OECD Regulatory Policy Outlook 2015

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BETTER POLICIES FOR BETTER LIVES

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Preface

There is nothing more important to the progress of our economies and societies than good regulation. By "good" regulation, is meant the sort that attains legitimate ends for public policy in cost-effective ways; regulation that serves to enhance the wellbeing of the community at large.

Over the years the OECD, in conjunction with member states, has made regulatory improvement a key focus of its activities. This commitment found renewed expression in the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance*, which sets out key principles in areas of leadership, governance, process and capabilities. These deliberately set the performance bar high, given how much is at stake for each country in getting regulation right.

Translating sound regulatory principles into good practices can be challenging, for there is much that militates against it politically and administratively. Transparency and accountability are important to sustained improvement. The OECD accordingly developed a detailed survey of existing regulatory practices, to ascertain the extent to which the Council's agreed principles are being reflected in practice.

This first edition of the *Regulatory Policy Outlook* draws on that survey, to provide unique comparative insights across member countries. As expected, some countries are revealed to be doing better than others. But none could be said to have reached "regulatory nirvana"! Hopefully the survey will assist all member governments in identifying where improvements are needed, while pointing to practices which can be emulated.

The Outlook, and the survey on which it is based, have involved considerable effort and commitment from many people. Thanks are due in particular to those delegates who served on the Steering Group on Performance Measurement. This group played a central role in developing the approach followed and in scrutinising the early results. I would also like to acknowledge the major contribution of the OECD Secretariat, and in particular Greg Bounds, to whom this volume is dedicated. Greg's untimely death in Australia earlier this year deprived that country, and the world, of a thoughtful and energetic advocate for good regulation.

Gary Banks
Chair, Regulatory Policy Committee Dean,
Australia and New Zealand School of Government

Foreword

The lingering economic malaise across most of the OECD – along with societal concerns such as climate change, social exclusion and insecurity – has pointed to the need for regulatory systems that are more effective in averting serious crises, promoting growth and protecting citizens. Moreover, in the fiscal environment that many countries now face, regulatory improvements and reforms are increasingly seen as an attractive alternative to fiscal and taxation measures. Reforms to improve the quality of regulation provide a real opportunity to stimulate economic activity at domestic level. Internationally, they can facilitate trade and investment by removing unnecessary non-tariff barriers and, more broadly, lay the foundations for better rules of globalisation.

This first Regulatory Policy Outlook *tracks the progress made by countries in improving the way they regulate to promote growth and well-being. It is based on the 2014 Regulatory Indicators Survey, a unique effort to gather evidence from all 34 OECD member countries and the European Commission on their regulatory policy practices. The* Outlook *is a timely undertaking, coming three years after the adoption by OECD countries of the* 2012 OECD Recommendation of the Council on Regulatory Policy and Governance, *a comprehensive and aspirational international standard on how to promote regulatory quality.*

The good news conveyed by the Outlook *is that, over the past two decades, OECD countries have come a long way towards establishing the conditions for better regulatory quality. There is now wide recognition of the importance of sound regulatory policy, illustrated by the designation in most OECD countries of a minister or a high-level official responsible for strengthening government-wide regulatory reform. At the same time, the law-making activity of government is becoming more accountable. Typically, the use of regulatory impact assessments, the engagement of stakeholders in the development of regulatory proposals and the application of systematic* ex post *evaluations are now common practices of the public administration.*

But the Outlook *also tells us that the tools, institutions and principles of regulatory policy could be implemented and used even more efficiently. Much remains to be done to ensure that the right rules are designed with the right people to achieve the right results. This will also involve going beyond the efforts of the executive branch to leverage the important part that other institutions – in particular parliaments, sub-national levels of government and regulatory agencies – can play in improving the way regulations are developed, implemented, evaluated and made consistent across sectors and jurisdictions. The* Outlook *identifies the ways forward.*

This report is the first of a series to be produced every three years by the OECD Regulatory Policy Committee. It provides countries with unique insight into their regulatory practices and those of their neighbours. Based on solid evidence, it identifies good practices for regulators to overcome limited consistency of rules across borders, the lack of evidence on impacts of regulation or the relative neglect of regulatory delivery and enforcement compared to regulatory design.

It is no coincidence that this Outlook *is launched during the OECD Public Governance Ministerial in Helsinki in October 2015. Establishing the institutions, instruments and conditions for*

regulatory quality is an integral part of well-functioning public governance and administration. I invite all countries to actively use these findings, together with the 2012 Recommendation, to monitor their progress with regulatory policy. We all understand the benefits of good regulation. We have the tools we need to move forward on this agenda. We also find ourselves at a point in time where the demands on regulatory policy and on governments more generally are at an historic high. Now is the time for action.

Angel Gurría

OECD Secretary-General

Acknowlegements

The Regulatory Policy Outlook was prepared by a team of analysts from the OECD Regulatory Policy Division led by Céline Kauffmann under the direction of Nick Malyshev, Head of the Regulatory Policy Division and the overall leadership of Rolf Alter, Director for Public Governance and Territorial Development.

The main authors included Céline Kauffmann (Chapters 1 and 2), Daniel Trnka (Chapter 3), Manuel Flores (Chapter 4), Faisal Naru (Chapter 5), Christiane Arndt, Antonia Custance Baker, Rebecca Schultz and Tobias Querbach (Country profiles, Reader's guide and methodological annex). Significant inputs were provided by Filippo Cavassini, Jacobo Garcia Villareal, Nick Malyshev, James Sheppard and Minsup Song. The Outlook relies heavily on data collected through the Regulatory Indicators Survey, which was designed, implemented, verified and prepared for publication by the Measuring Regulatory Performance team led by Christiane Arndt and comprising Antonia Custance Baker, Tobias Querbach and Rebecca Schultz.

The members of the OECD Regulatory Policy Committee, BIAC and TUAC provided substantial comments, inputs and support to the various drafts of the Outlook. The survey and indicators methodology was developed in strong co-operation with the Steering Group on Measuring Regulatory Performance through a series of meetings and consultations. The questionnaire was piloted in Australia, Estonia, Mexico and Switzerland. The OECD is grateful to the Governments of the Netherlands and Norway, and the Business Industry and Advisory Committee for their financial contributions to the regulatory indicators project, and to the Governments of Sweden and the Netherlands for hosting workshops in Stockholm (2013) and The Hague (2014) that were instrumental to the work.

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Useful comments and inputs were provided by Luiz de Mello, Deputy Director, Public Governance and Territorial Development Directorate at various stages of development of the Outlook.

The Regulatory Policy Outlook was prepared for publication by Jennifer Stein. The Outlook benefitted from editorial assistance from Andrea Uhrhammer, Kate Lancaster, and William Below.

The work on regulatory policy is conducted under the supervision of the OECD Regulatory Policy Committee whose mandate is to assist both members and non-members

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 and Territorial Development Directorate. The OECD Public Governance and Territorial Development Directorate's unique emphasis on institutional design and policy implementation supports mutual learning and diffusion of best practice in different societal and market conditions. The goal is to help countries build better government systems and implement policies at both national and regional level that lead to sustainable economic and social development. 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.

The Regulatory Policy Outlook owes its existence to the vision and dedication of Greg Bounds, our late colleague who left us in April 2015.

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Acronyms and abbreviations

AMSDE	Association of Economic Development Secretariats, Mexico
COAG	Council of Australian Governments, Australia
COFEMER	Federal Commission for Regulatory Improvement, Mexico
EESC	European Economic and Social Committee
GIC	Governor in Council, Canada
ILO	International Labour Organization
IOs	International Organisations
IRC	International Regulatory Co-operation
MRA	Mutual Recognition Agreement
NEDLAC	National Economic Development and Labour Council, South Africa
OHS	Occupational Health and Safety
PCA	Parliamentary Control of the Administration, Switzerland
PIR	Post-implementation review
PLS	Post-legislative scrutiny
REFIT	Regulatory Fitness and Performance programme
RIA	Regulatory Impact Analysis or Regulatory Impact Assessment*
RIS	Regulation Impact Statement
SAIs	Supreme audit institutions
SMEs	Small and medium-sized enterprises
TB	Treasury Board, Canada
TBS-RAS	Regulatory Affairs Sector in the Treasury Board Secretariat, Canada

* Regulatory Impact Assessment is also routinely referred to as Regulatory Impact Analysis, sometimes interchangeably. OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, p. 25, OECD Publishing, Paris, *http://dx.doi.org/101787/9789264209022-en*.

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Executive summary

Laws and regulations govern the everyday life of businesses and citizens. They are essential instruments, together with taxes and spending, in attaining policy objectives such as economic growth, social welfare, environmental protection and globalisation. But, when poorly conceived, they can be ineffective in achieving their objectives while imposing unnecessary costs on citizens and businesses. In the current context of slow growth, high unemployment and fiscal stringency in many countries, governments have limited scope for further spending and tax reduction. Reforms aimed at improving the quality of laws and regulations remain a potent means of stimulating economic activity and promoting well-being.

Trends in regulatory policy: Highlights from the OECD 2014 Regulatory Indicators Survey

This *Outlook* provides the first evidence-based, cross-country analysis of the progress made by OECD countries in improving the way they regulate. Based on the results of the OECD 2014 Regulatory Indicators Survey and a set of new indicators, it shows that countries have come a long way in improving regulatory quality over the past two decades. They have done this by systematically adopting the principles and tools described in the 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance*. The 34 OECD countries and the European Union have generally taken a whole-of-government approach to regulatory policy and made it a pillar of their public sector reform efforts:

- 33 have adopted an explicit regulatory policy.
- 29 have designated a minister or high-level official responsible for promoting government-wide progress on regulatory policy.
- 33 have established a standing body charged with regulatory oversight.
- In all but one country, Regulatory Impact Assessment (RIA) and public consultation have become formal requirements for the executive branch in the development of new regulations.

Areas for further action

Nevertheless, implementation in OECD countries varies greatly in both scope and form. Looking ahead, the *Outlook* identifies how countries can further embed regulatory policy in law and practice to respond to emerging risks and opportunities and to promote growth and well-being. It identifies institutions that could be mobilised to improve the quality of law making and proposes promising new fields for regulatory policy. It highlights areas that, if pursued more systematically, would yield substantial gains.

Institutional contexts and the maturity of regulatory systems differ substantially across the OECD and there is a need to understand which institutional settings support regulatory policy better and why. In particular, oversight bodies play a critical role in support of regulatory policy. Countries report several types of oversight bodies with a wide range of responsibilities, highlighting the need for both clear allocation of tasks and effective coordination. While some specialisation may be warranted, too much can result in fragmentation and can erode the whole-of-government approach specified in the 2012 Recommendation.

Other institutions – parliaments, regulatory agencies, sub-national and international levels of government – have an important role to play in improving the way regulations are developed, implemented, evaluated and made consistent across sectors and jurisdictions. However, this role is not always fully embraced by these institutions. There is room for making the quality of rule-making a core objective of these institutions and improving the way they work together and with the executive on this agenda. Similarly, regulatory quality is no longer solely a domestic responsibility. Greater consideration should be given to international regulatory co-operation to ensure the effectiveness of regulatory frameworks. Despite globalisation, only one-third of OECD countries have an explicit policy on international regulatory co-operation.

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

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

Stakeholder engagement should be well integrated into each step of the rule-making cycle: when identifying a problem and its possible solutions, when developing a set of regulatory options and when drafting the regulatory proposal. While most OECD countries have a formal requirement to engage stakeholders, it has yet to become part of the day-to-day work of policy makers and citizens. For that to happen, stakeholders need to be engaged before the final regulatory development phase to ensure meaningful inputs into the rule-making process. All affected parties should be considered in order to guarantee inclusiveness and a level playing field. Real consideration of stakeholder inputs and continuous evaluation of engagement practices would improve the effectiveness of regulations.

Despite its widespread use in other policy fields, *ex post* evaluation is practiced sporadically in regulatory policy. In the last three years, seven countries only have undertaken *ex post* evaluation frequently for primary and subordinate legislation. The

majority of evaluations focus on reducing administrative burdens. Governments could make greater use of reviews that focus on coherence of regulations with existing legislative frameworks and assess more systematically whether policy goals have been achieved. Establishing quality standards against which to evaluate regulation as part of the RIA process would ensure a stronger connection between *ex ante* and *ex post* evaluation. Finally, greater stakeholder involvement in *ex post* evaluation would help identify the priorities for revising regulations.

The progress in each of these areas for further action will continue to depend on strong political leadership as highlighted in the first principle of the 2012 Recommendation. The prospect of returns makes such commitment a worthwhile investment.

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Reader's guide

Most of the data presented in this Outlook, including the composite indicators, are the results of the 2014 Regulatory Indicators Survey. This survey gathers information as of 31 December 2014 from all 34 OECD member countries and the European Commission and focuses on their regulatory policy practices as described in the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance*. It investigates in detail three principles of the 2012 Recommendation: stakeholder engagement, Regulatory Impact Assessment (RIA) and *ex post* evaluation. For each of these areas, the survey has collected information on formal requirements and has gathered evidence on their implementation. The methodology of the survey and the composite indicators are described in detail in Annex B. This Reader's guide aims to help readers understand the scope of the data provided in the Outlook and some of the limitations related to the use of indicators.

Scope of the survey data and its use in the Outlook

The survey focuses on the processes of developing regulations (both primary and subordinate) that are carried out by the executive branch of the national government and that apply to all policy areas. However, 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)

The survey covers exclusively national regulations. It does not include practices at the sub-national level or those of parliaments. Only 16 countries have provided statistics on national and sub-national proportions, highlighting methodological challenges in gathering these numbers. Based on this evidence, the share of national primary laws as a percentage of total primary laws varies widely across countries: from 100% (in 8 countries, including Denmark, Finland, Israel, Ireland, Luxembourg, Netherlands, Norway and Portugal, 2011-13), to 56% (United Kingdom, 2012), 8% (Italy, 2013) and 0.9% (United States, 2011).

Survey results are used throughout the Outlook in multiple ways. First, results of individual questions are displayed to show trends in the number of countries picking up particular practices. Second, qualitative information and examples provided through the survey are used to enrich the analysis. Third, composite indicators for RIA, stakeholder engagement and *ex post* evaluation were constructed to provide an overview of country practices.

Each composite indicator is composed of four equally weighted categories: 1) Systematic adoption which records formal requirements and how often these requirements are conducted in practice; 2) Methodology which 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; 3) Oversight and quality control records the role of oversight bodies and publically available evaluations; and 4) Transparency which records information from the questions that relate to the principles of open government, e.g. whether government decisions are made publically available.

Limitations of the survey and composite indicators

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

Composite indicators are useful in their ability to integrate large amounts of information into an easily understood format (Freudenberg, 2003). However, by their very nature, cross-country comparable indicators cannot be context specific and cannot fully capture the complex realities of the quality, use and impact of regulatory policy. While the current survey, compared to previous editions, puts a stronger focus on evidence and examples to support country responses, it does not constitute an in-depth assessment of the quality of country practices. For example, while countries needed to provide examples of assessments of some specific elements required in RIA to back-up their answer with evidence, the OECD Secretariat did not evaluate the quality of these assessments nor discussed with stakeholders the actual impact of the RIAs on the quality of regulations.

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

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

The results of composite indicators are always sensitive to methodological choices, unless country answers are homogeneous across all practices. It is therefore not advisable to make statements about the relative performance of countries with similar scores. Instead composite indicators should be seen as a means of initiating discussion and stimulating public interest (OECD/European Union/JRC, 2008). To ensure full transparency, the methodology for constructing the composite indicators and underlying data as well as the results of the sensitivity analysis to different methodological choices, including the weighting system, will be made available publicly on the OECD website.

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Chapter 1

Global trends in regulatory policy: Evidence from new OECD survey data

According to the Regulatory Indicators Survey, a unique survey completed by all OECD members, most OECD countries have established the conditions for regulatory quality. They have generally committed at the highest political level to an explicit whole-of-government policy for regulatory quality. In most countries, conducting Regulatory Impact Assessment and stakeholder engagement has become a formal requirement in the development of new regulatory proposals by the executive. However, situations continue to differ significantly across countries. This chapter documents the adoption across OECD members of a whole-of-government approach to regulatory policy, the uptake in the use of regulatory policy tools and the important diversity in the institutional setting for regulatory policy.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Key findings

Trends

Consensus has grown among OECD countries on the elements of high quality regulation. In line with this consensus, a large body of knowledge has developed on the strategies, institutions, tools and practices of regulatory policy and governance. These efforts have led to the adoption in 2012 of the *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012).

