.

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Case Studies of RegWatchEurope Regulatory Oversight bodies and the European Union Regulatory Scrutiny Board

Regulatory oversight is a crucial ingredient of effective regulatory frameworks. Institutional setups and governance arrangements for regulatory oversight differ substantially across OECD countries. Beyond actors traditionally charged with oversight functions at the centre of government, the past 20 years have seen a surge in bodies located at arm's length from the executive. This publication documents this trend by presenting case studies of the seven members of RegWatchEurope from the Czech Republic, Finland, Germany, the Netherlands, Norway, Sweden, and the United Kingdom, as well as of the European Union Regulatory Scrutiny Board. It aims to describe and compare their common features and differences, as well as draw some lessons from their establishment and their experience. This report feeds into work of the OECD Regulatory Policy Committee on regulatory oversight, including a dedicated chapter of the *OECD Regulatory Policy Outlook 2018* on the institutional setup for regulatory policy as well as ongoing discussions on the mechanics and critical conditions for effective regulatory oversight.

https://oe.cd/RPO2018