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Building Regulatory Policy Systems in OECD Countries

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OECD REGULATORY POLICY WORKING PAPERS

BUILDING REGULATORY POLICY SYSTEMS IN OECD COUNTRIES

Christiane Arndt*, Sarah Hermanutz*, Céline Kauffmann* and Rebecca Schultz*

JEL Classification: K2; O5; P5

* OECD, France

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BUILDING REGULATORY POLICY SYSTEMS IN OECD COUNTRIES

Christiane Arndt*, Sarah Hermanutz*, Céline Kauffmann* and Rebecca Schultz*

ABSTRACT

This paper exploits the rich dataset collected in the context of the 2014 Regulatory Indicators Survey to analyse how countries put in place the building blocks of their regulatory policy systems. It complements the 2015 OECD Regulatory Policy Outlook by systematically examining country practices in the areas of regulatory impact assessment, stakeholder consultation and *ex post* evaluation of regulations. In particular, it seeks to inform discussions about the sequencing of measures in implementing policy in these three areas, through the adoption of legal requirements, the development of appropriate methodology, the establishment of transparency mechanisms and of oversight and quality control. In order to provide concrete illustration and lay the ground for practical reform advice, the paper identifies groupings of countries around the emphasis they put on each of these tools.

JEL Classification: K2; O5; P5

Key words: stakeholder engagement, consultation, open government, Regulatory Impact Assessment, evidence-based decision making, *ex post* evaluation, red tape, review, evaluation, composite indicators, transparency, oversight, quality control, methodology

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NOTE BY THE SECRETARIAT

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INTRODUCTION

Regulation is an essential instrument for governments to attain policy objectives. When regulation is designed and implemented well, it can promote economic growth, increase social welfare, and enhance the quality of life. Badly designed regulation, however, will be ineffective and inefficient in reaching its goals, create unnecessary burden, and divert and impede investment, entrepreneurship and the creation of jobs. Hence, regulatory policy, which includes the rules, processes and institutions in place for designing, implementing and evaluating regulation, remain a potent means of stimulating economic activity and promoting societal well-being (OECD, 2015).

The effective implementation of regulatory policy in practice requires the consideration of many different aspects and elements of regulatory processes and institutions. Policy makers have consistently made the case for collecting better information about where investments in programmes to improve regulations should be focused to pay growth and welfare dividends. This information is necessary to target scarce resources for reform efforts, to communicate progress and to generate the political support needed for implementing regulatory policy reforms.

The OECD has collected a wide range of evidence and produced a number of analytical work and instruments to support countries' efforts in developing their regulatory policy. The *2012 Recommendation of the Council on Regulatory Policy and Governance* (Recommendation) provides the normative framework and strategic orientations on the key pillars of regulatory policy. The development of the *Framework for Regulatory Policy Evaluation* (OECD, 2014) is a first step to provide an analytical framework to assist countries in evaluating their regulatory policy programmes. The *2015 Regulatory Policy Outlook* presents an overview of the progress made by countries in adopting regulatory policy tools and institutions. The *Indicators of Regulatory Policy and Governance* (iREG, see Box 1), the Outlook's main evidence base, present a unique and rich dataset that takes stock of countries' practices in carrying out Regulatory Impact Assessments (RIA), stakeholder engagement when developing regulations and *ex post* evaluation.

This paper builds on the detailed knowledge contained in the iREG to stimulate discussion on reform priorities and to help countries plan their next steps in improving their regulatory policy system. It aims to provide new insights into the way regulatory policy is carried out by countries, notably whether practices in RIA, stakeholder engagement in the development of regulations and *ex post* evaluation of regulations tend to be developed simultaneously or not and what priorities countries put on the respective areas of methodology, systematic adoption, transparency and oversight. In the first section of the paper, the analysis identifies groupings of countries around the emphasis they put on each respective tool. To stimulate discussion on how to stage the improvement of each of these tools, the second section analyses what policy choices distinguish relative groupings of countries in each of the three areas.

Box 1. 2015 Indicators of Regulatory Policy and Governance (iREG)

The 2015 Indicators of Regulatory Policy and Governance (iREG) present up-to-date evidence of OECD member countries' and the European Commission's regulatory policy and governance practices advocated in the *2012 Recommendation of the Council on Regulatory Policy and Governance*. They cover in detail three principles of the 2012 Recommendation: stakeholder engagement, Regulatory Impact Assessment (RIA) and *ex post* evaluation, and provide a baseline measurement to track countries' progress over time and identify areas for reform. The Indicators present information for all 34 OECD member countries and the European Commission as of 31 December 2014.

Box 1. 2015 Indicators of Regulatory Policy and Governance (iREG) (*cont.*)

The 2015 Indicators draw upon responses to the 2014 Regulatory Indicators survey. Answers were provided by delegates to RPC and central government officials. Compared to previous surveys, the 2014 survey puts a stronger focus on evidence and examples to support country responses, as well as on insights into how different countries approach similar regulatory policy requirements. The survey questionnaire has been developed in close co-operation with RPC delegates and members of the OECD Steering Group on Measuring Regulatory Performance. Survey answers underwent a verification process carried out by the OECD Secretariat in co-operation with delegates to the RPC in order to enhance data quality and ensure comparability of answers across countries and over time.

The survey focuses on RIA and stakeholder engagement processes for developing regulations (both primary laws and subordinate regulations) that are carried out by the executive branch of the national government and that apply to all policy areas. Questions regarding *ex post* evaluation cover all national regulations regardless of whether they were initiated by parliament or the executive. Based on available information, most national regulations are covered by survey answers, with some variation across countries. Most countries in the sample have parliamentary systems. The majority of their national primary laws therefore largely originate from initiatives of the executive. This is not the case, however, for the United States where no primary laws are initiated by the executive, or, to a lesser extent, for Mexico and Korea where the share of primary laws initiated by the executive is low compared to other OECD member countries (4% over the period 2009-2012 and 30% in 2013 in Mexico and 16% in Korea over the period 2011-13).

Based on the information collected through the 2014 survey, the OECD has constructed three composite indicators on RIA, stakeholder engagement for developing regulations, and *ex post* evaluation of regulations in order to help present the information collected in an easily expressible format. Each composite indicator is composed of four equally weighted categories: systematic adoption, methodology, transparency, and oversight and quality control.

While composite indicators are useful in their ability to integrate large amounts of information into an easily understood format (Freudenberg, 2003), they cannot be context specific and cannot fully capture the complex realities of the quality, use and impact of regulatory policy. In-depth OECD country peer reviews are therefore required to complement the indicators and provide readers with an in-depth assessment of the quality of a country's regulatory policy, taking into account the specific governance structures, administrative cultures and institutional and constitutional settings to provide context-specific recommendations. Moreover, the results of the iREG indicators, as those of all composite indicators, are sensitive to methodological choices. It is therefore not advisable to make statements about the relative performance of countries with similar scores. Please note that while the implementation of the measures assessed by the indicators aim to deliver better regulations, the indicators should not be interpreted as a measurement of the quality of regulation itself.

All underlying data and scores for the composite indicators are available at *http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm*.

Further information on the indicator design and methodology, as well as the full list of survey questions covered by the indicators can be found in: Arndt, C., A. Custance Baker, T. Querbach and R. Schultz (2015), "2015 Indicators of Regulatory Policy and Governance: Design, Methodology and Key Results", *OECD Regulatory Policy Working Papers*, No. 1, OECD Publishing, Paris. Results and first analysis of the indicators are available in the OECD Regulatory Policy Outlook 2015.

Source: www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Results show that while OECD countries aim to build a solid regulatory policy system comprising all the elements of the OECD Recommendation, no country has yet fully implemented it. Countries are at different stages of implementing the Recommendation. Because they are under resource constraints and budgetary pressures, they need to make decisions on which practices to adopt first and which practices might be introduced at a later stage. These choices may limit the effectiveness of the overall regulatory policy system – as RIA, stakeholder engagement and *ex* post evaluation are complementary tools to enhance regulatory quality.