The *Regulatory Policy Outlook* provides the first evidence-based analysis of the progress made by countries in improving the way they regulate. It is based on a unique survey completed by all OECD members, using the 2012 Recommendation as its basis. The Outlook provides insights into the organisation and institutional settings in countries for designing, enforcing and revising regulation and reviews the use of regulatory policy tools such as Regulatory Impact Assessment (RIA), stakeholder engagement and *ex post* evaluation.

The Outlook shows that OECD countries have established the conditions for implementing the 2012 Recommendation. OECD countries have generally committed at the highest political level to an explicit whole-of-government policy for regulatory quality by making a Minister or a high-level official responsible for promoting government-wide progress on regulatory reform. Many have published an explicit regulatory policy. Most countries have instituted either single or multiple oversight bodies to ensure regulatory quality.

The Outlook shows a clear uptake in the use of regulatory policy tools. In most countries conducting RIA and stakeholder engagement is a formal requirement imposed by law in the development of new regulatory proposals by the executive. A significant number of countries have also put in place the conditions for implementing these requirements in practice – by issuing specific guidelines for instance and by monitoring their use.

Areas for further action

The institutional setting for regulatory policy and how it is embedded into law differ substantially across countries and jurisdictions. For instance, the evidence shows that regulatory policy is usually expressed in a multiplicity of policy documents. Similarly, countries report on average 2.8 oversight bodies located across the government (e.g. the Prime minister's office or cabinet office, in the Ministry of Economy, Finance or Business, in the Ministry of Justice) or even as independent bodies. The functions and responsibilities of the oversight bodies range from RIA, simplification, stakeholders engagement, *ex post* analysis, legal quality and other tasks such as co-ordination across the government or compliance with legal requirements.

There is no blue print for institutional setting nor is there a model legal text to embed regulatory policy into law. These are country-specific and highly contextual; a function of history, administrative culture and the maturity of the regulatory framework. However, the diversity and in some cases the multiplication of institutions involved may raise the issue of co-ordination across various responsible authorities and ultimately the question of the effectiveness and efficiency of regulatory policy. Countries have much to learn from each other on their experiences with various institutional organisations.

Similarly, there is room for improvement in the use of regulatory policy tools. For stakeholder engagement and RIA, for instance, where countries are generally more advanced, the areas of transparency and quality control remain underdeveloped in all but a handful of countries. Looking ahead, improving transparency and establishing quality control mechanisms should help countries ensure that their regulatory policy tools deliver on their objectives. In the area of *ex post* evaluation, countries score poorer in terms of systematic implementation and of developing concrete methodologies and guidance. *Ex post* evaluation is an area for significant improvement.

Introduction

In 2011, the OECD noted the strong emergence of regulatory policy among OECD countries to promote regulations that "support economic growth and development, the achievements of broader societal objectives such as social welfare and environmental sustainability" (OECD, 2011). Four years later, in the current post-crisis context of fiscal stringency, sluggish growth and high unemployment, it is fair to say that the need for high quality regulations and greater consistency of regulatory frameworks remains critical. Regulatory reform, understood as the changes that improve the quality of regulation, provides a real opportunity to stimulate economic activity, unlock productivity and growth gains and balance the measures that seek to restore fiscal health but risk undermining recovery (Box 1.1 proposes a definition of regulatory quality).

Box 1.1. **What is regulatory quality?**

Regulations are the rules that govern the everyday life of businesses and citizens. They are essential for economic growth, social welfare and environmental protection. But they can also be costly in both economic and social terms. In that context, "regulatory quality" is about enhancing the performance, cost-effectiveness, and legal quality of regulation and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence-base. Beyond process, the notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient (do not impose unnecessary costs), coherent (when considered within the full regulatory regime) and simple (regulations themselves and the rules for their implementation are clear and easy to understand for users).

Building and expanding on the 1995 "OECD Recommendation on Improving the Quality of Government Regulation" (OECD, 1995), it is possible to define regulatory quality by regulations that:

1. serve clearly identified policy goals, and are effective in achieving those goals;
2. are clear, simple, and practical for users;
3. have a sound legal and empirical basis,
4. are consistent with other regulations and policies;

Box 1.1. **What is regulatory quality?** *(cont.)*

5. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
6. are implemented in a fair, transparent and proportionate way;
7. minimise costs and market distortions;
8. promote innovation through market incentives and goal-based approaches; and
9. are compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Source: OECD (1995), *OECD Recommendation on Improving the Quality of Government Regulation*, OECD, Paris, *http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=128&InstrumentPID=124&Lang=en&Book=False*; OECD/European Commission (2009), "Better Regulation in Europe: an OECD Assessment of Regulatory Capacity in the 15 Original Member States of the EU: Project Glossary", *www.oecd.org/gov/regulatory-policy/44952782.pdf*; Radelli C. (2004), "How Context Matters: Regulatory Quality in the European Union", *Journal of European Public Policy*, Special Issue on Policy Convergence.

The strong focus on regulatory co-operation and good regulatory practices in the context of recent trade agreements also points to the importance of regulatory policy in ensuring the quality of the rules of globalisation beyond domestic boundaries. Ensuring the quality of laws and regulations is crucial for promoting economic growth, equity and environmental protection, as well as for building resilient societies. Conversely, regulatory failure may have dramatic impacts globally – as illustrated by the 2008 financial crisis and the ensuing economic downturn. It can also divert the energy and talent of entrepreneurs away from strategic tasks; impede competition, trade and investment; limit innovation and economic efficiency; and undermine equity and green growth.

Both OECD and non-OECD countries have acknowledged the importance of regulatory policy "to ensure that regulations and regulatory frameworks are justified, of good quality and achieve policy objectives" (OECD, 2011). In line with this realisation, consensus has grown among countries over the years on the elements of high quality regulation and a large body of knowledge has developed on various strategies, institutions, tools and practices around regulatory policy and governance. These efforts have led to the development of a number of instruments, starting with the "1995 Recommendation of the Council on Improving the Quality of Government Regulation", including the "2005 APEC-OECD Integrated Checklist on Regulatory Reform", and culminating in 2012 with the "Recommendation of the Council on Regulatory Policy and Governance" (Box 1.2). In line with this recognition, the evidence shows the significant efforts made by countries to adopt the principles and tools of regulatory policy and the emergence of regulatory policy as an important field of public sector reform.

This chapter builds on the results of a unique survey of OECD practices in regulatory policy, the 2014 Regulatory Indicators Survey (see Reader's guide and Annex B), as well as on earlier research to highlight trends across countries over the past decade. It provides an overview of state-of-the-art practices for regulatory policy and governance across the OECD and conveys policy messages of wide relevance to the OECD membership. Building on this stock-taking, the next chapter identifies ways in which countries should approach their regulatory policy agenda over the coming years to address emerging challenges.

Box 1.2. **Recommendation of the Council on Regulatory Policy and Governance**

The Recommendation sets out the measures that Governments can and should take to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society. These measures are integrated in a comprehensive policy cycle in which regulations are designed, assessed and evaluated *ex ante* and *ex post*, revised and enforced at all levels of government, supported by appropriate institutions.

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.
2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including on-line) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.
5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.
6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice.
7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.

Box 1.2. **Recommendation of the Council on Regulatory Policy and Governance** *(cont.)*

11. Foster the development of regulatory management capacity and performance at sub-national levels of government.
12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

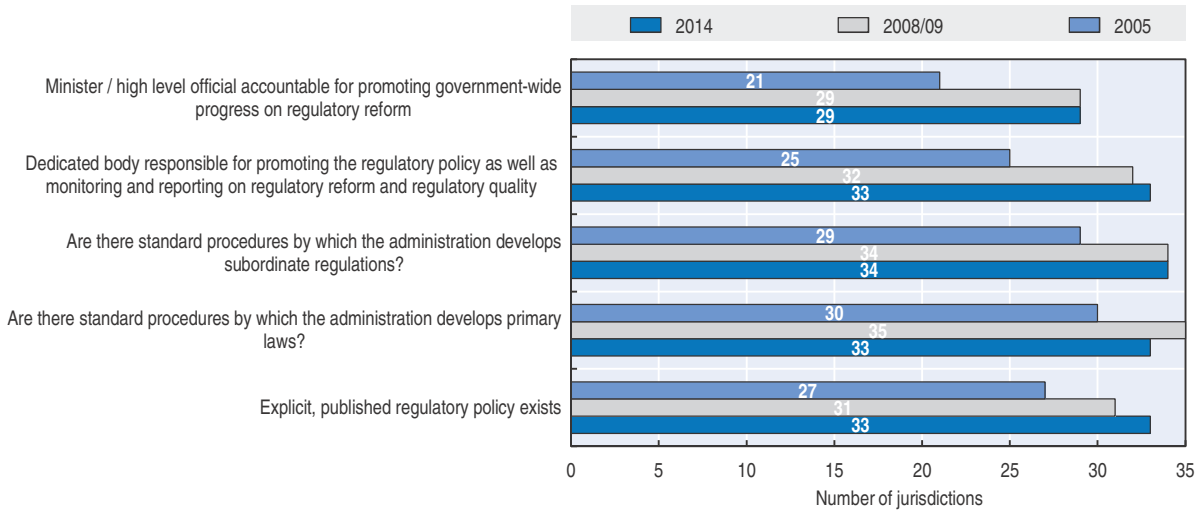
Source: OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris.

The wide adoption across OECD members of a whole-of-government approach to regulatory policy

The 2012 Recommendation prescribes that members "commit at the highest political level to an explicit whole-of-government policy for regulatory quality". The Survey results confirm that most countries show signs of such a commitment. An increasing number of countries have nominated a Minister or a high-level official to be accountable for promoting government-wide progress on regulatory reform; and have developed and published an explicit regulatory policy. Most countries have also established a dedicated body responsible for promoting regulatory policy and for monitoring and reporting on regulatory reform and quality. In practice, most countries have standard procedures for developing primary and subordinate laws (Figure 1.1).

This high-level of commitment is encouraging. It shows that OECD countries have established the conditions for implementing the 2012 Recommendation: developing an explicit policy and making it widely known, securing high-level political leadership and advocacy with government; and establishing de facto procedures. The survey results also raise the issue of the small number of OECD countries that still do not have an explicit

Figure 1.1. **The adoption of an explicit whole-of-government policy for regulatory quality**



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

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

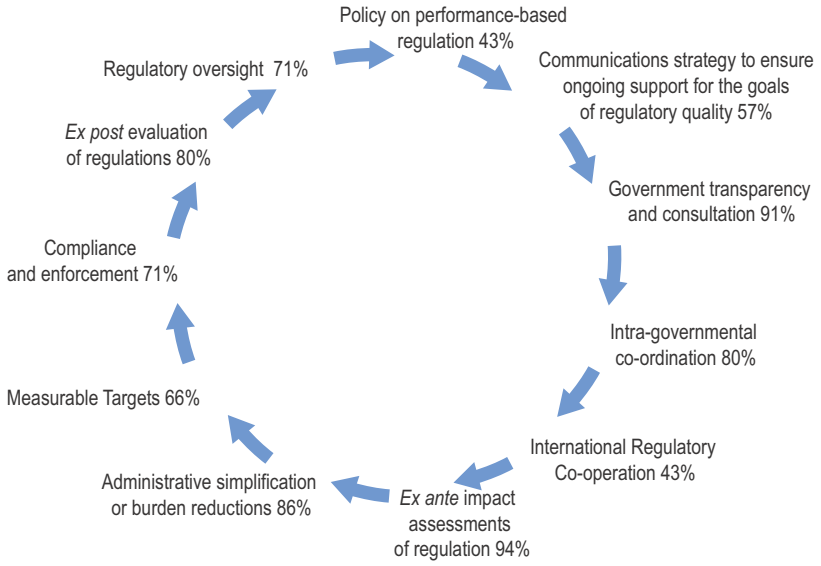
StatLink http://dx.doi.org/10.1787/888933262494

regulatory policy. There are also countries that no longer report having some of the major requirements for regulatory quality that they had reported in 2008/09. On the whole, however, the survey data show evidence of stalling rather than backsliding.

The way regulatory policy is embedded into law differs substantially across countries. While most countries report an explicit, published regulatory policy, there is no blue print or a model legal text to embed this policy into law. The evidence shows that regulatory policy is rarely expressed in a single high-level document. Instead countries have a wide range of documents, from broad approaches to regulatory policy (through cabinet directives on regulatory management, implementation plans for regulatory reform or frameworks for better regulation and directives on regulatory planning and review), to focused documents referring to specific regulatory tools such as RIA, administrative simplification and *ex post* evaluation. They take several forms: laws, manuals or guidelines, and government strategies and programmes. Based on the survey results, most countries report more than one document and 18 countries have 3 documents or more.

These policies cover various areas of regulatory governance (Figure 1.2). In 33 countries, regulatory policy covers *ex ante* impact assessments. In 32 countries, it covers government transparency and consultation; and in 28 countries *ex post* evaluation of regulations. Compliance and enforcement is less common (25 countries), as is performance-based regulation (15 countries). This suggests that many countries still have progress to make at the implementation stage of the regulatory cycle.

Figure 1.2. **Areas covered in regulatory policy across OECD countries**

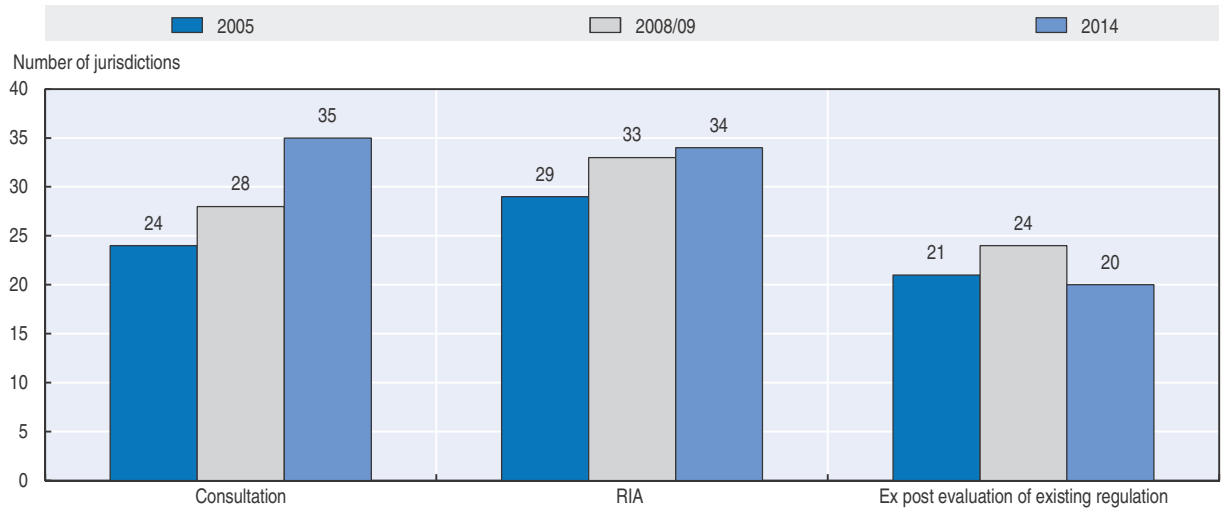


Source: OECD 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

A more systematic use of regulatory policy tools

The 2012 Recommendation highlights the importance of "maintaining a regulatory management system, including both *ex ante* impact assessment and *ex post* evaluation as key parts of evidence-based decision making". The survey results indicate greater use of the typical tools of regulatory management, in particular consultation and RIA (Figure 1.3). In both areas, the number of countries with formal requirements for their adoption has

Figure 1.3. **Formal requirements in the areas of consultation, RIA and *ex post* evaluation**



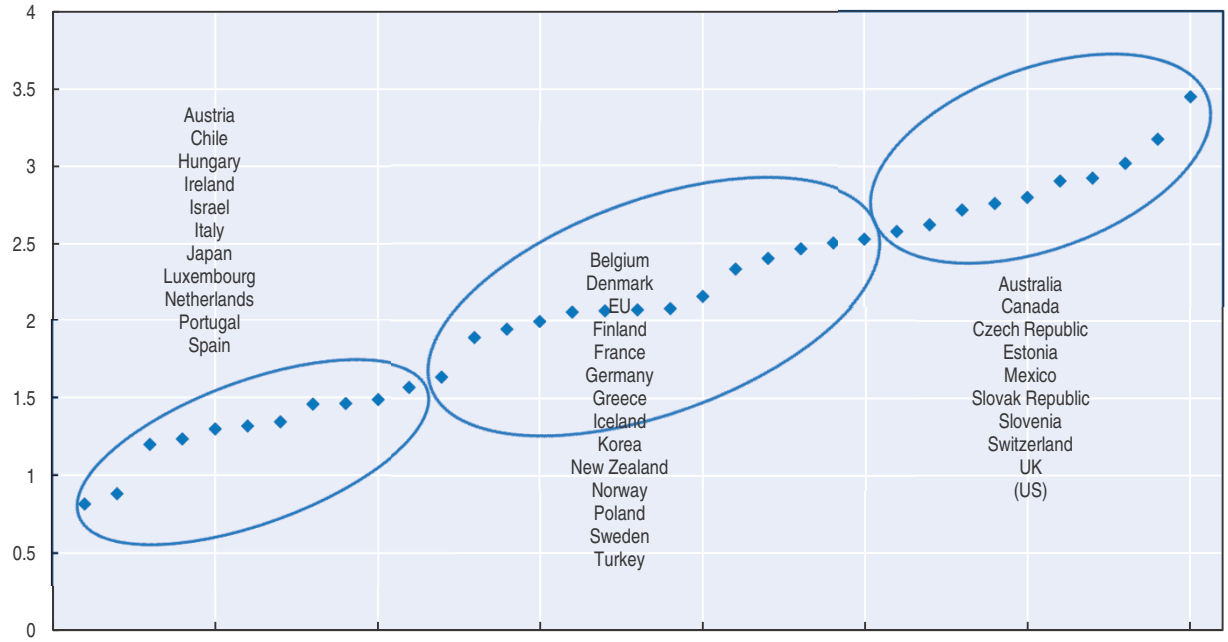
Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink *http://dx.doi.org/10.1787/888933262507*

risen in the last decade. In the area of consultation, eight countries have even made this requirement a feature of their constitution (see Chapter 3). In contrast, the practice of *ex post* evaluation remains limited in its application in many countries. This may reflect the important fundamental and methodological challenges faced by countries in implementing this area of the 2012 Recommendation (see Chapter 5).