INVESTMENT IN KEY REGULATORY POLICY TOOLS

The iREG show countries progress in implementing the Recommendation in three key areas: *ex ante* analysis of the impact of planned regulations through regulatory impact assessment, *ex post* analysis of existing regulations and the engagement of stakeholders in the design of regulations. While the Regulatory Policy Outlook provides a descriptive analysis of the results against each of the three composite indicators, much more can be inferred from a combined analysis of these policy tools.

Correlations across policy tools

The combined analysis of these three composite indicators (see Table 1) shows that countries that invested in RIA also tended to invest in stakeholder engagement systems. There is also a clear relationship between investments in *ex ante* and *ex post* evaluation systems. The weakest correlation can be found between the scores on *ex post* evaluation and stakeholder engagement, i.e. a number of OECD countries have strong stakeholder engagement systems but only rudimentary *ex post* evaluation of regulations in place. This is not true for the reverse; no countries that are strong on *ex post* evaluation are in the starting group for stakeholder engagement. To some extent, this result reflects the fact that stakeholder engagement is a widespread discipline of regulatory policy. By contrast, *ex post* evaluation is a practice that only a limited number of OECD countries apply systematically.

Table 1. Correlation results between composite indicators

	Ex post evaluation	**Stakeholder engagement**
Regulatory impact assessment	0.67	0.67
Stakeholder engagement	0.39	

Note: The underlying scores represent the average of primary laws and subordinate regulations, except for the scores of Regulatory Impact Assessment and Stakeholder Engagement for the United States, for which only the results for subordinate regulations are used. Scores are based on composite indicators constructed on the basis of qualitative data. For details on the construction of the composite indicators, see Box 1.
A correlation coefficient is a measure of the degree to which two variables tend to move together. The coefficient has a value between plus and minus 1, which indicates the strength and direction of an association. Please note that correlation does not imply causation.

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Country groupings across policy tools

The analysis of the country groupings taken from the OECD Regulatory Policy Outlook (see Annex I) - which were based on the results on the composite indicators on RIA, *ex post* evaluation and stakeholder engagement (see Box 2), confirms the strong correlation between the three tools of regulatory policy (see Figure 1). Countries with strong RIA practices also tend to have invested in open stakeholder engagement systems and in *ex post* evaluation. No countries that are in the advanced group on RIA are in the starting group for stakeholder engagement or *ex post* evaluation.

Box 2. Description of country grouping

The grouping of countries in each policy tool is derived from the OECD Regulatory Policy Outlook (OECD, 2015, p. 29) and based on the average of countries' scores on each policy tool. For analytical purposes, countries that score 0.5 above the average are classified in the advanced group, countries that score 0.5 below the average are categorized in the starting group and the remaining countries form the intermediate group. This relative grouping has been set by the authors based on the observed composite scores in OECD countries.

In order to explore the sensitivity of the country grouping, we extended and reduced the range of the intermediate group by 10% (0.525 above and below and 0.475 above and below the respective indicator mean instead of 0.5). With respect to the stakeholder engagement indicator, if the range of the middle group was extended by 10%, Spain would move up from the starting to the middle group and the Czech Republic would move down from the advanced to the middle group, If the range of the middle group for stakeholder engagement was reduced by 10%, Poland would move up from the middle to the advanced group. With respect to the RIA indicator, the Czech Republic would move up from the middle to the advanced group if the range of the middle group was reduced by 10%. With respect to the *ex post* evaluation indicator, extending or reducing the range of the middle group does not lead to any changes in the grouping. Consequently, the country grouping is not particularly sensitive to small changes in the group limits.

Countries' average score on stakeholder engagement is 2.09 and on RIA 2.01. However, for *ex post* evaluation, countries' average score is considerable lower at 1.54, suggesting OECD countries have adopted comparatively fewer elements of the 2012 Recommendation in the area of *ex post* evaluation. Hence, for *ex post* evaluation it has to be kept in mind that countries scoring above 1.04 already belong to the intermediate group and countries scoring above 2.04 already belong to the advanced group.

This method results in the following distribution of countries across the three groups: For stakeholder engagement, 11 countries are in the starting group, 14 countries in the middle group and 10 countries in the advanced group. For RIA, 11 countries are in the starting group, 14 countries are in the middle group and 10 countries are in the advanced group. For *ex post* evaluation, 10 countries are in the starting group, 18 countries are in the middle group and 7 countries are in the advanced group.

Country groupings

	Stakeholder engagement	RIA	Ex post evaluation
Advanced group	AUS, CAN, CHE, CZE, EST, GBR, MEX, SVK, SVN, USA	AUS, CAN, CHE, DEU, EST, EU, GBR, MEX, NZL, USA	AUS, BEL, CAN, DEU, EU, GBR, MEX
Intermediate group	BEL, DEU, DNK, EU, FIN, FRA, GRC, ISL, KOR, NZL, NOR, POL, SWE, TUR	AUT, BEL, CZE, ESP, FRA, HUN, IRL, ITA, KOR, LUX, POL, SVK, SVN, SWE	AUT, CHE, DNK, EST, HUN, ISL, ISR, ITA, KOR, LUX, NLD, NZL, NOR, POL, PRT, SVN, SWE, USA
Starting group	AUT, CHL, ESP, HUN, IRL, ISR, ITA, JPN, LUX, NLD, PRT	CHL, DNK, FIN, GRC, ISL, ISR, JPN, NLD, NOR, PRT, TUR	CHL, CZE, ESP, FIN, FRA, GRC, IRL, JPN, SVK, TUR

Note: The underlying scores are an average of the scores for primary laws and subordinate regulations, except for stakeholder engagement and regulatory impact assessment for the United States, for which only the results for subordinate regulations were used.

Overall, two relatively homogeneous sets of countries[1] emerge. A first set includes 10 countries with advanced RIA practices. These countries also have relatively advanced stakeholder engagement and *ex post* evaluation practices. A second set comprises 11 countries with starting RIA practices. These countries also feature practices for stakeholder engagement and *ex post* evaluation that are either at the starting or middle level. A third group of countries gathers the remaining 14 OECD jurisdictions. These countries display middle level practices in relation to RIA and a very heterogeneous performance with respect to stakeholder engagement and *ex post* evaluation.

1. Please note that the grouping of countries taken from the OECD Regulatory Policy Outlook (2015) is not based on a statistical cluster analysis. Please see Box 2 for the methodology.

Most countries with a common law system (Australia, Canada, New Zealand, the United Kingdom and the United States[2]) are in the first cluster, with a strong emphasis on regulatory impact assessment and stakeholder engagement. Three countries from this group are in the advanced group for all three regulatory policy tools. However, there are also countries with a civil law system (Estonia, the Czech Republic, Germany and Mexico) and the European Union in the first cluster, having advanced RIA practices and relatively advanced stakeholder engagement and *ex post* evaluation practices in place. Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) also seem to have similar systems in place. They are mostly in the middle group for stakeholder engagement and *ex post* evaluation, and in the starting group for RIA with the exception of Sweden. Central and Eastern European countries (Czech Republic, Estonia, Hungary, Poland, Slovak Republic, Slovenia) are mostly in the middle group for RIA and in the advanced or middle group for stakeholder engagement with the exception of Hungary where engaging with stakeholders is not a policy priority.

Countries that were particularly affected by the financial and economic crisis[3] (Greece, Iceland, Ireland, Italy, Portugal and Spain) score lower on the iREG indicators than other OECD countries[4]. Comparing iREG with information collected before the crisis, it seems that this was already the case before the crisis. The exception is Ireland where the regulatory policy system was more advanced before the crisis and is now less of a priority because of austerity measures.

Figure 1. Grouping of countries across policy tools

	RIA advanced group			RIA intermediate group			RIA starting group		
	ex post advanced group	ex post intermediate group	ex post starting group	ex post advanced group	ex post intermediate group	ex post starting group	ex post advanced group	ex post intermediate group	ex post starting group
stakeholder advanced group	AUS CAN GBR MEX	CHE EST (USA)*			SVN	CZE SVK			
stakeholder intermediate group	DEU EU	NZL		BEL	KOR POL SWE	FRA		DNK ISL NOR	FIN GRC TUR
stakeholder starting group					AUT HUN ITA LUX	ESP IRL		ISR NLD PRT	CHL JPN

Note: *The underlying scores are an average of the scores for primary laws and subordinate regulations, except for stakeholder engagement and regulatory impact assessment for the United States, for which only the results for subordinate regulations were used. The groupings are based on countries that scored 0.5 above or below the mean score. The grouping of countries is based on Regulatory Policy Outlook, p. 29. Please see Box 2 for further details on the grouping of countries.

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

2. Further OECD countries with a common law system are Ireland and Israel.

3. These countries were identified by the OECD Economics Department based on a combination of criteria, including a change in GDP and government debt following the onset of the crisis, and the time it took countries to recover from the crisis.

4. Please note that this observed association does not imply causation. Further research is required to investigate the complex interrelations between regulatory policy and economic performance.

A crucial finding of the Regulatory Policy Outlook (OECD, 2015) is that *ex post* evaluation tools are much less systematically applied across countries than *ex ante* evaluation. This is illustrated by the lower average on the composite indicator for *ex post* evaluation compared to the average for stakeholder engagement and *ex ante* evaluation. In addition, the distribution of scores differs across composite indicators. There are fewer countries in the advanced group for *ex post* evaluation (i.e. those with scores 0.5 above the average, see Box 2), and the jump in the scores between the intermediate and the advanced group is more pronounced. This possibly points to the fact that countries give a lower priority to *ex post* evaluation on the regulatory policy reform agenda. Only a few countries have made it a substantial reform priority so far.

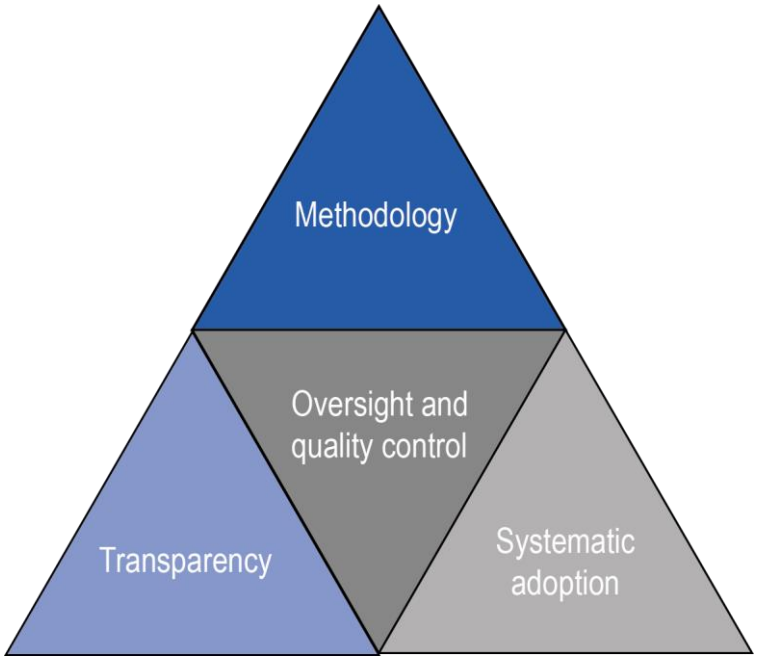
A number of political and technical challenges may explain the lack of emphasis on systematic *ex post* evaluation (OECD, 2013): Governments may focus on implementing their election promises and on solving daily crises instead of reviewing what was regulated some time ago. Second, systematic *ex post* evaluation requires resources which are scarce. Third, reviews can also lead to "review fatigue" if reviews are not targeted and their benefits are not clear. Fourth, regulations that are costly to an economy can also provide benefits to select groups or be perceived to be more widely beneficial than they actually are, so that reform may accordingly be resisted. Accordingly, special interest groups or the public at large may resist reform of the regulations. And in some cases governments may wish to implement systematic *ex post* evaluation but face important challenges to move the culture in the administration towards open and evidence-based policy-making. Successful *ex post* evaluation does require a culture of acknowledging and allowing for failure, but ministries do not want to be blamed for unsuccessful policy measures. Given these challenges the institutional setting for *ex post* evaluation is critical. A standing capacity with reference to regularly undertake reviews in key policy areas and political leadership are essential to communicate the potential gains of *ex post* evaluation and to overcome resistance to reform.

Countries' scores on the three indicators are a continuum. Small changes in practices can therefore lead to changes in their position relative to other countries, in particular for the stakeholder engagement indicator and to a lesser extent for the RIA indicator (see Annex I). Consequently, a few countries at the boundaries of the three groups would move up to the next higher group following some modest reforms but a few countries may also easily move down a group in case of stagnation (see Box 2). This is much less the case for the *ex post* evaluation indicator where the gaps between the three groups are large.

POLICY CHOICES TO IMPROVE EVALUATION AND STAKEHOLDER ENGAGEMENT SYSTEMS

Countries wishing to improve their regulatory policy systems may look at countries that are one step ahead for guidance. The indicators can help to identify these countries and to understand what additional investments they have made into their regulatory policy system. This section analyses the key policy differences that distinguish countries in one group from the next group. It draws for this purpose on the subcategories that constitute the composite indicators for stakeholder engagement, RIA and *ex post* evaluation.

Figure 2. Overview of categories for the three composite indicators



Each of the three composite indicators is composed of the same four categories, which provide critical information on the building blocks of regulatory policy:

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

The maximum score that can be achieved on each category is 1.

A number of countries that are in the starting group for a regulatory policy tool might already have put in place quite advanced practices in one or more of the four categories systematic adoption, methodology, transparency and oversight and quality control. To further look into this, we calculated, separately for starting, intermediate and advanced countries (see Box 2), the percentage of countries that have advanced practices in place for each of the four categories, scoring above the category mean (i.e. > 0.5).[5]

This analysis helps to understand for each policy tool how countries stage the introduction of the four building blocks highlighted in the composite indicators, i.e. systematic adoption, methodology, transparency and oversight and quality control. The results are reported below separately for stakeholder engagement, RIA and *ex post* evaluation.