Three composite indicators have been developed to describe the use of stakeholder engagement, RIA, and *ex post* evaluation (see Figures 1.4, 1.5 and 1.6 and the Reader's guide for the scope of the indicators and their limitations). These composite indicators are further described and analysed in the chapters on stakeholder engagement (Chapter 3), RIA (Chapter 4) and *ex post* evaluation (Chapter 5). They confirm that countries have made efforts to establish and implement their practices in the three areas. There is nevertheless room for improvement in all countries. In the areas of stakeholder engagement and RIA, for instance, where countries are generally more advanced, they have achieved on average half of the full potential of these tools, based on current knowledge of good regulatory policy practices. In the area of *ex post* evaluation, the average is lower, with countries performing less well in terms of systematically implementing *ex post* evaluation and developing concrete methodologies and guidance. This is thus an area for significant improvement. It is also worth noting that the results for primary laws and subordinate regulations are broadly similar. However, countries generally report having less stringent requirements for subordinate regulations than for primary laws, particularly in the area of stakeholder engagement.

The composite indicators also highlight the areas for improvement. A more detailed approach of the different components of the composite indicators shows that most countries have established the necessary legal requirements and tools for RIA and stakeholder engagement (Tables 1.1, 1.2 and 1.3). However, transparency and quality control remain underdeveloped in all but a handful of countries. The lack of quality control and oversight is particularly pronounced for *ex post* evaluation. Looking ahead, establishing

Figure 1.4. **Composite indicators: Stakeholder engagement for developing regulations**

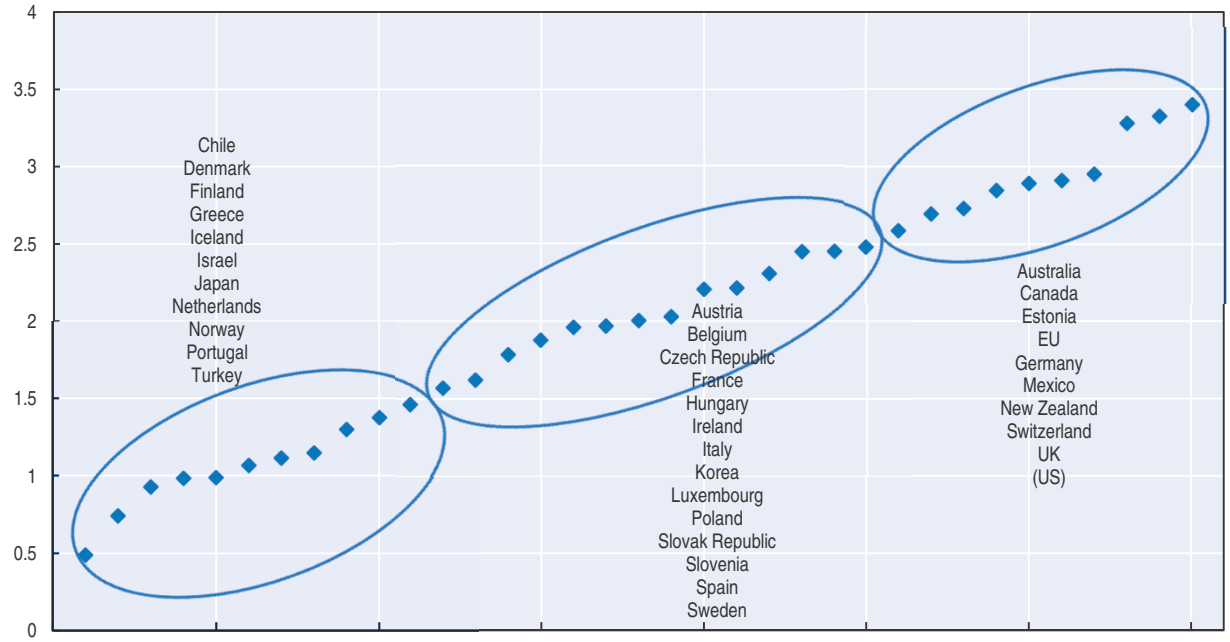


Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The scores are an average of the scores for primary laws and subordinate 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: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink *http://dx.doi.org/10.1787/888933262567*

Figure 1.5. **Composite indicators: Regulatory Impact Assessment**

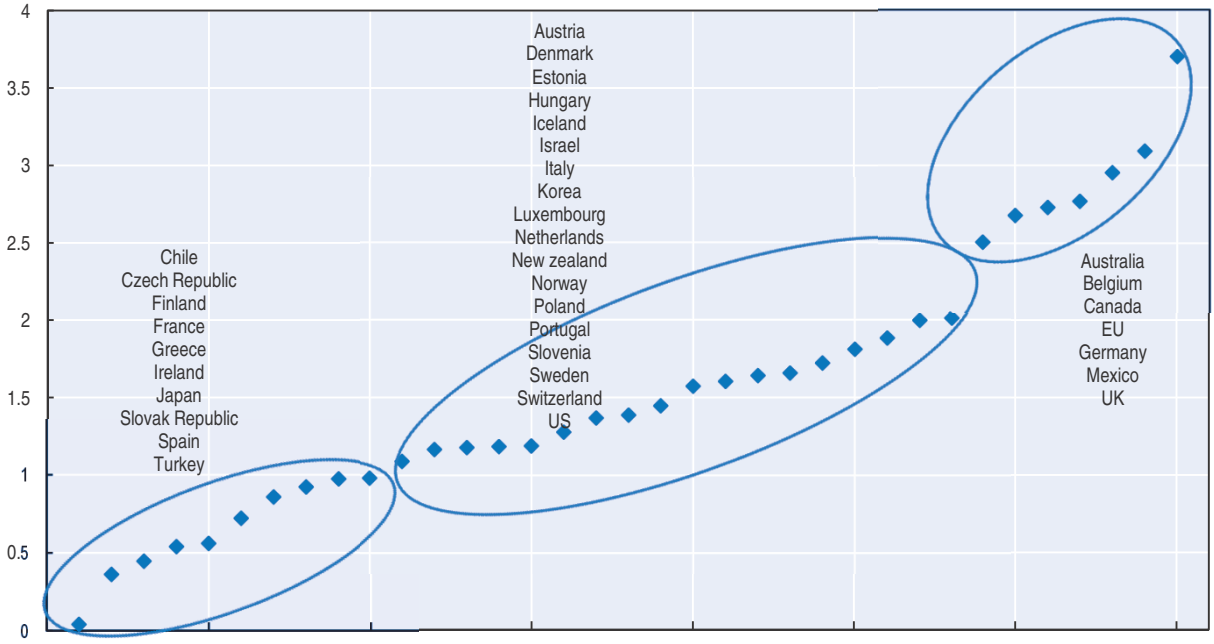


Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The scores are an average of the scores for primary laws and subordinate 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: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink *http://dx.doi.org/10.1787/888933262511*

Figure 1.6. **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: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink *http://dx.doi.org/10.1787/888933262527*

quality control mechanisms should help countries ensure that their regulatory policy tools deliver on their objectives.

For the three composite indicators, countries can be grouped into three clusters (the composition of which differ). These clusters are highlighted in Figures 1.4, 1.5 and 1.6 by symbols. They are reflected in the sub-categories in Tables 1.1, 1.2 and 1.3 with a system of symbols. These clusters highlight: *i)* the countries that are below the average and yet have already established the basic requirements for RIA, stakeholder engagement or *ex post* evaluation; *ii)* the countries around the average that have put in place additional components such as a standard methodology (between a third and half of the sample depending on the indicator); and *iii)* the countries that are above the average. For *ex post* evaluation, there are fewer countries in the group above the average and many more around the average.

Table 1.1. **Sub-categories of the composite indicators on stakeholder engagement**

Primary laws (P) and Subordinate regulations (S)

	Methodology		Systematic adoption		Transparency		Oversight and quality control		Total	
	P	S	P	S	P	S	P	S	P	S
Australia	●	●	●	●	▲	▲	▲	▲	●	●
Austria	■	■	▲	▲	■	■	■	■	■	■
Belgium	●	●	●	●	■	▲	■	■	▲	▲
Canada	●	●	●	●	▲	●	▲	▲	●	●
Chile	▲	▲	▲	▲	■	■	■	■	■	■
Czech Republic	▲	▲	●	●	●	●	▲	▲	▲	●
Denmark	▲	▲	●	●	▲	■	■	■	▲	▲
Estonia	●	●	●	●	●	▲	▲	▲	●	●
EU	▲	▲	▲	●	●	●	▲	▲	▲	●
Finland	●	●	●	●	●	●	■	■	▲	▲
France	▲	●	▲	●	▲	▲	■	▲	▲	▲
Germany	●	●	●	●	■	■	■	■	▲	▲
Greece	▲	▲	●	▲	■	■	▲	▲	▲	▲
Hungary	■	■	●	●	■	■	■	■	■	■
Iceland	▲	▲	▲	▲	▲	■	■	■	▲	▲
Ireland	■	■	■	■	■	■	■	■	■	■
Israel	■	■	▲	▲	■	■	■	■	■	■
Italy	■	▲	●	●	■	■	■	■	■	■
Japan	■	▲	■	▲	■	▲	■	■	■	▲
Korea	●	▲	●	●	▲	▲	▲	▲	▲	▲
Luxembourg	■	■	●	●	■	■	■	■	■	■
Mexico	●	●	●	●	●	●	●	●	●	●
Netherlands	▲	■	■	■	■	■	■	■	■	■
New Zealand	▲	▲	●	●	▲	▲	▲	▲	▲	▲
Norway	●	●	●	●	▲	■	■	■	▲	▲
Poland	●	●	●	●	▲	▲	■	■	▲	▲
Portugal	■	■	▲	▲	■	■	■	■	■	■
Slovak Republic	●	●	●	●	●	●	▲	▲	●	●
Slovenia	●	●	●	●	●	▲	■	▲	●	●
Spain	■	■	●	●	■	■	■	■	▲	■
Sweden	▲	▲	●	●	■	■	■	■	▲	▲
Switzerland	●	●	●	●	●	▲	■	■	●	▲
Turkey	▲	■	●	●	■	■	▲	●	▲	▲
United Kingdom	●	●	●	●	●	●	▲	▲	●	●
United States		●		●		●		▲		●

● Above average range.
▲ Average range.
■ Below average range.

Note: This table presents countries' scores for the four sub-categories, as well as the total score of the composite indicator on stakeholder engagement. The results are grouped into three clusters. For the total aggregated indicator, the circles represent scores over 0.5 above the mean score (> 2.579 for primary laws, > 2.570 for subordinate regulations). The triangles represent scores within the range of either 0.5 above or below the mean score (around 2.079 for primary laws, around 2.070 for subordinate regulations). The squares represent scores less than 0.5 below the mean (< 1.579 for primary laws, < 1.570 for subordinate regulations). The same logic is followed at the category-level, with the mean calculated as one-fourth of the total mean score.

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

StatLink http://dx.doi.org/10.1787/888933262570

Table 1.2. **Sub-categories of the composite indicators on RIA**

Primary laws (P) and Subordinate regulations (S)

	Methodology		Systematic adoption		Transparency		Oversight and quality control		Total	
	P	S	P	S	P	S	P	S	P	S
Australia	●	●	●	●	▲	●	▲	▲	●	●
Austria	●	●	●	●	■	■	▲	●	▲	▲
Belgium	●	▲	▲	■	●	●	▲	▲	▲	▲
Canada	●	●	●	●	●	●	■	▲	●	●
Chile	▲	▲	■	■	■	■	■	■	■	■
Czech Republic	●	●	●	●	▲	▲	▲	▲	▲	●
Denmark	▲	■	●	▲	■	■	■	■	▲	■
Estonia	●	●	●	●	●	●	▲	▲	●	●
EU	●	●	●	●	●	●	●	●	●	●
Finland	▲	▲	●	▲	■	■	■	■	▲	■
France	▲	■	●	▲	■	▲	▲	▲	▲	▲
Germany	●	●	●	●	▲	▲	▲	▲	●	●
Greece	▲	■	▲	■	■	■	■	■	■	■
Hungary	●	●	●	●	▲	●	■	■	▲	▲
Iceland	■	■	●	■	■	■	■	■	■	■
Ireland	●	▲	●	●	▲	▲	■	■	▲	▲
Israel	▲	▲	■	▲	■	■	■	■	■	■
Italy	▲	▲	▲	▲	■	■	▲	▲	▲	▲
Japan	▲	▲	▲	▲	■	■	■	■	■	■
Korea	●	●	▲	●	●	●	■	■	▲	●
Luxembourg	■	■	▲	▲	▲	▲	■	■	▲	▲
Mexico	●	●	●	●	●	●	●	●	●	●
Netherlands	▲	■	▲	▲	■	■	▲	■	■	■
New Zealand	●	●	●	●	▲	▲	■	▲	●	●
Norway	▲	▲	▲	▲	■	■	■	■	■	■
Poland	●	●	●	●	■	■	■	■	▲	▲
Portugal	■	■	▲	▲	■	■	■	■	■	■
Slovak Republic	▲	▲	▲	▲	●	●	■	▲	▲	▲
Slovenia	▲	▲	▲	●	●	▲	■	■	▲	▲
Spain	▲	▲	●	●	■	■	■	■	▲	▲
Sweden	●	●	▲	●	■	■	▲	▲	▲	▲
Switzerland	●	●	●	●	●	●	▲	▲	●	●
Turkey	■	■	●	■	■	■	■	■	■	■
United Kingdom	●	●	●	●	●	●	●	●	●	●
United States		●		●		●		▲		●

● Above average range.
▲ Average range.
■ Below average range.

Note: This table presents countries' scores for the four sub-categories, as well as the total of the composite indicator on RIA. The results are grouped in three clusters. For the total aggregated indicator, the circles represent scores over 0.5 above the mean score (> 2.582 for primary laws, > 2.406 for subordinate regulations). The triangles represent scores within the range of either 0.5 above or below the mean score (around 2.082 for primary laws, around 1.906 for subordinate regulations). The squares represent scores less than 0.5 below the mean (< 1.582 for primary laws, < 1.406 for subordinate regulations). The same logic is followed at the category-level, with the mean calculated as one-fourth of the total mean score.