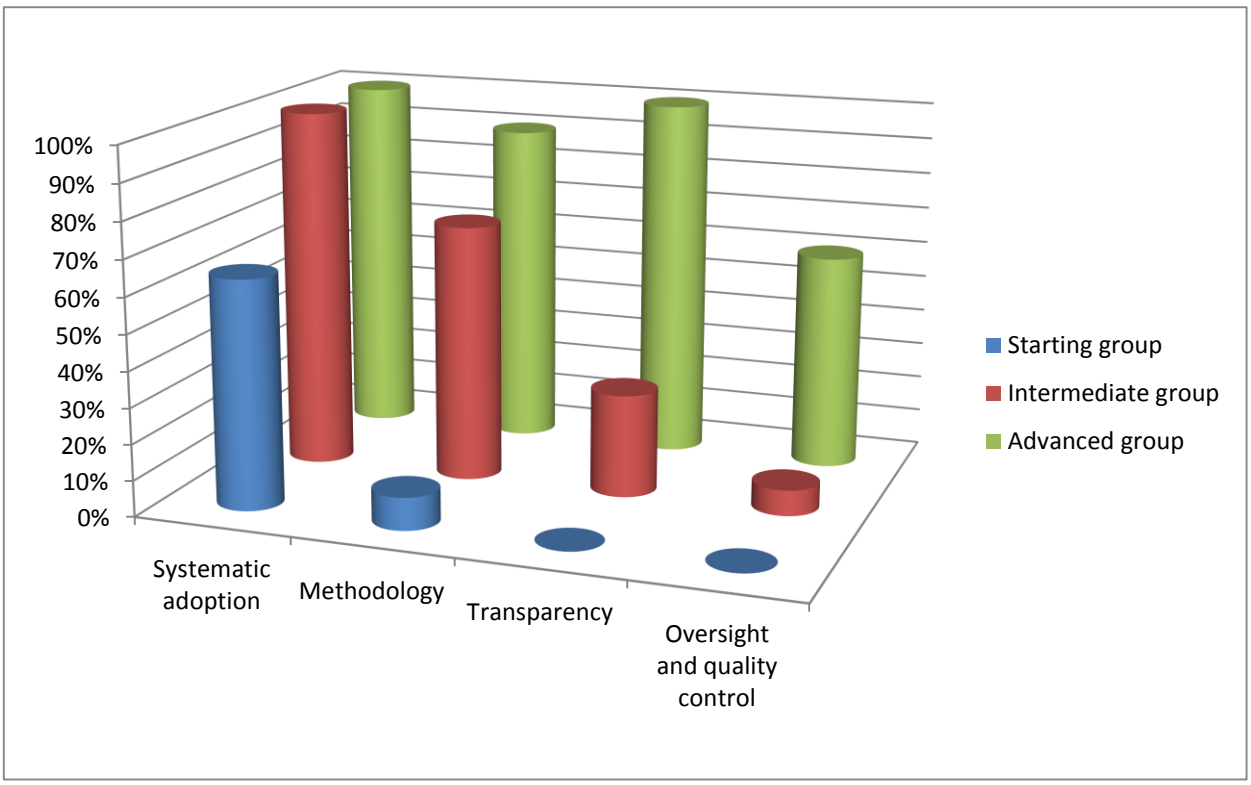
Stakeholder engagement

A process of communication, consultation and engagement which allows for public participation in the regulation making process as well as in the revision of regulations can help governments understand citizens', business' and other stakeholders' needs. In addition, administrations may be pursuing public consultation in an effort to regain trust in governments (OECD, 2015). Also, it can help governments collect more information and resources, increase compliance and reduce uninformed opposition. It may enhance transparency and accountability as interested parties gain access to detailed information on potential effects of regulation on them (OECD, 2012).

As reflected in the Regulatory Policy Outlook, most OECD countries have put in place the legal requirements for stakeholder engagement. This shows clearly in the fact that all groups of countries reach a very high level for "systematic adoption" (Figure 3). Already in the starting group, more than half of the countries have taken the necessary policy measures to systematically conduct stakeholder engagement, scoring above average in the category "systematic adoption" (Figure 3). In particular most countries in the starting group systematically conduct stakeholder engagement on draft laws. By contrast, methodology, transparency and oversight and quality control are much less developed.

[5] Individual country scores on the four categories are online available at: www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm

Figure 3. Analysis of categories across groups: Stakeholder engagement



Notes: Each pillar represents the percentage of countries in the respective group that score above 0.5 (with the highest possible score being 1) for the respective category (systematic adoption, methodology, transparency, oversight and quality control). The underlying scores are an average of the scores for primary laws and subordinate regulations, except for the United States, for which only the results for subordinate regulations are used. The grouping of countries is based on Regulatory Policy Outlook, p. 29 (see Figure 7 in Annex I). For stakeholder engagement, 11 countries are in the starting group, 14 countries in the middle group and 10 countries in the high group.

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

What differentiates critically the middle from the starting group is the further development of the methodology for stakeholder engagement. Two-thirds of OECD countries score above the average on methodology in the middle group compared to less than 10% in the starting group. Key practices in this respect include early stage consultation to identify options to address a policy problem, the use of interactive websites for consultation and methodological guidance for stakeholder engagement. Minimum periods for consultation are also less common among the countries in the starting group, although even some countries in the middle and advanced group do not have minimum periods for consultation in place. Beyond the development of the methodology, some countries of the middle group have enhanced transparency in their engagement with stakeholders, yet two third of countries in this group still score below average on transparency.

By contrast, countries of the advanced group have systematically invested in transparency in addition to systematic adoption and methodology. In most countries in this group any member of the public can choose to participate in a consultation and in more than half of countries there is a requirement to publish a response to consultation comments online for all or major primary laws and subordinate regulations. "Oversight and quality control" remains the most challenging area, even for the most advanced countries. Only 60% of countries in this group score above average, having established some institutional responsibility for stakeholder oversight and publishing some information on the functioning of their

stakeholder system. Furthermore, even in the advanced group, a number of countries never conduct consultations open to the general public at early stage, when a decision to regulate has not yet been made, which affects their score on methodology.

Regulatory impact assessment

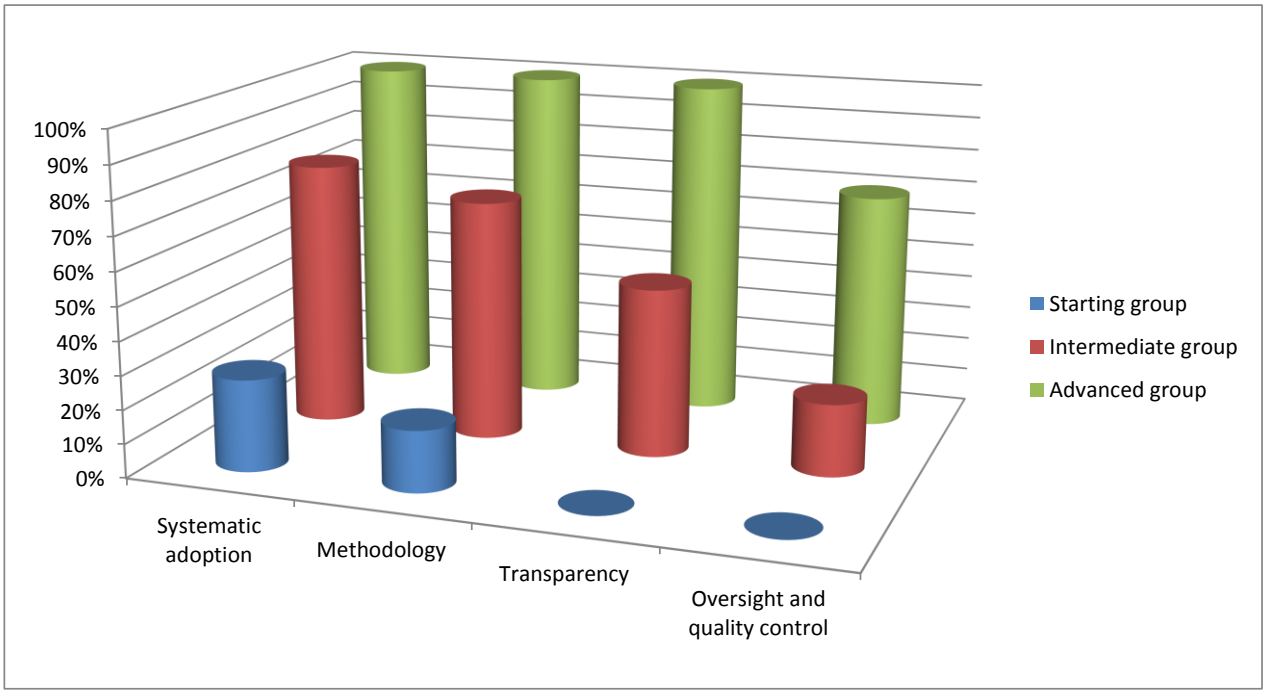
RIA is both a tool and a decision process for informing political decision makers on whether and how to regulate to achieve public policy goals. Improving the evidence base for regulation through a prospective impact assessment of new regulations is one of the most important regulatory tools available to governments. The aim is to improve the design of regulations by assisting policy makers to identify and consider the most efficient and effective regulatory approaches, including the non-regulatory alternatives before they make a decision (OECD, 2012).