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

StatLink http://dx.doi.org/10.1787/888933262583

Table 1.3. **Sub-categories of the composite indicators on *ex post* analysis**

Primary laws (P) and Subordinate regulations (S)

	Methodology		Systematic adoption		Transparency		Oversight and quality control		Total	
	P	S	P	S	P	S	P	S	P	S
Australia	●	●	●	●	●	●	●	●	●	●
Austria	●	●	■	■	▲	▲	▲	▲	▲	▲
Belgium	●	●	●	●	●	●	▲	▲	●	●
Canada	▲	●	●	●	●	●	▲	▲	●	●
Chile	▲	■	■	■	●	▲	■	■	▲	■
Czech Republic	■	■	▲	▲	▲	▲	■	■	■	■
Denmark	▲	●	▲	▲	▲	▲	■	■	▲	▲
Estonia	▲	▲	▲	■	●	●	▲	▲	▲	▲
EU	●	●	▲	▲	●	●	●	●	●	●
Finland	■	■	■	■	●	▲	■	■	■	■
France	■	■	■	▲	●	▲	■	■	▲	■
Germany	●	●	●	●	●	●	▲	▲	●	●
Greece	■	■	■	■	■	■	■	■	■	■
Hungary	▲	▲	■	▲	■	■	▲	▲	▲	▲
Iceland	■	■	■	■	●	●	■	■	▲	▲
Ireland	■	■	▲	■	■	■	■	■	■	■
Israel	●	●	▲	▲	●	●	■	■	▲	▲
Italy	▲	▲	▲	▲	■	■	▲	▲	▲	▲
Japan	■	■	▲	▲	■	■	■	■	■	■
Korea	▲	▲	●	▲	●	●	▲	▲	▲	▲
Luxembourg	▲	▲	▲	▲	●	●	■	■	▲	▲
Mexico	●	●	●	●	●	●	▲	▲	●	●
Netherlands	▲	▲	▲	▲	●	●	■	■	▲	▲
New Zealand	■	■	▲	▲	●	●	▲	▲	▲	▲
Norway	■	▲	■	■	●	●	■	■	▲	▲
Poland	▲	■	■	■	●	▲	▲	■	▲	■
Portugal	▲	▲	■	■	▲	▲	■	■	▲	▲
Slovak Republic	■	■	■	■	■	■	■	■	■	■
Slovenia	■	■	■	■	●	●	■	■	▲	▲
Spain	■	■	■	■	●	▲	■	■	■	■
Sweden	●	●	▲	▲	●	●	■	■	▲	▲
Switzerland	▲	▲	●	●	●	●	■	■	▲	●
Turkey	■	■	■	■	▲	▲	■	■	■	■
United Kingdom	●	●	●	●	●	●	●	●	●	●
United States	■	▲	■	▲	▲	●	■	■	■	▲

● Above average range.
▲ Average range.
■ Below average range.

Note: This table presents countries' scores for the four sub-categories, as well as the total of the composite indicator on *ex post* analysis. The results are grouped into three clusters. For the total aggregated indicator, the circles represent scores over 0.5 above the mean score (> 2.076 for primary laws, > 2.012 for subordinate regulations). The triangles represent scores within the range of either 0.5 above or below the mean score (around 1.576 for primary laws, around 1.512 for subordinate regulations). The squares represent scores less than 0.5 below the mean (< 1.076 for primary laws, < 1.012 for subordinate regulations). The same logic is followed at the category-level, with the mean calculated as one-fourth of the total mean score.

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

StatLink http://dx.doi.org/10.1787/888933262591

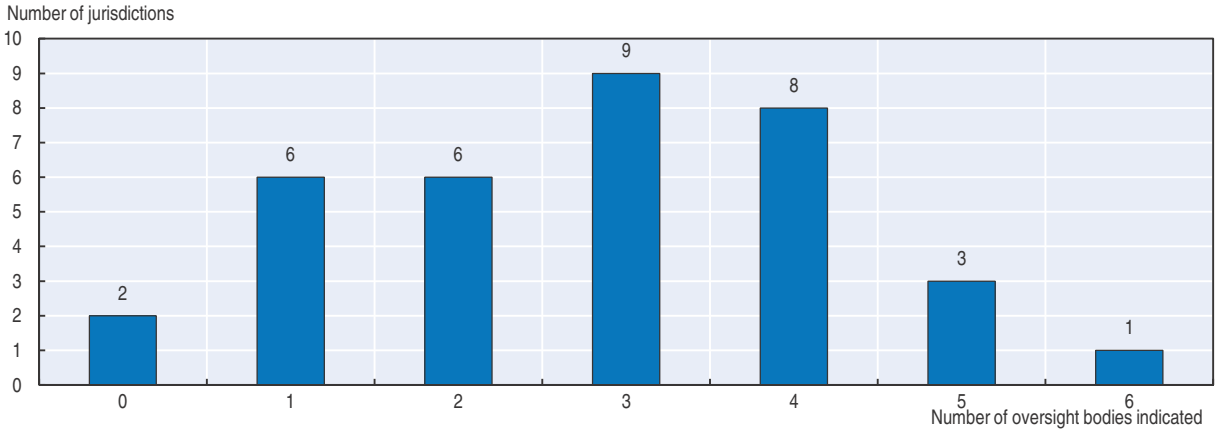
The heterogeneous institutional setting for regulatory policy

The 2012 Recommendation recommends that countries "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 describes a wide range of functions and tasks to promote high quality evidence-based decision making, provide oversight of regulatory policy procedures and goals, support and implement regulatory policy. It also 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" (OECD, 2012).

The 2014 Survey results show signs that most countries have instituted either single or multiple oversight bodies to ensure regulatory quality (33 jurisdictions of the 35 surveyed). However, the institutional setting of oversight bodies differs importantly across countries. Strikingly, the majority of countries report not one but several oversight bodies (Figure 1.7). On average, countries report 2.8 oversight bodies. Twenty one countries have three or more oversight bodies. This raises the question of the allocation of responsibility across the different bodies and the need for intergovernmental co-ordination. While specialisation may be warranted, too much fragmentation could also erode a whole-of-government approach.

A majority of countries (26 out of 35) have at least one oversight body located at the centre of government (e.g. the prime minister's office or cabinet office) (Figure 1.8). In addition many countries have at least one body based in the Ministry of Economy, Finance or Business (13 countries) which can reflect a focus on monitoring and reducing administrative burdens. This choice of location may also be due to the technical nature of the work. In 8 countries, one oversight body is located in the Ministry of Justice, indicating a focus on the quality of the legal drafting (alongside or independently of economic impact analysis). Finally, since 2008, one can note the emergence of independent oversight bodies as a new institution in the regulatory policy architecture (Figure 1.8). Renda and Castro (2015) provides a rationale for establishing these bodies at arm's length from the government (Box 1.3).

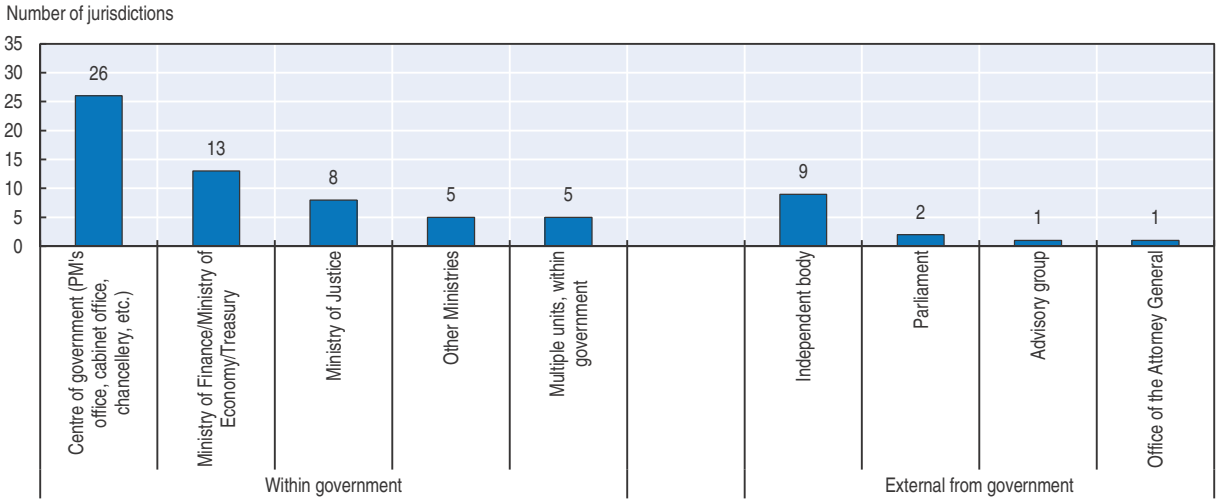
Figure 1.7. **Number of oversight bodies per country/jurisdiction**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262532

Figure 1.8. **The location of oversight bodies**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink *http://dx.doi.org/10.1787/888933262548*

Box 1.3. **The rationale for establishing independent oversight bodies**

A parliamentary democracy might locate the oversight body inside the parliament to enhance the scrutiny capacity of the assembly with respect to government's legislative decrees (especially when the scope of smart regulation tools such as RIA includes primary legislation);

When regulatory oversight is mostly focused on the quality of public spending, it might make sense to empower the audit office or a court of audit;

When regulatory reform targets a particular group of stakeholders, which is sufficiently concentrated (and/or expected to possess relevant information available to the policymakers), it might make sense to establish a hybrid or a totally external oversight body with a more limited mandate;

When governments want to signal their commitment to high-quality regulatory reform, they may have an incentive to appoint a high-level academic committee in charge of supervising the choices made by government;

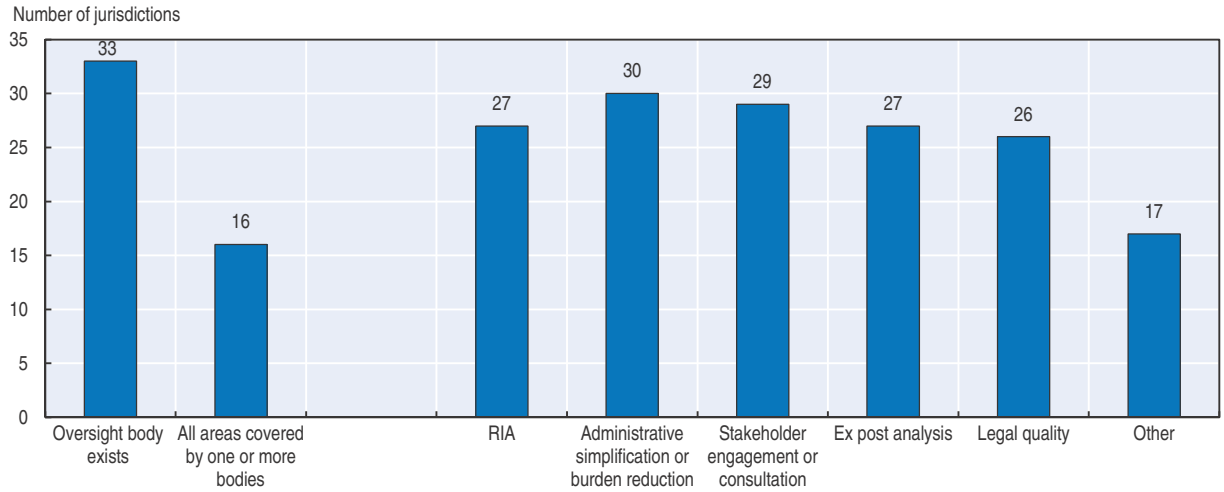
Finally, when performing the technical functions of assessing and advising on the quality of impact assessments, the OECD *Recommendation of the Council on Regulatory Policy and Governance* states that the oversight body should be independent from political influence (though this does not necessarily demand complete independence from government). Conversely, experience shows that the more regulatory reform is aimed at regulatory coherence and the realisation of the government's agenda for the electoral period, the more likely and appropriate it will be that the oversight body is located inside government.

Source: Renda and Castro (2015), "Regulatory oversight and co-ordination: Selected national experiences", OECD, unpublished paper.

The Survey results also show substantial variety across countries in relation to the oversight functions and responsibilities of the oversight bodies. They range from RIA, administrative simplification, stakeholders engagement, *ex post* analysis, legal quality and

a category entitled "other" that includes tasks such as co-ordination across the government, or verifying compliance with legal requirements of the country, or driving strategy and planning in regulatory policy (Figure 1.9). None of these categories stand out as prominent. The various bodies also show substantial heterogeneity in the depth and range of their responsibilities (Table 1.4). Four bodies enjoy responsibilities for all categories. 35 bodies are limited to one regulatory oversight activity. For bodies with only a single responsibility, oversight of legal quality is the most common responsibility cited (12 bodies have legal quality as sole responsibility).

Figure 1.9. **Areas of responsibility of oversight bodies**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262557

Table 1.4. **The responsibilities of oversight bodies**

Number of responsibilities	Number of oversight bodies
5	4
4	20
3	16
2	19
1	35

Note: The categories of responsibilities include RIA, stakeholder engagement/consultation, administrative simplification or burden reduction, *ex post* analysis, and legal quality.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262606

According to the 2012 Recommendation, "the regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decisions making". These functions and responsibilities can be seen as aiming to answer the deficits of regulation and the shortcomings of the regulatory policy agenda as detailed in the next chapter. In particular, oversight bodies have a role to play in *i)* solving the lack of consistency and continuity in regulation; *ii)* encouraging ministries to engage stakeholders in the regulatory process in an inclusive and transparent way to address the participation deficit; *iii)* promoting greater responsiveness and effectiveness of regulation

through the use of tools that support the gathering of evidence; and *iv)* training regulators to enhance the efficiency of regulation by becoming more adaptable and flexible in the use of their regulatory instruments.

Table 1.5 summarises these functions, areas of responsibility and locations of oversight bodies. Based on the 2012 Recommendation, the functions involve firstly "quality control", i.e. the task of improving the quality of impact assessments, by providing scrutiny of individual policy evaluations and challenging proposals that are not accompanied by a satisfactory assessment. Oversight bodies may also be charged with examining the legal quality of draft laws (most often performed by a dedicated legal service or a ministry).

Table 1.5. **The functions of oversight bodies**

Areas of responsibility	Functions	Location
Consultation/stakeholder engagement Legal quality Administrative simplification RIA *Ex post* evaluation Other (e.g. de-regulation agenda or e-government)	**Quality control** • Scrutinise evaluations • Challenge unsatisfactory tools or processes • Review legal quality **Identifying areas of policy where regulation can be made more effective** • Gather opinions from stakeholders on areas in which regulatory costs are excessive and submit them to individual departments/ministries. • Reviews of existing regulation • Analysis on the stock and/or flow of regulation. • Advocate for particular areas of reform **Systematic improvement of regulatory policy** • Institutional relations e.g. co-operation with international fora • 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 of regulatory tools** • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle **Guidance and training** • Issue guidelines • Provide assistance and advice to regulators for performing assessments	**Within government** • Centre of government (e.g. PM's office, cabinet office) • Ministry of Finance / Ministry of Economy / Treasury • Ministry of Justice • Other ministries **External to government** • Independent bodies • Parliament • Advisory group • Office of Attorney General

Source: Based on OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris; Renda, A. (2015), "Regulatory Impact Assessment and Regulatory Policy", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris; and 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262615

Second, the 2012 Recommendation highlights that the oversight bodies should play a role in examining the potential for regulation to become more effective. Renda and Castro (2015) describe methods which can support this objective including: participating in the advocacy process by identifying areas in which regulatory reform would be needed; gathering opinions from stakeholders on areas in which regulatory costs are excessive; drafting studies on the stock and/or flow of regulation; and providing reviews of existing regulation.

Third, the 2012 Recommendation notes that oversight bodies should contribute to the systematic improvement of regulatory policy. Renda and Castro (2015) identify a number of

functions that can support this aim, including: reporting (e.g. publishing yearly reports on oversight activities); institutional relations (e.g. reporting to parliament on oversight activities and co-operating with other oversight bodies at the international level and within international fora such as the OECD or APEC for instance); and co-ordination (e.g. co-ordinating between oversight bodies located in different parts of government).

Fourth, oversight bodies should also be tasked with co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods, encouraging the smooth adoption of the different regulatory tools at every stage of the policy cycle.

Finally, the 2012 Recommendation states that the oversight body should provide training and guidance on impact assessment and strategies for improving regulatory performance. According to Renda and Castro (2015), oversight bodies may also act as "consultancies bodies", providing assistance to ministries at an early stage of drafting the preliminary and extended impact assessment forms and intervening on early drafts by suggesting more in-depth assessment of competitiveness, proportionality, reduction of administrative burdens requirements etc.

The evidence collected through the Survey shows that in practice, oversight bodies have an important role to play in quality control. Ten countries report "review by standing or central oversight body" as the method for ensuring that regulators are held accountable for considering consultation comments when developing the final regulation and 11 countries report a form of standing body as the method of quality control for *ex post* evaluations. Some bodies may be able to challenge inadequate evaluations, or signal to government or the public when a regulatory obligation has not been fulfilled. Oversight bodies may also be charged with examining the legal quality of draft laws.

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Chapter 2

A forward-looking agenda for regulatory policy

Despite the progress made in adopting the principles and practices of regulatory policy, OECD countries continue to face challenges in establishing the conditions for and in delivering on their regulatory quality agenda. This chapter identifies the challenges faced by countries in embedding regulatory policy in law and practices. It also identifies an ambitious agenda for countries on how to overcome the challenges and use regulatory policy to promote growth and well-being. It focuses in particular on four areas that constitute the frontiers of regulatory policy: i) regulatory implementation and enforcement; ii) the untapped potential of the non-traditional actors of regulatory governance; iii) strengthening the evidence on impacts of regulatory policy; and iv) addressing regulatory impacts beyond the border.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Key findings

Trends

Despite the progress made in adopting the principles and practices of regulatory policy, countries continue to face a number of challenges in establishing the conditions for and in delivering on their regulatory quality agenda as provided for in the 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012c).

Among the challenges, countries may lack a strategic approach and focus too much on processes rather on the impacts of regulatory quality. Regulatory policy tools – typically consultation, Regulatory Impact Assessment, burden reduction initiatives – are largely used in a procedural fashion after policies and the regulatory decision have been made. In many cases, the scope of regulatory policy is limited to minimising the administrative costs imposed on business by regulations. This narrow, procedural approach may prevent countries from fully benefitting from the efforts they have made to establish the conditions for regulatory quality.

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

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

Areas for further action

Regulatory implementation and enforcement remain the weakest link in regulatory governance. Focusing on increasing compliance with regulations would help to improve the effectiveness of regulation at achieving its goals and, ultimately, would strengthen the case for regulatory quality. There is a potential to further improve compliance strategies, inspections and use new approaches to regulatory design – such as behavioural economics – to foster better compliance. In addition *ex post* evaluation could be used further to "close the loop" in the regulatory governance cycle.

The landscape of regulatory players is rich and there is no blue print or ideal institutional arrangement for regulatory reform. However, there may be some missed opportunities in the institutional set up of countries to promote regulatory reforms. There

is untapped potential of traditional actors and the emerging state and non-state actors. In particular, parliaments and sub-national levels of governments generally have a substantial regulatory role. They should be encouraged to set up their own procedures to guarantee the quality of legislation. Similarly, more countries are establishing regulatory agencies to facilitate the adequate delivery of regulatory systems. More efforts should be put into understanding the drivers and indicators of good performance of regulatory agencies and their contribution to achieving good regulatory outcomes.

Much remains to do to promote evidence based regulatory policy. Many countries are still in the process of developing the tools that can support the identification of trade-offs, costs and benefits of alternative regulatory reforms upon which countries can base their societal choices. The evidence on the impact of using alternative regulatory policy tools and approaches is not captured and therefore the overarching impact remains very elusive. Looking forward, many countries still need to establish systems for collecting and producing the evidence needed to base decision and to integrate them into the decision-making process. Publicly available reviews can inform the reform agenda of the government. In some countries, there is independent standing capacity to undertake in-depth reviews and provide the necessary analysis. New ICT are changing the way information is collected and their full potential to support regulatory quality has yet to be explored.

Ensuring efficient regulatory policy in an interconnected world remains a challenge, and one also related to the limited spread of regulatory policy beyond OECD countries. Regulators cannot afford to act in isolation anymore. They are impacted by the regulatory activity of other jurisdictions. Their own activity may have direct or indirect effects on trade and investment flows. Looking ahead, regulatory policy will need to take greater consideration of outside parties in the development and delivery of regulation. In this perspective there is a need to build shared understanding and common language on international regulatory co-operation, taking into account the variety of possible approaches and mechanisms and their respective benefits and costs in different country and sector context.

Introduction

As outlined in the previous chapter, OECD countries have acknowledged the critical importance of regulatory policy and imbedded many good practices within their domestic settings. Despite the important progress made, countries nevertheless continue to struggle with the complexity of positioning regulatory policy strategically in their broader regulatory reform and growth agenda owing to a multiplicity of factors.[1] The landscape of regulatory actors is rich and diverse, raising a number of co-ordination and engagement challenges. Regulatory reform is also perceived as difficult to carry out owing to a complex political economy.

Looking ahead, there are several areas that countries could strengthen to deliver on their better regulation agenda and to improve the quality of their regulatory frameworks. This is the case in particular of regulatory delivery and enforcement. There are also actors whose potential to improve the quality of regulation remains largely untapped, including parliaments, economic regulators, sub-national levels of government and supreme audit institutions. There are areas that may be perceived as too complex but would bring substantial gains if reforms were pursued more systematically. For example, efforts to

measure the performance of regulatory policy and linking the tools and processes of better regulation with final outcomes – growth, well-being – would help to promote regulatory reforms among the regulated and the public at large. Moreover, developing such tangible evidence, linking investments in regulatory policy to final outcomes, could provide new insights into the design and implementation of successful policies. There are also new fields of regulatory policy that countries need to harness. This is for instance the case of international regulatory co-operation that has the potential to address some of the challenges that regulators face in a globalised economy but remains largely unexplored.

This chapter builds on the results of the 2014 Regulatory Indicators Survey (see the Reader's guide and Annex B), as well as on OECD and other research to discuss the challenges faced in the systematic adoption and implementation of regulatory policy. It identifies a forward-looking agenda for countries wishing to harness the potential of regulatory policy to promote growth and well-being.

The challenges of regulatory policy

Lodge (2015) argues provocatively that "regulation is in crisis". If not an outright crisis, countries face a number of challenges in carrying out their regulatory activities owing to new trends such as rapid technological innovation and globalisation. As an example, heavily regulated sectors, such as infrastructure service delivery and healthcare, see their traditional "business model" (based on state-owned monopolistic companies) challenged with important repercussions on the ways they are regulated.[2] The 2008 financial crisis and the ensuing economic downturn have shown the potentially devastating impacts of regulatory failures in an open economy.

These challenges point to a number of "deficits" of regulation. Following Lodge (2015) and various OECD works, including the evidence collected through the Regulatory Indicators Survey, four deficits can be identified.

- There is an *oversight deficit* related to the lack of consistency and continuity in regulation as well as inadequate enforcement that generates uncertainty and costs for the regulated. As identified in the previous chapter, countries display a fragmented approach to regulatory policy. Their institutional framework for regulatory policy covers multiple oversight bodies and multi-level governance. The regulatory policy cycle is too often broken, with the downstream phases of enforcement and evaluation largely neglected.
- A *participation deficit* related to the challenges in engaging stakeholders in the regulatory process. This deficit heightens the risk of capture and the lack of representativeness of the engagement process that questions the legitimacy of regulation. While the previous chapter shows that countries grasp the importance of stakeholders' engagement, there is still strong doubt that it is addressing the actual participation needs of regulatory policy. Engagement remains largely done too late in the process to inform decision making. It is still largely used for transparency purposes rather than evidence gathering (Alemano, 2015). There is a risk that it is an area where expectations are being raised, but not necessarily met.
- A *deficit in the effectiveness of regulation* related to the prescriptive nature of regulation that may fail to elicit the expected responsiveness in the regulated and the public at large. While regulation is not the right instrument in all situations, its use is justified in the presence of market failures. However, there is evidence that countries use regulations to

signal a political commitment rather than to address market failures. The previous section for instance highlights the use of regulatory policy tools as an administrative requirement imposed by oversight bodies rather than real instruments of regulatory policy. Their use comes usually too late in the process, once regulation is too much advanced to change track and adopt a different approach. The consideration of alternatives to regulations continues to be a weak link in the RIA process.

- An *evaluation deficit* that questions the efficiency of regulation. The evidence suggests that countries have not invested sufficient regulatory policy resources to ensure that their regulatory instruments are fit for purpose. As highlighted in the previous chapter, countries generally show a strong focus on design rather than on the delivery of regulation – oversight bodies for instance overwhelmingly focuses on RIA rather than on the areas of inspection, enforcement and compliance. The area of *ex post* analysis lags behind compared to the other fields of regulatory policy.

The difficult strategic positioning of regulatory policy

Ensuring that regulation adapts and remains fit for purpose will require a harder look at the underlying regulatory frameworks and tools that ensure the quality of regulation. However, despite the substantial efforts made to improve regulatory policy and governance across the OECD, countries face a number of challenges. For one, despite the efforts to build a consensus around the content of regulatory policy and governance, the language, components and even objectives of the regulatory policy agenda of countries remain diverse. The continuous change in language around regulatory policy is one example. Table 2.1 provides some examples of different terminologies used in relation to regulatory policy.

Table 2.1. **Terminologies used in relation to regulatory policy**

OECD	EU	Other terminologies used in different countries
Regulatory quality Regulatory reform Regulatory policy	Better Regulation Smart regulation Regulatory fitness	Deregulation Paperwork reduction Regulatory management Regulatory governance Regulatory improvement Good regulatory practice Simplification

Source: Developed by the OECD Secretariat.

StatLink http://dx.doi.org/10.1787/888933262705

The regulatory policy agenda may also cover wide divergences in understanding and expectations across countries. Table 2.2 identifies the four most common objectives of regulatory policy based on Lodge (2015), including "reducing perverse and unintended effects", "reducing inconsistency, unpredictability and lack of expertise", "reducing regulatory burden", and "reducing siloes and lack of professional conversation". The different conceptions of the scope of regulatory reform can be synthetised and illustrated as in Figure 2.1. At one end of the spectrum, a narrow definition would show regulatory reform as limited to little more than minimising the administrative costs imposed on business by regulations. At the other end, regulatory reform can be seen as an integral part of the structural reform of economies, including such fundamental issues such as the economic role of the state and the public policy objectives that regulation is seeking to

achieve. In its broader definition, regulatory reform has the potential to raise GDP per capita of OECD economies by up to 25% through the implementation of structural reforms (Barnes et al., 2011; Bouis and Duval, 2011). However, based on OECD research, only a handful of countries have actually embraced a broader perspective of regulatory reform.

One of the consequences of the narrow understanding of the regulatory policy agenda of countries is the use of regulatory policy tools – typically consultation, RIA, burden reduction initiatives – in a procedural or administrative fashion, after policies and the regulatory decision have been made. These regulatory management tools may have become an end in themselves rather than supporting evidence-based policy making. Countries may have the perception to face a trade-off between democratic accountability on the one hand – conferred by elections that grant them the right to make choices on behalf of their electorate – and the technocratic use of tools that may be seen to constrain their options on the other hand. However, these tools merely aim to reveal the trade-offs and provide the information to base policy choices. Ultimately, the choices and policy decisions are made based on societal preferences that are reflected in political leadership.

The survey answers illustrate the fact that the procedural requirements in relation to the typical tools of regulatory management have been established in most countries. By

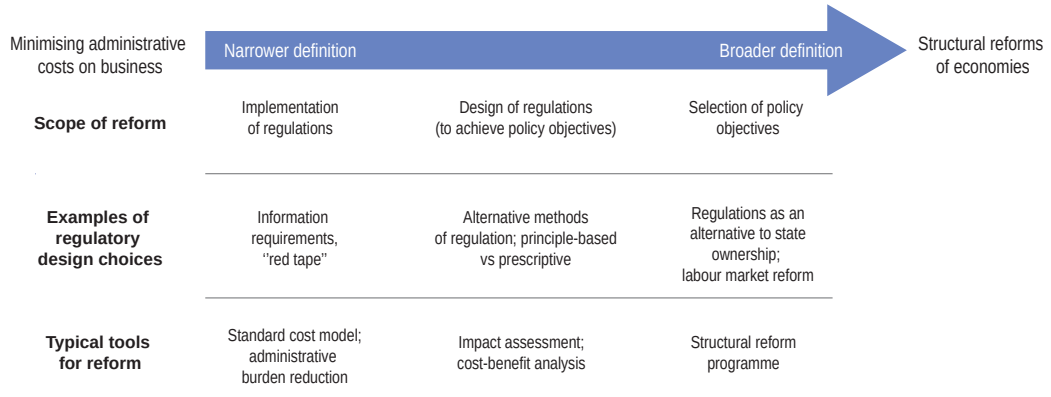
Table 2.2. **The four objectives of the regulatory policy agenda**

Reduce perverse effects and unintended effects Regulation have side-effects and trade-offs. Regulatory policy might offer one way to reduce the extent/impact of these effects.	**Reduce inconsistency, unpredictability and lack of expertise** Regulation suffers from knee-jerks. Regulatory policy may help slow down process, enrich information, and lead to better expert judgement on costs and benefits of different proposals.
Reduce regulatory "burden" via deregulation and "alternatives to regulation" Regulation seen as "last resort" and needs to be limited. Regulatory policy offers the tools to look at alternatives, such as "benchmarking" and naming and shaming.	**Reduce siloes and lack of professional conversation in regulation** Regulation seen as lacking professional conversation and institutional memory. Regulatory policy may offer the mechanisms that encourage exchange of knowledge and experiences.

Source: Based on Lodge, M. (2015), "Trends and Challenges in Regulation and Regulatory Policy", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris.

StatLink http://dx.doi.org/10.1787/888933262715

Figure 2.1. **The spectrum of regulatory reform**



Source: OECD (2012a), "Roundtable On Regulatory Reform for Inclusive Growth: The Contribution of Regulatory Reform to the Broader Reform for Growth Agenda of OECD Countries", produced as part of the series of Roundtables on Regulatory Reform in Support of Inclusive Growth of the OECD Regulatory Policy Committee, unpublished document.

contrast, the indicators of the actual use of these tools to connect to the regulatory policy agenda – for instance, the use of stakeholders' inputs to improve the quality of regulation or the early use of RIA to inform the development of regulatory measures – show mixed performance. Chapters 3 and 4 illustrate this point. As an example, according to the evidence collected through the survey, stakeholder engagement is more systematically carried out in the final phase of developing regulation rather than at an early stage, casting a doubt on the use of inputs to inform decision making. A limited number of countries use the RIA process to underpin a full cost-benefit analysis or to engage stakeholders in a co-production process. The quality of the impact assessment process remains unchecked in most countries – as an illustration, few countries only publish reports on how RIAs function in practice.

Beyond the procedural approach to regulatory policy, regulatory policy tools – in particular the *ex ante* tools of RIA and consultation – do not apply widely to all rule-making activity, but rather narrowly to the regulations developed by the executive branch of the national government. According to the Regulatory Indicators Survey, the activities of the parliament, as those of sub-national levels of government, are often excluded from the scope of regulatory policy, except in the few cases where the disciplines extend to these levels. In countries where the majority of national primary laws largely originate from initiatives of the national executive, this does not raise any major issue. However, in an important number of countries, the parliament and/or sub-national levels of government have a substantial rule-making activity which remains largely unchecked. Statistics on shares of laws initiated by the executive in the total vary widely, but remain patchy (Annex A). Extending regulatory management disciplines beyond national government and the executive and promoting a better information base are important areas for improvement.

There may also be a number of intrinsic tensions in the regulatory policy agenda of countries and across different approaches and tools that may undermine achievements. Lodge (2015) identifies the tensions between "responsive regulation" and "risk-based regulation", two contemporary approaches to regulatory enforcement.[3] Responsive regulation relies on frequent interactions that aim to promote enforcement as a mostly advice-driven process. It also requires the threat of formal sanctions (Parker, 2006). Risk-based enforcement reduces the number of enforcement activities related to low-level risks and focuses the attention and efforts on high-level risks. While this approach can help allocate the limited resources that regulators have, it may generate a contradiction, at least where the low-risk activities are concerned, if the threat of formal sanctions cannot be maintained.