One-third of countries that are in the beginning phase to introduce RIA have systematically adopted RIA practices and one-fourth has developed an advanced methodology (Figure 4). In particular, most countries in the starting group systematically assess budget and public sector impacts as part of their methodology and half systematically require quantification of costs of regulation, in particular administrative burdens and government administration and enforcement costs for primary laws. As for stakeholder engagement, transparency and oversight of RIA only come next in the reform process – no country in the starting group scores above average in these categories. Only one country in the starting group has established an oversight body for RIA for both primary laws and subordinate regulations and four countries have done so for primary laws only.

More than two-thirds of OECD countries in the middle group systematically conduct RIA and have developed a more refined methodology. In particular, most countries in this group conduct impact assessments proportionate to the significance of the regulation, assess distributional effects, impacts on competition and environment and systematically quantify administrative burdens and government administration and enforcement costs. About half of countries in the middle group also systematically require the quantification of substantive compliance costs. Furthermore, half of the countries in the middle group require regulators to identify a process of assessing progress in achieving regulations' goals and to consider issues of compliance and enforcement when developing new laws and regulations, which is not the case in the starting group.

In contrast to the starting group, about half of the countries in the middle group have significantly invested in the transparency of the RIA system. In most countries in this group, RIAs for primary laws are made publicly available online in a central registry and in one-third they are also released at least in some cases for public consultation. Furthermore, practices for primary laws seem to be extended to subordinate regulations when moving from the starting to the middle group: While in the starting group only two countries publish all RIAs on subordinate regulations online, six countries do so in the middle group. A key difference between countries in the starting group and in the middle group is the establishment of a government body responsible for reviewing the quality of RIA for both primary laws and subordinate regulations. Still, only one-fifth of countries in the middle group score above the average in the category oversight and quality control, which is mostly linked to the lack of publically available performance evaluation of RIA and, in some countries, lack of power of the oversight body.

Figure 4. Analysis of categories across groups: Regulatory impact assessment



Note: Each pillar represents the percentage of countries in the respective group that score above 0.5 (with the highest possible score being 1) for the respective category (systematic adoption, methodology, transparency, oversight and quality control). The underlying scores are an average of the scores for primary laws and subordinate regulations, except for the United States, for which only the results for subordinate regulations are used. The grouping of countries is based on Regulatory Policy Outlook, p. 29 (see Figure 8 in Annex I). For RIA, 11 countries are in the starting group, 14 countries are in the middle group and 10 countries are in the advanced group.

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

In the advanced group all countries have systematically adopted RIA and developed a strong methodology. In particular, requirements are extended to subordinate regulations, cover a variety of different impacts and regulators in most countries need to demonstrate that the benefits of new regulation justify the costs. However, even in the advanced group systematic quantification of benefits is limited to half of the countries in the group. All countries in the advanced RIA group put emphasis on transparency of RIA, scoring above average in this category (Figure 4). In almost all countries in this group RIAs are made publicly available online and the public learns in advance that a RIA is due to take place. Furthermore, contrary to the starting and middle group, in most countries in the advanced group the public is informed if a decision has been made not to conduct a RIA and there is a body responsible for reviewing the decision made by officials whether a RIA is required. In half of the countries in the group the general public can contest the decision not to conduct a RIA. However, even in the advanced group only two countries always release RIAs for public consultation.

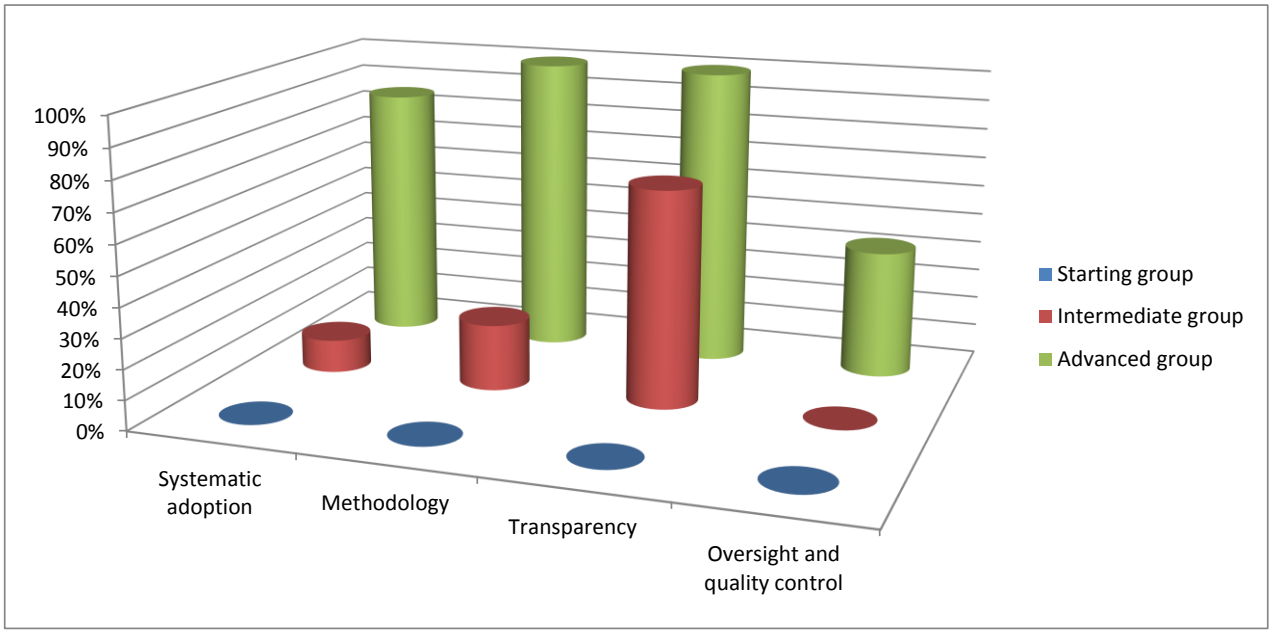
In contrast to the middle and starting group, about two-thirds of countries in the advanced group have introduced institutions and processes for strong oversight and quality control. All countries in this group have an oversight body to promote the quality of RIA and the oversight body can return the impact assessment for revision where it is deemed inadequate with the exception of one country. Most countries in this group also publish performance reports on RIA; half of the countries in this group do so regularly and also provide information on the percentage of RIAs that comply with formal requirements.

Ex post evaluation of regulations

The evaluation of existing policies through ex post impact analysis is necessary to ensure that regulations are effective and efficient. Furthermore, in the absence of a process of renewal, the volume of red tape and regulatory costs tends to accrete over time (OECD, 2012). This complicates the daily life of citizens and impedes the efficient functioning of business.

However, as already highlighted in the Regulatory Policy Outlook, systematically assessing the actual functioning of laws and regulations once they are in place is not well developed in most OECD countries. In contrast to *ex ante* evaluation and stakeholder engagement no countries in the starting group score high in this category - nor does any country in this group score above average in any other category (Figure 5). The data confirms the strong focus on administrative burden reduction in OECD countries. More than half of countries in the starting group have done ad-hoc reviews focusing on administrative burdens, but they do not evaluate the achievement of objectives of regulations with a few exceptions.