The evidence shows the complexity of risk-based approaches to regulatory design and enforcement. The evaluation of the risk profiles in many sectors has proven very difficult. Indeed, in some cases it is challenging to identify which activities and institutions represent "systemic" risks. It is harder yet to identify those risks that might pose systemic risks in other systems (for example, failure in financial systems having catastrophic impact on health and safety). It is even more difficult to identify systemic risks that may emerge as a result of failure in other jurisdiction. Risk-based regulation is also challenged by the emergence of new risks, as by definition, they are "off the radar" of existing regulatory frameworks. They characterise areas where changing technologies, behaviours and markets may lead to the rise of new types of risks. By definition, not being known, the assessment of their "impact and probability" is particularly difficult to carry out.[4]

Another tension lies between the trend in adopting quantitative (blanket) targets to secure action and the aspiration towards quality of the better regulation agenda that requires a focused and qualitative approach. For example, quantitative targets on reducing the costs to particular groups may lead to the neglect of collecting evidence on the impacts on other groups, and overall welfare effects. Another example is provided by the administrative burden reduction efforts in many countries. These efforts have had a strong focus on reducing regulatory cost on business and some have evolved into programmes to reduce compliance costs. It is however not clear if these initiatives are taking full account of the competitive environment in which businesses operate. There is a risk that these efforts reinforce business rents as opposed to enhancing market and welfare.

Finally, the balance may not be easy to strike for governments between relying on non-regulatory tools such as voluntary codes of conduct and minimising risks of non-compliance. Non-binding tools may reduce enforcement costs for government and compliance costs for business. They may also lead to more creative and user-friendly solution to achieve the policy goal. However, they can also lead to uncertainty over legal obligations and can have a higher risk of failing to achieve the policy goal.

The political economy of regulatory reforms is complex

Finding support for regulatory reform is often difficult because the benefits of reforms are widely spread and evident only in the medium term whereas interest groups that stand to lose will be immediately vocal in their opposition. The specific combination of advocacy and analysis to demonstrate where changes in regulation will be of benefit is instrumental to successful reform. Political support is necessary for regulatory reform, but politicians also have to be convinced of the potential benefits of reform if they are to court the political risks of ensuring that regulatory quality is maintained and improved. The recent measures of austerity have required governments to do “more with less”. This can compound an already difficult argument for additional effort to conduct reforms on top of existing priorities. In addition many regulatory policy tools require an immediate investment, but may be perceived as delivering only longer-term gains. This may not be palatable in a political context where results are required immediately.

While there may be an external demand for reforms, opposition in specific areas of the economy and from specific groups remains strong. Businesses and citizens normally support regulatory reforms that remove or reduce the bureaucracy and red tape that affect them. The lesson from administrative burden reduction programmes is that reform efforts that realise tangible benefits will be supported. Yet, from the perception surveys carried out on the subject, business usually perceive that reforms to reduce regulatory burdens do not go far enough or quickly enough. There can be several explanations for this, including that minor regulatory or administrative changes can generate adaptation costs for businesses which are not justified by the expected gains and the sectors with the greatest potential for impacts and growth- generation are often excluded. On the other hand, there may be an increasing societal demand for more regulation, especially after the economic crisis related to a number of regulatory failures stemming both from poorly designed regulations and deficient enforcement. Balancing the demand for regulatory reform and demand for regulatory action is difficult.

The challenge of gathering support for reform is compounded by the difficulty to demonstrate the links between improving regulatory quality and delivering on policy objectives, and identifying opportunities for promoting growth through the application of

regulatory policy and governance. While sporadic evidence from countries shows that regulatory reforms have paid off, more needs to be done to understand the analytical and empirical links between the use of regulatory policy, the creation of better laws and regulations and the delivery of final policy outcomes.

In this context of scattered demand for reforms, it can be challenging to obtain the political traction for sustainable long term regulatory quality. Often, short to medium-term reforms are preferred to fit the political cycle. It is also a challenge to identify the right sequencing of reforms. The sequencing is largely a function of the political appetite and the immediate external demands for reform. Independent scrutiny of the effects of regulation may be necessary, given the limitations with expecting government departments to objectively review their own regulations. At the same time, the evidence base on which to build sound policy making and substantiate priority setting is often weak and needs strengthening.

OECD (2010) points to the relevance of a number of conditions in promoting regulatory reform. In particular, it highlights the importance of appropriate regulatory institutions to support reform from decision to implementation. It further notes that the structure of central government institutions can greatly affect the quality of regulatory policy – including the role of central bodies and the importance of creating a culture of regulatory quality across public administration. OECD (2010) also underlines the importance of building constituencies. This involves the capacity to take into consideration the impact on, and the reactions of, those affected by reforms. Finally, managing the political economy of regulatory reform involves taking due consideration to the timing of reform and to the interactions across different policy areas.

The range of actors involved in the regulatory policy cycle is rich and diverse, raising a number of co-ordination and engagement challenges. Across the OECD, the internal organisation to deliver regulatory policy shows the diversity of the participants involved (Table 2.3). Frequently actors are engaged in more than one stage of the policy cycle – roughly four stages can be delineated as shown in Table 2.3 –, and the engagement of actors outside government is essential. Even within the formal structures of government, there are distinctions in the legal competencies of different tiers and organs of government, and questions of multiple and overlapping jurisdictions. There are less formal, but no less important, distinctions between different types of actors. Beyond the shared acknowledgement of the role of different actors at various stages of the regulatory governance cycle, including different tiers of government and non-state actors, there is no blue print or ideal institutional arrangement for regulatory governance. Maintaining consistent and coherent reform policies, while ensuring the engagement of all participants to their potential, is therefore a major challenge.

There is however a pattern that emerges across countries and is reflected in Table 2.3. Governments have an important role to play in setting the policy agenda and selecting the mix of instruments to achieve the set policy objectives. Individual ministries are involved in carrying the agenda through at most stages of the regulatory cycle, but especially at the regulatory design stage. Regulatory oversight bodies make their biggest input at the policy-setting and design stages. Regulatory agencies play a key role at the enforcement stage. Some actors are reported much less frequently, for example sub-national tiers of government, parliaments and supreme audit institutions – posing the question of whether there may be value in involving them more actively. The task of monitoring and evaluating the performance of regulation is particularly widely spread among different types of institution.

Table 2.3. **The reported actors at each stage of the regulatory cycle**

Based on 24 respondents

	Number of countries reporting involvement of actors at the following stages			
	Stage 1: Set policy	Stage 2: Design	Stage 3: Implement/ enforce	Stage 4: Evaluate
Parliament	7	6	2	4
Government collectively (e.g. Cabinet or President)	19	6	4	6
Government collectively (e.g. Cabinet or President)	19	6	4	6
Individual ministries acting within their policy areas	15	20	14	15
National government body co-ordinating or overseeing regulatory proposals	17	20	6	10
Regulators	3	9	17	9
Supreme Audit Institutions	0	0	0	5
Other (sub-national) tiers of government	4	7	7	5
Civil society (business, citizens, etc.)	3	8	0	3

The shaded cells show the stages of the policy cycle where the actors engage more prominently.

Notes: The 24 respondents included Australia, Austria, Brazil, Chile, Denmark, Estonia, the European Commission, Germany, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, New Zealand, Norway, Poland, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

Source: OECD (2013b), "The institutions and key players of regulatory reform: survey of OECD members – results and analysis", produced as part of the series of Roundtables on Regulatory Reform in Support of Inclusive Growth of the OECD Regulatory Policy Committee, unpublished document.

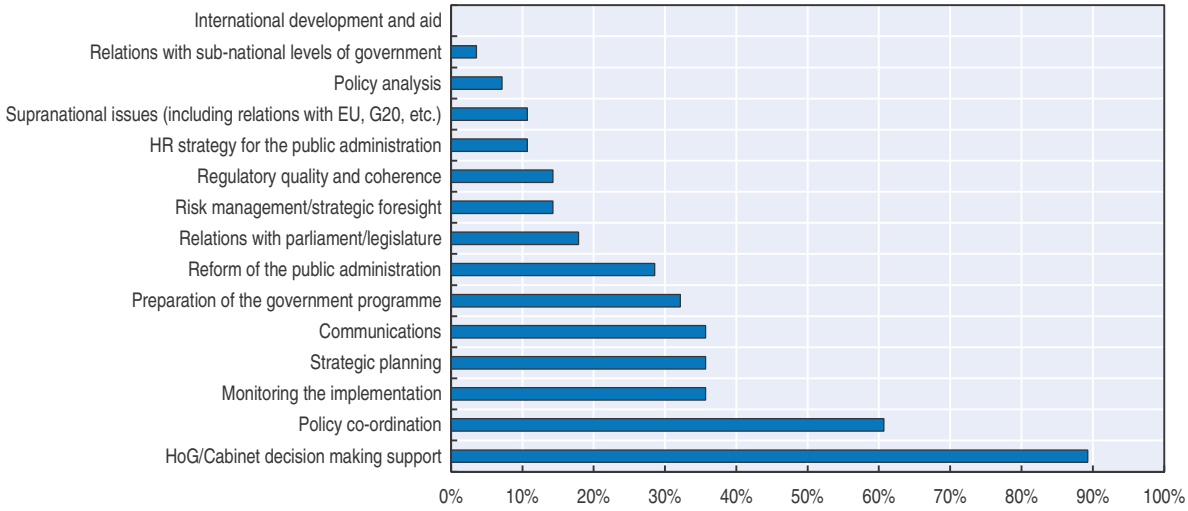
StatLink http://dx.doi.org/10.1787/888933262728

Mobilising the administration and building an administrative culture of regulatory quality throughout the administration remains an important challenge throughout countries. The administrations must take ownership of the regulatory policy agenda. Past OECD work shows the importance in this context of political support and leadership. However, a recent OECD review of the Centres of Government shows that despite playing a critical role including the oversight of regulatory quality and coherence (Figure 2.2), they are surprisingly small (OECD, 2014a). It is highly unlikely that alone, they can handle the transition towards high-quality regulation. This heightens the need to change the culture of regulation throughout the administration itself. To this end, the experience of a number of OECD countries shows the value of creating internal networks and training civil servants on issues of regulatory quality in order to ensure that the administration genuinely embraces the regulatory policy agenda. There is also a role for oversight bodies to promote regulatory policy to line ministries.

In the Netherlands, for example, the Regulatory Reform Group comprises 20 staff at the centre of government. There are ten additional staff in the independent regulatory watchdog. In addition, there are one co-ordinator and two employees in each ministry (around 60 staff in total). In the United Kingdom, there are 50 staff in the Better Regulation Executive (BRE) and 10 in the Regulatory Policy Committee (independent supervisory body). The BRE maintains a network of regulatory policy experts in each ministry. In total, around 20 000 people are responsible for regulatory policy, including inspections.

Figure 2.2. **Responsibilities of Centres of Government**

Percentage of countries identifying function as one of the top four tasks of the Centre



Source: OECD (2013), Survey on the Organisation and functions of the Centre of Government, OECD, Paris.

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A forward-looking agenda for regulatory policy

The limitations and challenges of regulatory policy and governance argue for a harder look at four areas. They have emerged from recent OECD work and the evidence gathered through the Regulatory Indicators survey as important challenges and frontiers of regulatory policy that should be the subject of greater attention from regulators and their oversight bodies:

1. **Closing the regulatory policy cycle**: regulatory implementation and enforcement remain the weakest link in regulatory governance. There is large potential to further improve compliance strategies, inspections and use new approaches to regulatory design – such as behavioural economics – to foster better compliance. In addition the use of *ex post* evaluation to "close the loop" in the regulatory governance cycle is largely underutilised.
2. **Empowering the actors of regulatory governance**: the landscape of regulatory players is rich and there is no blue print or ideal institutional arrangement for regulatory reform. However, the Roundtable discussions point towards some missed opportunities in the institutional set up of countries to promote regulatory reforms. There is untapped potential of traditional actors and the emerging state and non-state actors, including at international level.
3. **Promoting evidence based policy**: many countries are still in the process of developing the tools that can support the identification of trade-offs, costs and benefits of alternative regulatory reforms upon which countries can base their societal choices. The evidence on the impact of using alternative regulatory policy tools and approaches is not captured and therefore the overarching impact remains elusive.
4. **Addressing regulatory impacts beyond the border**: regulators cannot afford to act in isolation anymore. They are impacted by the regulatory activity of other jurisdictions. Their own activity may have direct or indirect effects on trade and investment flows. The various global and regional economic integration processes under way require many countries to assess their levels of regulatory coherence. However, ensuring efficient

regulatory policy in an interconnected world remains a challenge, and one also related to the limited spread of regulatory policy beyond a handful of OECD countries.

Closing the regulatory cycle requires addressing regulatory compliance, enforcement and inspections more systematically

Changing the enforcement culture

Regulatory enforcement and inspections is a relatively new element of regulatory policy that has recently gained importance. However, it still remains underdeveloped in most countries with only a few OECD countries investing into reforms in this area. The United Kingdom has created the Better Regulation Delivery Office to ensure, among other things, that regulation is enforced (delivered) in a consistent and business-friendly, pro-growth manner, and to improve the professionalism of front-line regulators responsible for regulatory enforcement. Reforms in the Netherlands to increase efficiency of inspections have focused on consolidating inspectorates, removing overlaps and improving co-ordination and exchange of information among the inspectorates.

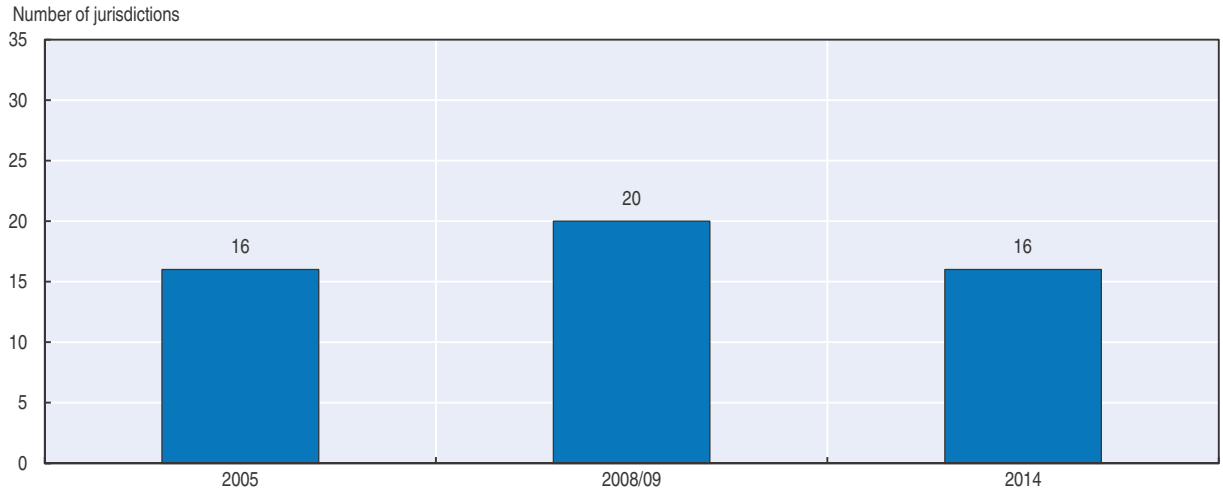
Countries also seem to underestimate the analysis of compliance and of the reasons for weak enforcement of regulatory frameworks. This analysis may provide useful inputs for the reviews of the existing stock of regulations. Preferably, this analysis should be conducted by those responsible for implementing and enforcing regulations as they have the "front-line" experience and may have clear opinions on why is regulation achieving its goals or not. Even when drafting new regulations, only half of the countries assess the level of compliance and identify and assess potential enforcement mechanisms *ex ante* (Figure 2.3).

Based on the OECD *Best Practice Principles on Regulatory Enforcement and Inspections*, the next steps for countries in the area of enforcement and inspections involve developing a whole-of-government policy and institutional mechanisms on regulatory enforcement and inspections with clear objectives and a long-term roadmap. Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly. Inspections and enforcement should not be conceived as the only way to achieve regulatory objectives. They are one (important) option in the hand of the government, which needs focus and resources. Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.

In addition, inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness. Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded. Governments should also ensure transparency of the enforcement process, integrity and professionalism of inspectors and a clear and fair process for enforcement and inspections.

These reforms should be driven by the overarching goal of increasing compliance with regulations and therefore better chances that regulations will achieve their goals. Inspection bodies should provide assistance to regulated subjects in achieving compliance. Focusing on finding and punishing cases of non-compliance at any costs is inefficient.