Figure 5. Analysis of categories across groups: *Ex post* evaluation



Note: Each pillar represents the percentage of countries in the respective group that score above 0.5 (with the highest possible score being 1) for the respective category (systematic adoption, methodology, transparency, oversight and quality control). The underlying scores are an average of the scores for primary laws and subordinate regulations. The grouping of countries is based on Regulatory Policy Outlook, p. 29 (see Figure 9 in Annex I). For *ex post* evaluation, 10 countries are in the starting group, 18 countries are in the middle group and 7 countries are in the high group.

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Interestingly and in contrast to practices in RIA and stakeholder engagement, even countries in the middle group do not score strongly on systematic adoption, meaning that they do not conduct *ex post* evaluation systematically. Most countries have not either developed a refined methodology: In two-thirds of countries, most *ex post* evaluations that are carried out do not contain an assessment of whether the underlying policy goals of regulation have been achieved and there are no standardised evaluation techniques. Strikingly, countries in the middle group put a strong emphasis on transparency for the reviews they conduct, with two-thirds of countries in this group scoring above average on transparency. Most countries in this group engage stakeholders in *ex post* evaluation of both primary laws and subordinate

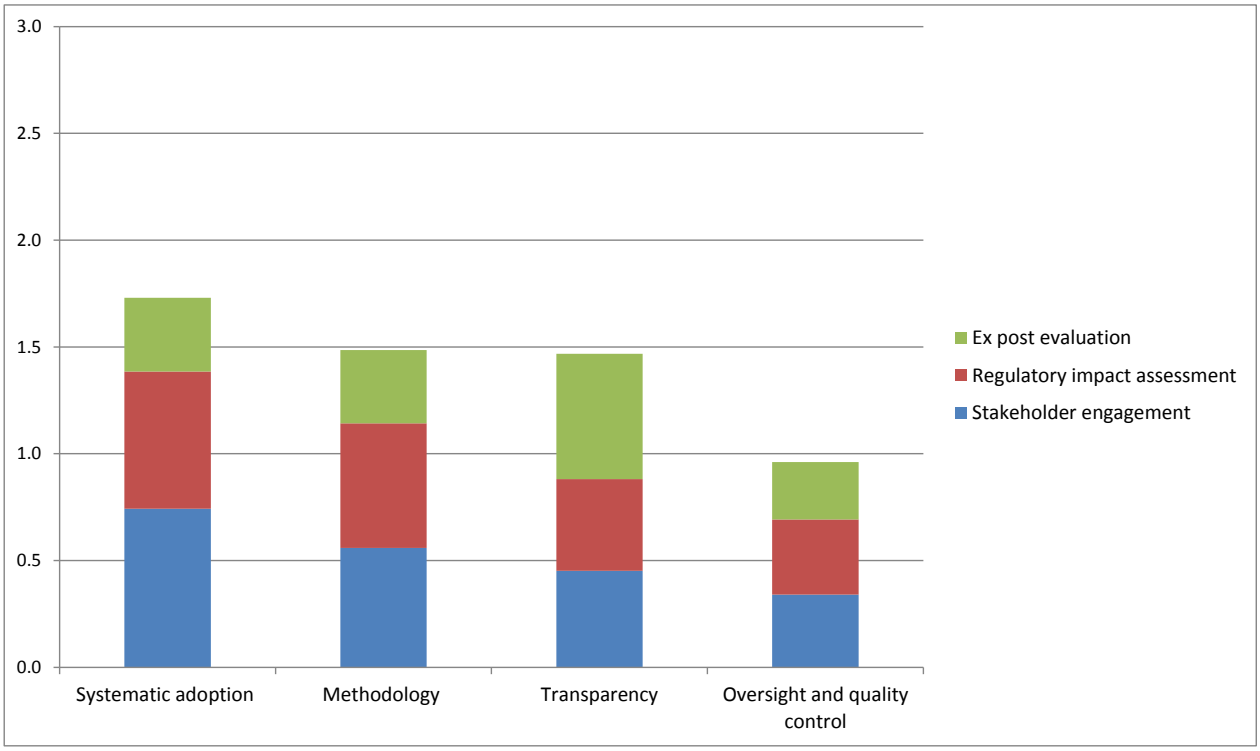
regulations and half of countries in this group make evaluations publicly available over the internet. The low priority given to oversight and quality control in terms of reform priorities is confirmed even more strongly for *ex post* evaluation, with no country in the middle group scoring above average.

Countries in the advanced group depart strongly from the other groups in all areas. They systematically conduct *ex post* evaluations and have a permanent body that conducts in-depth reviews of regulations in specific sectors or policy areas. A key difference between the middle and the advanced group are improvements in the methodology of *ex post* evaluations. In most countries in the advanced group, all *ex post* evaluations contain by default an assessment of the achievement of goals and more than half of the countries systematically assess consistency with other regulations and take steps to address areas of overlap, duplication and inconsistency. All countries in this group have developed guidelines for conducting *ex post* evaluations, yet only about half have developed standardised evaluation techniques. Countries in the advanced group have also further enhanced transparency of *ex post* evaluations, with all countries making evaluations of existing regulations publicly available. Only in the advanced group are countries that put emphasis on oversight and quality control for *ex post* evaluation, having established a quality control system for *ex post* evaluations and publishing performance information on the functioning of *ex post* evaluation. Areas for improvement for a number of countries in this group include establishing a method to ensure that a required type of assessment is completed and publishing information and indicators on the functioning of the *ex post* evaluation system.

Overview across the three tools

Results from the combined analysis of the three policy tools tend to show that countries have a staged approach to regulatory policy, with more countries having well-developed stakeholder engagement and RIA systems than *ex post* evaluation systems. This can be further analysed by aggregating the four sub-categories described above across the three regulatory policy tools (RIA, stakeholder engagement and *ex post* evaluation). Figure 6 illustrates that on average countries seem to have opted for similar reform choices for building their systems for stakeholder engagement and RIA: Formal requirements and a standard methodology are in place for many countries for stakeholder engagement and RIA, but less so for *ex post* evaluation. Practices of RIA and stakeholder engagement seem to be less transparent than those for *ex post* evaluation. Clearly, the area of oversight and quality control is the least developed for all three indicators. This area is nevertheless essential to provide credibility and the capacity to monitor the effectiveness of regulatory policy. This result emphasises the findings of the Outlook that countries need to go the extra mile to ensure that regulatory policy is not only perceived and carried out as a procedural exercise, but exert the necessary pressure that will ensure regulatory quality in fine.

Figure 6. Average category scores separated by policy tools



Note: Scores represent the average of primary laws and subordinate regulations, except for the scores of Regulatory Impact Assessment and Stakeholder Engagement for the United States, for which only the results for subordinate regulations are used.

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Extending the scope of practices

When building their regulatory policy systems, do countries equally invest in practices for primary laws and subordinate regulations or do they tend to focus on one type of regulation before they extend the practice? The latter seems to be the case for RIA and *ex post* evaluation where the overall average is higher for primary laws than for subordinate regulations (see Table 2).

Table 2. Averages for primary laws and subordinate regulations for the three policy tools

	Average for Primary Laws	Average for Subordinate Regulations
Stakeholder engagement	2.08	2.08
Regulatory impact assessment	2.09	1.91
***Ex post* evaluation**	1.58	1.51

Source: OECD (2015), *OECD Indicators of Regulatory Policy and Governance (iREG)*, www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

With respect to RIA, countries in the starting group conduct RIAs more systematically for primary laws than for subordinate regulations, supporting the hypothesis that countries tend to focus on primary laws before they extend the practice. In contrast, most countries in the middle group and advanced group have similar practices in place for primary laws and subordinate regulations with the exception of transparency of RIA: in all three groups, many countries have more transparent practices in place for primary laws than for subordinate regulations.