Figure 2.3. **Number of jurisdictions where regulators are required to assess the level of compliance and identify enforcement mechanisms**



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink *http://dx.doi.org/10.1787/888933262620*

Behavioural informed approaches toward regulatory design and enforcement

A new frontier for regulatory policy is the integration of behavioural insights into the design and delivery of regulatory frameworks. There is an increasing trend across OECD countries in the use of behavioural insights in rule making. Lunn (2014) cites over 60 cases of behavioural informed policies. This has resulted in the establishment of a number of dedicated units or networks in governments to provide the necessary expertise to input the lessons from academia and conduct experiments such as randomised control tests. On the whole, however, regulatory agencies have been using behavioural science far more often than governments.

The application of behavioural economics to date has largely focused on improving the delivery of regulations, and, in particular, on strengthening the information available for regulated entities to make better choices for themselves. For instance, the United States' Consumer and Financial Protection Bureau introduced the "know before you owe" rule in 2013 that simplified information disclosure for mortgages, credit cards and student loans (Lunn, 2014). "Nudging" is also a type of behavioural informed intervention that has been effective in some policies such as in increasing tax return compliance through reminder letters from tax authorities. The European Commission has also used insights from behavioural science to ban the use of default settings in certain online purchases to protect consumers (Lunn, 2014).

There is further potential to use behavioural studies to inform compliance strategies from ensuring information disclosure is maximised to testing enforcement mechanisms before they are implemented. There are also gains from the use of behavioural science in the design of policy themselves that could be integrated into existing regulatory tools. Behavioural science has great potential in defining the problems that governments may be seeking to address in the first instance. This may provide a natural link to Regulatory

Impact Assessments and help to understand whether government intervention is appropriate in the first place.

Behavioural insights is fundamentally about embedding experimentation in regulatory design and delivery and accepting the challenge of tackling the unknown with this "scientific" approach. However, this comes with a number of issues that require care, in particular in relation to ethics. There are concerns about the appropriateness of governments' use of behavioural science to influence the behaviour of regulated entities against the right for freedom of choice. However it is increasingly recognised that where choices and ultimately decisions are already influenced by external forces and are counter-productive toward social welfare or consumer protection then governments have a role to play, such as in health or the environment. Default settings for organ donor volunteers or pension enrolment have proved very effective in improving citizen take up in a way that benefits the whole of society. The ethical issues may be addressed by the adoption by governments of a set of standards, including transparency and rigour of trained specialists practicing in field, as well as norms defining the application of the behavioural science.

There is untapped potential of traditional actors and of emerging state and non-state actors, including at sub-national level, to support better regulation

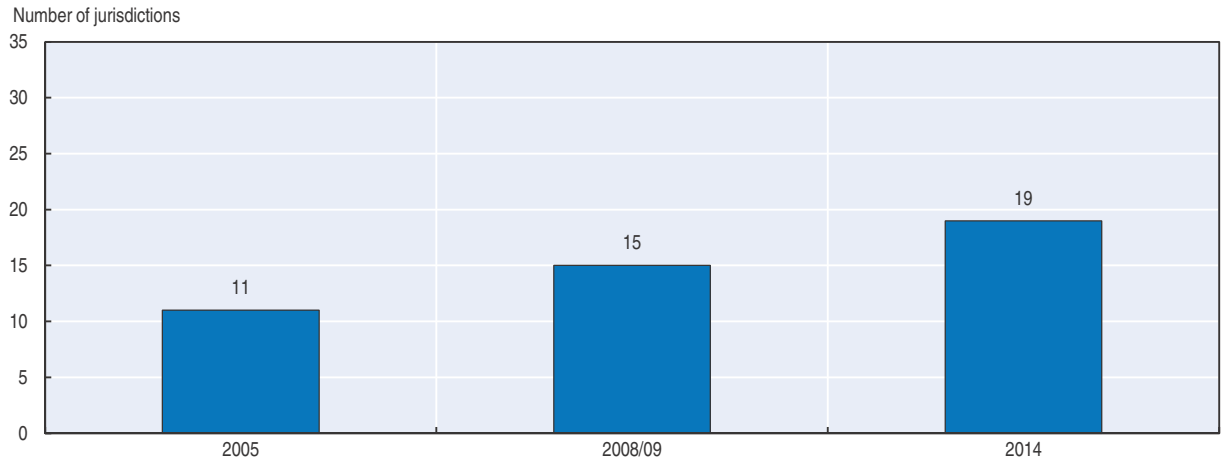
Ensuring the effectiveness of regulatory policy will require implementing top-down and bottom-up approaches for regulatory quality. Having both high level commitment and technical or operational buy in is required to make a regulatory management system work. This involves empowering the players of regulatory policy within, but also beyond the administration, including the parliaments, the regulatory agencies and the sub-national levels of government.

Law making, a shared responsibility with parliaments

Parliaments play a growing role in regulatory policy and rightly so (Figure 2.4). The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* highlights that "Ensuring the quality of the regulatory structure is a dynamic and permanent role of governments and Parliaments". As the institutions responsible for approving legislation, parliaments can exercise oversight and control over the application of better regulation principles for new and amended regulation. Through the public debate of proposed bills and amendments, they can help foster a transparent dialogue on the opportunities and challenges offered by new and amended regulation. Through the control they exercise on public expenditures and government performance, they can help monitor the effectiveness and efficiency of regulation. However, the arrangements adopted to institutionalise parliamentary oversight vary across countries, as does crucially the scope of their responsibilities.

Despite their prominent role as designers of primary laws, there are still a number of jurisdictions where parliaments have not yet explicitly adopted regulatory management practices. Parliaments should be encouraged to set up their own procedures to guarantee the quality of legislation, such as consultation, RIA, and *ex post* evaluation. A number of countries have already adopted established regulatory scrutiny units within their parliaments as illustrated in Box 2.1. These examples provide a good basis to share experiences on what works and what does not. Indeed, regulatory practices cannot be "cut and pasted" from the executive and need to be carefully designed to fit into the legislative setting.

Figure 2.4. **Number of jurisdictions with a parliamentary body responsible for regulatory policy**



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

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Box 2.1. **Examples of regulatory scrutiny units**

The arrangements adopted to institutionalise parliamentary oversight vary widely across jurisdictions, as does crucially the scope of their responsibilities.

In **Switzerland**, evaluation is undertaken by the Parliamentary Control of the Administration (PCA), which is part of the Parliamentary Services Department of the Federal Assembly. Established in 1991 the PCA is an example of a specialised service that carries out evaluations on behalf of parliament. The PCA deals directly with all federal authorities and public agencies and may request from them all relevant information. Evaluations are presented to Control Committees, which are mandated by the Federal Assembly to exercise parliamentary oversight of the activities of the Federal Government and the Federal Administration, the Federal Courts and the other bodies entrusted with tasks of the Confederation. Committees, with the assistance of PCA, focus on verifying that:

- the activities of the federal authorities comply with the constitution and legislation (legality control);
- the measures taken by the state are appropriate (control of appropriateness);
- the measures taken by the state bear fruit (efficiency control).

In **Sweden**, the Parliamentary Evaluation and Research Secretariat was established in 2002 within the Committee Services Division of the Parliament, to support the committees in their *ex post* evaluation activities. The Unit works closely to support parliamentary oversight committees in their evaluation functions and undertakes, among others, the following tasks:

- Help them to prepare, implement and conclude follow-up and evaluation projects, research projects and technology assessments.
- Locate and appoint researchers and external expertise to carry out projects.
- Prepare background materials for evaluation and research projects at their request.
- Support the committees to request up-to-date reports from government and agencies on the operation and effects of laws.

Box 2.1. **Examples of regulatory scrutiny units** *(cont.)*

In **the United Kingdom**, the Scrutiny Unit was established in 2002 in the Committee Office of the House of Commons to provide specialist expertise to select committees on financial matters and legislative scrutiny. The Unit supports committees scrutinising draft bills. Since 2008 the Unit assists select committees in implementing post-legislative scrutiny. Ministries are required 3 to 5 years after the passage of an Act, to submit a memorandum to the relevant committee providing a preliminary assessment of how the Act has worked out in practice. The select committee may then decide to conduct a fuller post-legislative inquiry into the Act.

In **the European Union**, the *Ex ante* Impact Assessment Unit was established in 2012 in the Directorate General for Parliamentary Research Services to accomplish the following tasks (for the European Parliament):

- Screening of road-maps accompanying the Commission's Work Programme.
- Appraisal of Commission impact assessments.
- Impact assessment on substantive amendments being considered by the Parliament.
- Complementary or substitute impact assessment
- Briefing notes or studies analysing all or part of a Commission impact assessment.

In September 2013, a Unit for *Ex Post* Impact Assessment was established to:

- Monitor the Commission's work with due regard for the transposition and implementation, impact, application and effectiveness of European legislation;
- Follow-up and analyse the studies and reports produced by the Commission and by any other competent body or institution in the afore-mentioned context;
- Assist Parliament's committees in drawing up implementation reports, activity reports and monitoring reports on EU legislation, policies and programmes, by providing a European implementation assessment report; and
- Produce research papers on the implementation, impact or effectiveness of existing EU legislation at the request of Parliament's committees or governing bodies.

Source: OECD (2012b), *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, OECD Publishing, Paris, *http://dx.doi.org/10.1787/9789264176263-en* and concept note on Law evaluation and the role of parliaments prepared for the Joint meeting of the OECD and the Scrutiny Committee on Law Implementation of the French Senate: *www.oecd.org/regreform/regulatory-policy/conference-on-role-of-parliaments.htm*.

Ensuring the performance of economic regulators

Regulatory agencies are important actors for the adequate delivery of regulatory systems. The 2012 Recommendation recognises the role of regulatory agencies in providing greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence. There are several types of regulators, including social and economic ones. Economic regulators in particular play an important role in the utility sectors – energy, transport, water and telecoms. They are fundamental actors in strengthening the contribution of regulatory policies to sustainable growth and development and rebuild trust in the role of public policy in achieving positive outcomes for citizens and businesses.

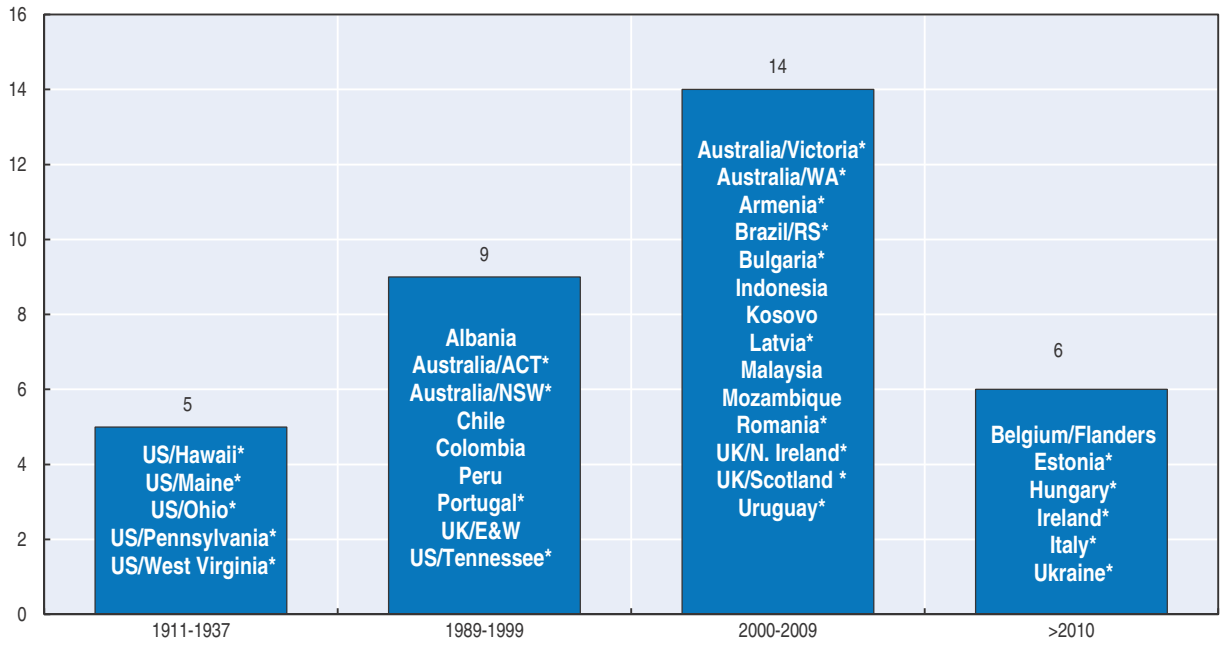
Economic regulators, as their peers in other sectors, have been playing a growing and increasingly complex role. Information technology, digital or e-commerce and big data are making information asymmetries a greater risk and the environment within which regulators operate has become more dynamic and susceptible to change. In addition, the

post-financial crisis world has led to greater scrutiny of financial regulators in particular which has affected the perception of all regulators. Volatility in energy markets, pressures on water supply and delivery, and the protection of consumers in markets have created a demand for greater accountability of regulators and better delivery of the objectives of regulators as "market referees".

Recent OECD work documents the consistent establishment over the past two decades of dedicated bodies in charge of economic regulation in various utility sectors (see Figure 2.5 in the case of water services). In the energy and telecommunications sector, their establishment has been mandated in the European Union through a Directive OECD (2015a, forthcoming). Recently, a trend towards the establishment of multi-sector regulators can be observed. Two-thirds of the 34 water regulators reviewed by the OECD are multi-sector bodies (OECD, 2015b). For the majority of them, water is bundled with energy competencies. In some countries, competition or consumer agencies have been merged, such as the UK's Competition and Markets Authority.

Given their growing role, having a strategic approach towards regulatory agencies and in particular to their governance arrangements is important for the success of their mission and the achievement of the expected social, environmental and economic outcomes. This importance is recognised in Principle 7 of the 2012 Recommendation (OECD, 2012c), which recommends to "Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of

Figure 2.5. **Year of operational establishment of a sample of dedicated regulatory agencies for water services**



Notes: * Multi-sector regulators.
The sample covers the 34 economic regulators for water services involved in the survey carried out as part of the work on the governance of water regulators.
Source: OECD (2015b), *The Governance of Water Regulators*, OECD Publishing, Paris, p. 21, *http://dx.doi.org/10.1787/9789264231092-en*.
StatLink *http://dx.doi.org/10.1787/888933262653*

interest, bias or improper influence". The *OECD Best Practice Principles on Regulatory Policy: The Governance of Regulators* (OECD, 2014b) provides the supporting guidance that identifies the governance and operational dimensions that will be critical to the success of regulatory agencies to achieve their objectives.

The evidence collected through the Product Market Regulation Survey (OECD, 2015a, forthcoming) shows that the governance structures of regulators vary considerably across sectors. New data on the regulatory management of the network sectors indicates that the telecommunications, gas and electricity sectors display stronger governance structures than transport (rail, air, ports). Overall the United Kingdom, Italy and Germany display strong governance structures across all sectors. Countries with a comparatively strong governance structure in one sector tend to perform well in other sectors. This highlights the value of policy for regulators, as described in the 2012 Recommendation.