For *ex post* evaluation, countries in the starting group tend to focus more on evaluating primary laws, while countries in the advanced group tend to have stronger practices in place for subordinate regulations than for primary laws. In particular the US and Canada seem to have a stronger focus on evaluating subordinate regulations. In these countries subordinate regulations do play a very important role in the regulatory framework which may explain the particular importance attached to regulatory policy practices in this area. Contrary to RIA, there are several countries in all groups that have different practices in place for primary and subordinate regulations.

For stakeholder engagement, contrary to the other two tools, the overall average for primary laws and subordinate regulations is the same and there is no clear difference between the starting, middle and advanced group in terms of having stronger practices in place for either primary laws or subordinate regulations. This does not mean that countries have the same practices in place for primary laws and subordinate regulations. In all three groups there are countries that have adopted practices more systematically for one type of regulation than for another. In particular Canada, France and Japan have stronger practices in place for subordinate regulations and Denmark, Ireland, Israel, Korea and Switzerland seem to focus more on primary laws.

Policy choices for quality control

The Recommendation clearly emphasises the complementary nature of its 12 principles, including the importance of combining open government to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation (principle 2) and oversight mechanisms to support and implement regulatory policy (principle 3). Oversight bodies, transparency measures along the lines of "sunshine disinfects" and consultation with stakeholders can all contribute to control the quality of RIAs and *ex post* evaluations. Oversight bodies systematically provide technical expertise and ensure RIAs are actually conducted and are of sufficient quality. Consultation can help to provide the views of those affected by regulation to improve RIAs and provide, together with transparency measures, some checks and balance on the government.

However, given resource constraints, countries may not always be able to put all these measures in place at the same time to ensure high-quality RIAs and *ex post* evaluations. A legitimate question may then be whether, in practice, countries may substitute or complement quality control by oversight bodies by consulting with external stakeholders and making information publicly available? Can substitution lead to a higher risk of poor implementation of regulatory policy or regulatory capture?

With respect to RIA, countries do not appear to substitute RIA oversight with stakeholder consultations as check and balance for the quality of RIA. Many countries have oversight bodies for RIA in place and those that put emphasis on transparency and public consultation usually also have an oversight body. However, consultation on RIA is a rare practice even for countries with advanced systems.

The situation looks different for *ex post* evaluation. Most countries do not have a body overseeing *ex post* evaluations, but do engage with stakeholders and about half of these countries also publish *ex post* evaluations online. Countries seem to give priority to stakeholder engagement and, to a lesser extent, transparency. They put much less focus on government institutions to ensure *ex post* evaluations are

conducted and are of high quality. There is no substitution the other way round – most countries with a body in charge of oversight of *ex post* evaluations also engage with stakeholders and publish *ex post* evaluations online.

The question arises whether transparency and the possibility for stakeholders to engage on its own provide sufficient quality control. This requires a public that is both interested, actively engaged and has the expertise to understand evaluations to provide a systematic quality control on its own. As Etzioni (2014, p.687) explains: "Most people are busy making a living and maintaining a family and a social life, and they have very limited time and energy to devote to following public affairs." And, as studies reviewed in Thinking, Fast and Slow by Nobel laureate Daniel Kahneman (2011, p. 157–58) show, people do not have the training necessary to evaluate the relevant data. This of course does not mean that transparency is not important – on the contrary data and information can be picked up by academics, journalists, civil society and business organisations and feed into a public debate. The question is just if this is sufficient on its own for systematic quality control and if those actors that do engage are sufficiently representative to avoid regulatory capture.

CONCLUSION

Regulatory policy should be seen as a systemic and whole of government approach to regulatory quality. The key principles of regulatory policy (as embodied in the 2012 Recommendation of the Council on Regulatory Policy and Governance) demonstrate the importance of pursuing this systemic approach and adopting all 12 Principles. However, the Recommendation does not provide for a roadmap of regulatory policy reforms, nor does it clarify the steps to build, in a resource-constrained environment, the elements of a regulatory policy that will ensure regulatory quality. This paper presents new insights on the building blocks of regulatory policy systems by reviewing the country evidence collected through the 2014 Survey of regulatory policy and governance and analysing in combination the three composite indicators of stakeholder engagement, regulatory impact assessment and *ex post* evaluation.

The paper found that countries that have invested in regulatory impact analysis also generally put emphasis on stakeholder engagement and *ex post* evaluation. The link between stakeholder engagement and *ex post* evaluation is less strong. Some countries have made significant investments in stakeholder engagement but only started to develop *ex post* evaluation practices. Moreover, additional analysis revealed some regional and institutional country groups, with similar practices among countries with common law systems, among Nordic countries and among Eastern European countries. This finding might indicate that regional proximity or a similar institutional development throughout history facilitates the diffusion of regulatory policy practices leading to similar reform choices as regards the development of the three regulatory policy tools. Of course, regional and institutional proximity of countries is just one factor among many others potentially influencing the development of regulatory policy systems.

The analysis of progress of countries in developing each policy tool is highly instructive. For stakeholder engagement and regulatory impact assessment, the pattern is similar. Countries seem to start with the systematic adoption of requirements, then they refine the methodology, enhance transparency and at last, they establish mechanisms for oversight and quality control. Future reviews and time-series analysis may be able to show this pattern directly.

For *ex post* evaluation, in contrast to the other two policy tools, only the few countries in the advanced group conduct *ex post* evaluations systematically including key elements such as the evaluation of the achievement of objectives of regulations. The starting group conducts mostly ad-hoc reviews with a focus on administrative burdens and the middle group has already invested in transparency and stakeholder engagement. The low priority given to oversight and quality control is confirmed even more strongly for *ex post* evaluation, with room for significant progress even for advanced countries.

While even countries with less developed regulatory policy systems frequently have introduced formal requirements and developed a standard methodology, it might be worth discussing why strong oversight and quality control only seems a priority for advanced countries. This begs the question of where to put the emphasis for countries that have established the legal conditions for regulatory policy: in refining and extending the methodology for regulatory policy tools or in ensuring that formal requirements are implemented through a credible oversight framework. A key finding of the Regulatory Policy Outlook 2015 and the 7th and 8th OECD Conference on Measuring Regulatory Performance in Iceland and Sydney in 2015 and 2016 respectively identified a high potential for improvements to the institutional framework for regulatory policy in OECD countries to bridge the gap between formal requirements and implementation, which may help realise higher impacts of regulatory policy on economic and social outcomes. More in-depth analysis of the institutional setting in OECD countries will be at the core of the Regulatory Policy Outlook 2018.

Oversight bodies, transparency measures along the lines of "sunshine disinfects" and stakeholder engagement can all contribute to control the quality of RIAs and *ex post* evaluations and are complementary. For RIA, many countries have oversight bodies in place and those that put emphasis on transparency and stakeholder engagement usually also have an oversight body. However, stakeholder engagement on RIA is a rare practice even for countries with advanced systems. It seems that the application of this practice requires a protracted cultural change towards a more transparent public administration and a political coalition willing to drive this change. For *ex post* evaluation, there seems to be some substitution the other way around: Stakeholder engagement and to a lesser extent transparency are much more common than oversight bodies. It does not seem straightforward to replace one measure by the other as they all contribute in different ways to the quality control of evaluations.

Finally, many countries with less developed systems for RIA and *ex post* evaluation focus to a greater extent on primary laws while countries with more developed systems tend to have more similar practices in place for both types of regulation. Adopting RIA and *ex post* evaluation for primary laws first may be a path to gradually improve the regulatory policy system in a country, but at the same time may lead to some lack of coherence.

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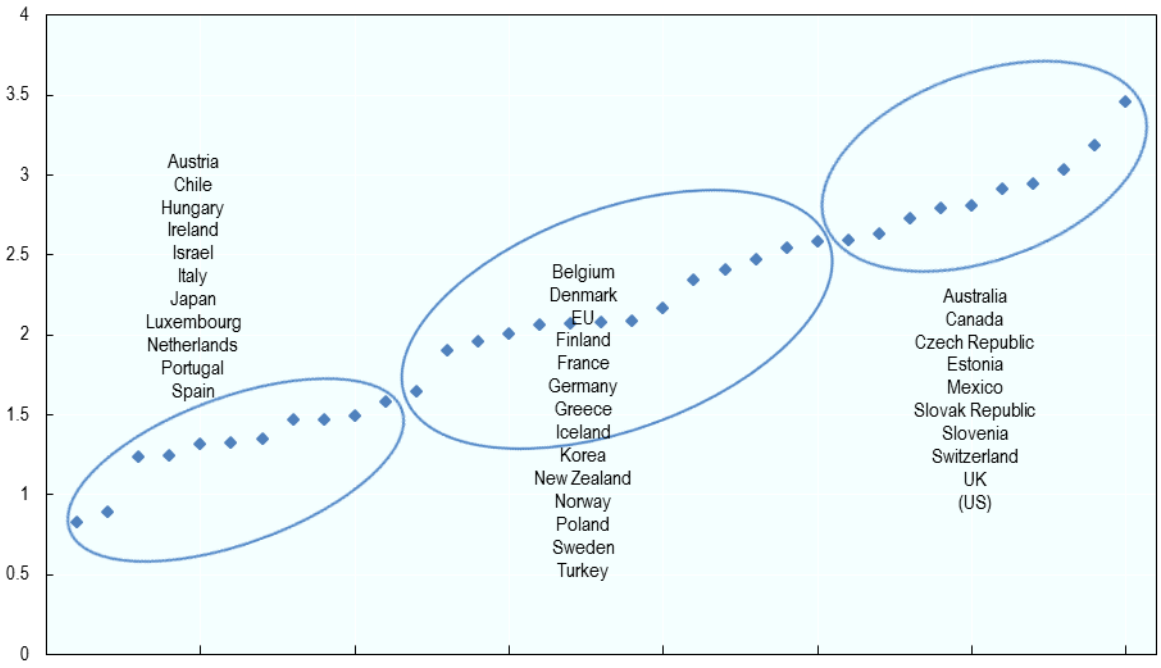
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ANNEX I

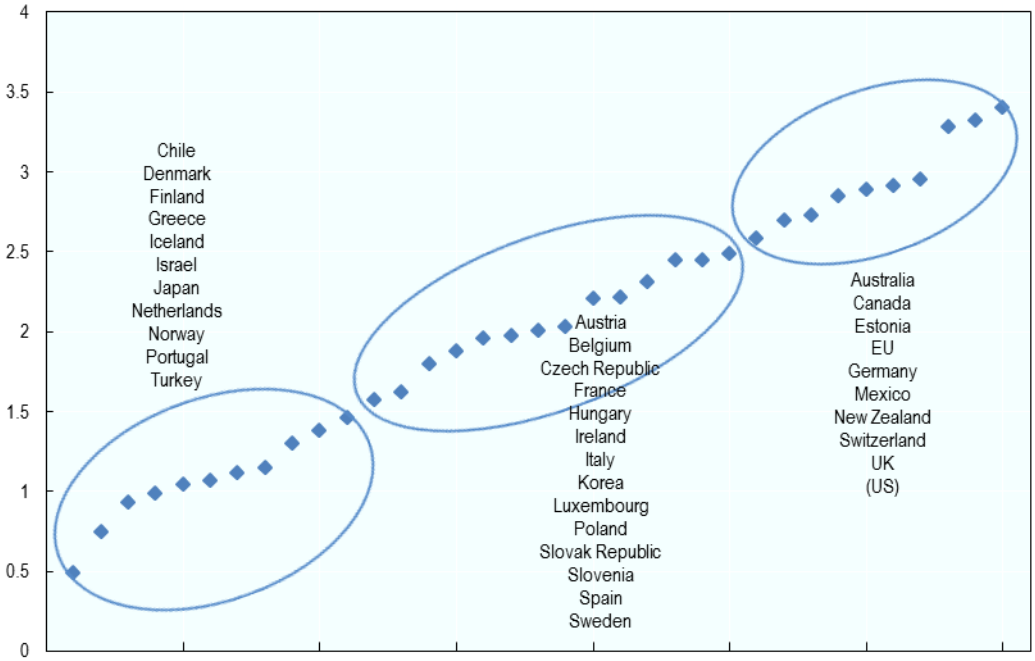
Figure 7. Composite indicators: Stakeholder engagement for developing regulations



Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The scores are an average of the scores for primary laws and subordinate regulations, except for the United States, for which only the results for subordinate regulations are presented. The groupings are based on countries that scored 0.5 above or below the mean score.

Source: OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, p. 29, http://dx.doi.org/10.1787/9789264238770-en.

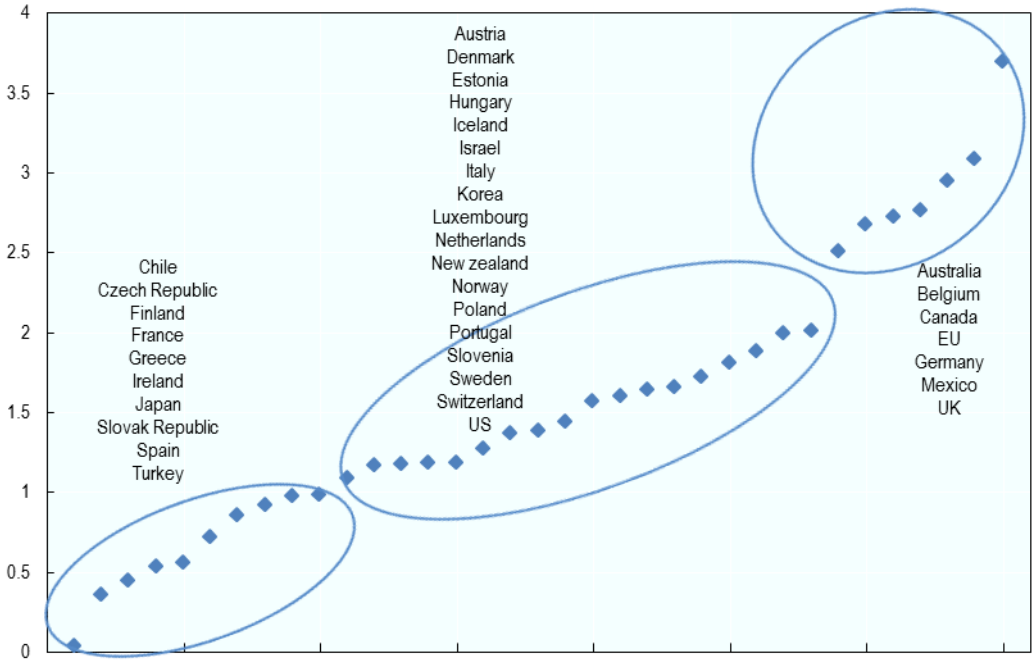
Figure 8. Composite indicators: Regulatory Impact Assessment for developing regulations



Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The scores are an average of the scores for primary laws and subordinate regulations, except for the United States, for which only the results for subordinate regulations are presented. The groupings are based on countries that scored 0.5 above or below the mean score.

Source: OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, p. 29, http://dx.doi.org/10.1787/9789264238770-en.

Figure 9. Composite indicators: *Ex post* evaluation of regulations



Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The scores are an average of the scores for primary laws and subordinate regulations, except for the US, for which only the results for subordinate regulations are presented. The groupings are based on countries that scored 0.5 above or below the mean score.

Source: OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, p. 30, http://dx.doi.org/10.1787/9789264238770-en.