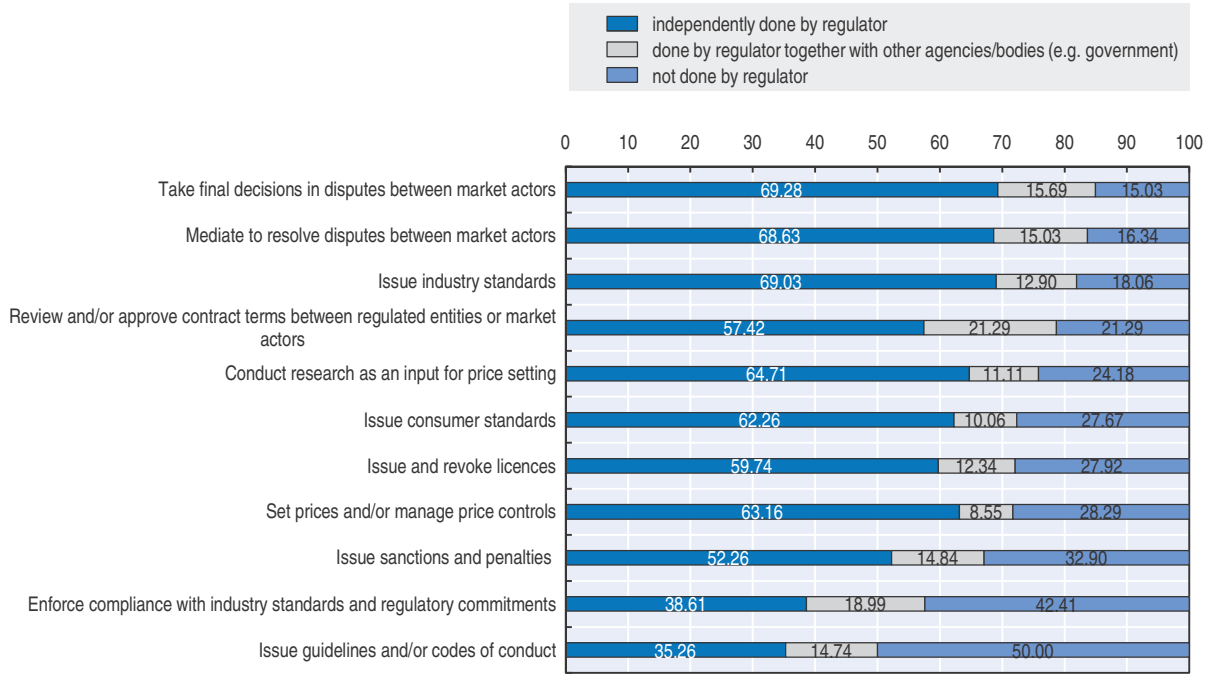
In complex infrastructure sectors where different levels of government and public authorities may be interacting, well-performing economic regulators are shown to promote transparency and a user-centric approach, co-ordination across responsible authorities and credibility of the regulatory framework. Regulators tend to act as "referees" of the market. Evidence collected through the Product Market Regulation Survey (OECD, 2015a, forthcoming) shows that the most common actions for regulators is to mediate and take final decisions between market actors (Figure 2.6). Water regulators are often responsible for regulatory enforcement (OECD, 2015b). This confirms the role of regulatory agencies in the downstream phase of the regulatory policy cycle as emphasised in Table 2.3.

While most regulators are formally "independent bodies with adjudicatory, rule-making or enforcement powers", there is a fair degree of variety with respect to their institutional set-up and context. It is common that the government performs a "corrective or checking function" in the activities of regulators by providing guidance and instructions to regulators. It is also common that at least some of the activities performed by a regulator are done together with another agency or body such as courts, a ministry or the competition agency. Water regulators are emblematic of this broader regulatory framework at national, sub-national level and even supra-national level to which the regulator is part off. This fragmentation emphasises the importance of designing effective structures for co-ordination and co-operation at all levels of government to support effective regulatory management (OECD, 2014b). Evidence from the water sector shows that ad hoc arrangements largely prevail over systematic and institutionalised mechanisms (OECD, 2015b). Formalising co-ordination would help to prevent the risk that a lack of co-operation among agencies may bring.

Most regulators are accountable to the government or the parliament. At the same time most regulators have to implement various measures of transparency vis-à-vis the wider public, including in particular the publication of reports on their activities, the publication of their decisions, resolutions and agreements, and the conduct of public consultations (OECD, 2015a, forthcoming). OECD (2015b) confirms this finding for the water sector and shows that the water regulators display a strong culture of consultation and routinely resort to cost-benefit analysis to ensure the quality of the regulatory process. The use of other regulatory management tools (including *ex post* evaluation or regulatory decisions) would also help regulators to deal with complaint or judicial recourse by regulated entities and to improve regulatory delivery.

Figure 2.6. **The scope of action of regulators**

In per cent



Source: OECD (2015a, forthcoming), "The global picture of economic regulators: independence, accountability and scope of action", OECD Economics Department Working Papers, OECD Publishing, Paris.

StatLink http://dx.doi.org/10.1787/888933262699

There is an increased impetus for regulators to demonstrate that their activities are achieving the expected regulatory outcomes and deliver value added in their respective sector. This is beyond considerations of due process or value for money in the use of public resources. Instead, regulators are increasingly held accountable to show their contribution to broader economic performance (e.g. the growth duty imposed on regulators in the United Kingdom) as well as other societal well-being. While the performance of a regulator cannot be considered separately from its governance arrangements, more efforts should be put into understanding the drivers and indicators of good performance of regulators and their contribution to achieving good regulatory outcomes (OECD, 2015c).

There is much more to regulatory policy than the national level: ensuring quality at and coherence with sub-national levels

In most OECD countries, central government bodies, supported by a network of institutions and rules, function alongside regional and local governments, with their own set of rules and mandates. In many cases, different layers of government have the capacity to design, implement, and enforce regulation. This multi-level regulatory framework poses a series of challenges that affect the relationships of public entities with citizens and businesses. If poorly managed, it may impact negatively on economic growth, productivity, and competitiveness. In fact, the OECD has found that high-quality regulation at one level of government can be undermined by poor regulatory policies and practices at other levels, impacting negatively on the performance of economies and on business and citizens' activities. In order to ensure regulatory quality across levels of government, the principles

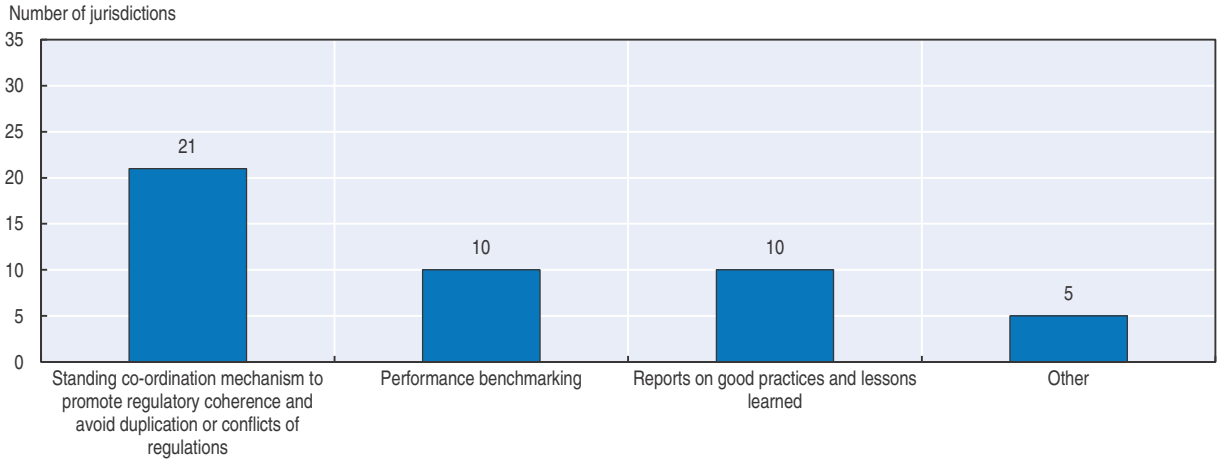
that lower levels should follow must be defined. Clear definitions and effective implementation of the mechanisms to achieve and improve co-ordination, coherence, and harmonisation in making and enforcing regulation must also be in place. Finally, measures to avoid and eliminate overlapping responsibilities are also needed.

OECD countries have different mechanisms to ensure regulatory coherence among levels of government (Figure 2.7). According to the 2014 Regulatory Indicators Survey, 21 OECD countries have a standing co-ordination mechanism across national and sub-national governments to promote regulatory coherence and avoid duplication or conflicts of regulation. Ten countries use performance benchmarking to share or promote best practices of regulatory management across sub-national governments, ten rely on reports on good practices and lessons learned, and five use some other means (i.e. ombudsmen reports and discussions in co-ordination bodies).

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

Despite a positive trend towards the adoption of better regulation practices at the sub-national level, important challenges remain. First, in most countries regional and local governments are granted some degree of autonomy (particularly in federal countries). This implies that central governments cannot dictate policies adopted at the sub-national level

Figure 2.7. **Mechanisms to ensure coherence across all levels of government and improve performance at the sub-national level**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

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and, therefore, their role is more of motivating and convincing sub-national authorities of the importance of adopting a regulatory policy. In Mexico, for example, the Federal Commission for Regulatory Improvement (COFEMER) and the Association of Economic Development Secretariats (AMSDE)[5] established the Framework Agreement for co-operation concerning regulatory reform for Mexico's productivity and economic development. This has helped to promote regulatory policy to state and municipal governments and to facilitate COFEMER's advice and support.

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

Looking ahead, national governments could design support mechanisms to help and motivate sub-national governments to adopt the principles and practices of regulatory policy. Regulatory policies in countries could also be explicit regarding this "facilitation role" for national governments and the recommendation for sub-national territories to mirror the efforts done at the central level.

The untapped potential of supreme audit institutions

Supreme audit institutions (SAIs)[6] are a key part of the institutional framework of democratic States and play a central role in supporting good public governance. They provide independent opinion and recommendations on the management of public resources and delivery of government goals and, in some cases, use the results of their work to provide counsel to government.

Practice in a number of countries show that SAIs have a role to play in examining and reporting both on the performance of regulators and regulation and, to a lesser extent, on regulatory policy and governance (Figure 2.8). Most reviews focus on the functioning of RIA, relative to simplification and burden reduction programmes. However, SAI audit work on regulatory policies, tools and institutions remains a limited part of these institution's portfolios. Only around 4% of SAIs' performance audit reports are on regulatory issues based on a desk-review of SAI audit reports in 34 OECD countries, the European Union and 2 OECD key partners, Brazil and South Africa, (OECD, 2015b, forthcoming). The economic significance and societal importance of regulation, and the expertise of SAI in the area of evaluation suggest that there is an untapped potential in the use of these institutions to foster a culture of evaluation and evidence-based policy in law making.

However, there are a number of challenges and issues that affect SAIs interest and ability to address issues of regulatory governance. These include:

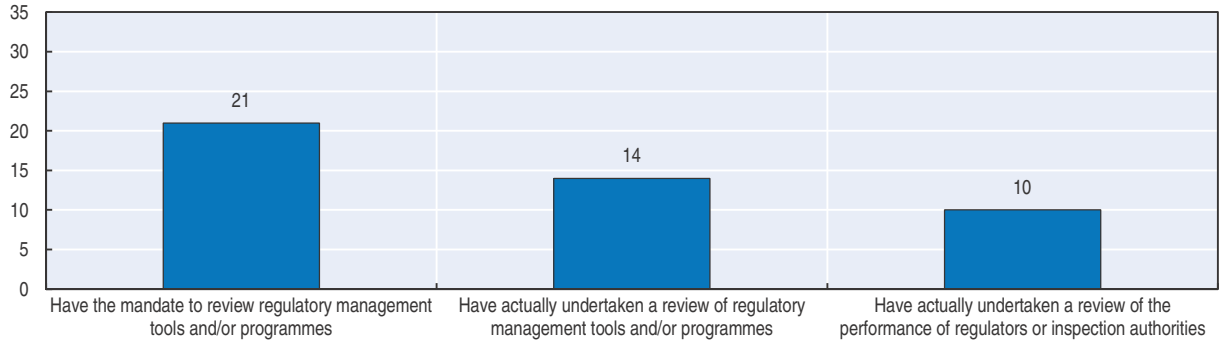
- Formal and discretionary SAI mandate: Regulators, including at the sub-national and international level, as well as national independent regulators, may be outside of an SAI mandate. In other cases, SAIs may have a formal mandate but consider that this is the function of other executive body or legislative committee with responsibility for regulatory oversight.
- Perceptions of SAI scope to achieve impact: SAIs programming/prioritisation of audit work is strongly influenced by government spending (i.e. fiscal instruments) and they

have a tradition of focusing on public financial management. As such regulatory policy (with low spending relative to economic impact) may receive relatively less attention.

- SAI knowledge and expertise: SAIs workforce may be more focused on public financial management and not have the knowledge and expertise to effectively examine issues of regulatory governance. Moreover, medium-term strategic and workforce planning may not be effectively developed to enable a shift to issues of regulatory governance.

In order to overcome these challenges, clear understanding and communication of the potential benefits of good regulatory governance is essential – not just internally but also among SAI stakeholders (e.g. the legislature and public) – if regulatory issues are to achieve the political salience needed to support SAI work.

Figure 2.8. **Mandate and activities of supreme audit institutions**



Source: OECD (2014c), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, *http://dx.doi.org/10.1787/9789264214453-en*.

StatLink *http://dx.doi.org/10.1787/888933262672*

In this regard, the 2012 Recommendation offers a potential as a benchmark for SAIs to use for empowering their role as actors supporting regulatory governance. In particular, it may provide SAIs with a valuable resource to draw on when developing evaluative criteria for performance audits, and a basis for putting national performance in the context of international best practice. As such, the 2012 Recommendation could be used by SAIs when they conduct performance audit of Regulatory Impact Analysis and *ex post* review of regulations, which have been a common theme in surveyed audit reports.

There is important room for promoting evidence-based regulatory policy making by moving the application of regulatory policy tools further upstream in decision making

Evidence-based policy implies that public policy is informed by rigorously established evidence. It has become a central element of the modernisation of governments and of policy making over the past two decades as illustrated by various policy commitments and announcements.[7] In the regulatory field, it is expected that evidence-based policy improves public welfare and stimulates growth by identifying regulations that are likely to deliver the greatest net benefit to society, discarding regulations that are not effective and identifying alternative policy options in cases where regulation is not the most efficient solution to a problem.

To ensure that policies and regulatory frameworks are informed by evidence, countries need to adopt the right tools to gather evidence and to systematise the use of rigorous analysis (scientific, economic, behavioural) to identify programs and practices likely to

improve policy-relevant outcomes. They also need to put in place governance structures that enable the real time use of evidence in the policy-making process and guarantee its quality and timeliness to be useful for decision makers. Systems of analysis and review need to be implemented consistently in order to support a strong culture of evidence-based decision making.

As developed in Chapter 4, while most OECD countries perform various types of RIA prior to introducing new regulation, these assessments may not always reach the level of details necessary to provide the decision makers with a complete picture of the policy issue at hand. *Ex ante* analysis is constrained by a number of limiting factors, including the explicit evidence about what matters most in improving regulatory outcomes, the risks of unintended changes to outcomes, the key challenge of changing actual behaviour of regulated entities and the fundamental importance of political economy factors to successful reforms and policy interventions. Many of these factors are more easily assessed after a law or regulation has been promulgated.

The full potential of *ex post* evaluation to promote evidence-based policy making remains unexploited. Less than half of OECD countries systematically conduct *ex post* assessments. Most strikingly, less than one third of countries always evaluate whether regulations achieve their objectives when they conduct evaluations – so most countries do not know whether the regulations in place are actually needed and useful. Less than one third of OECD countries systematically considers the actual implementation of regulation and assesses the level of compliance with regulation and potential enforcement mechanisms.

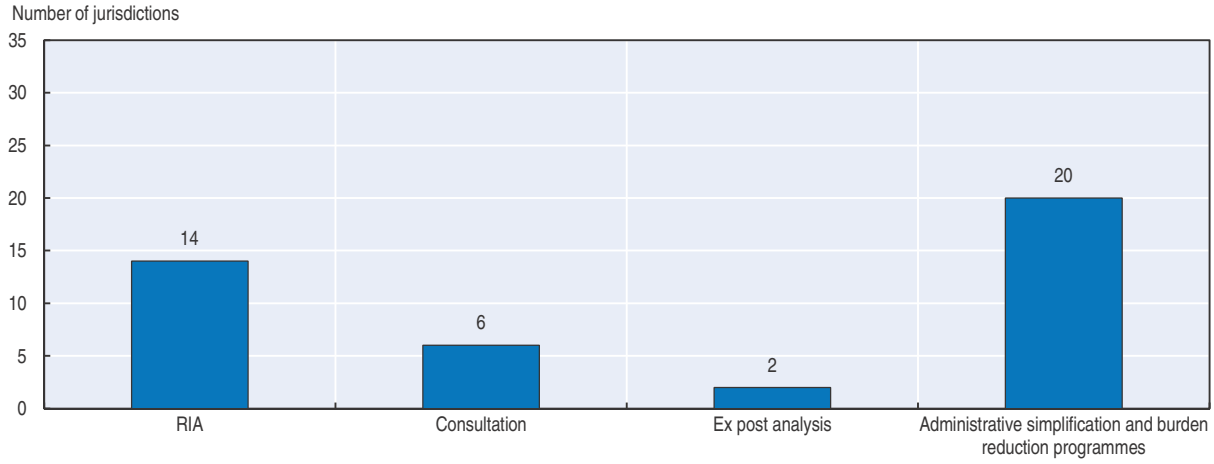
For evidence to be embedded in the decision-making process, it needs to be available and used before a decision has been made. In particular for major regulations it is important to engage with stakeholders at early stages before regulation is drafted to fully understand the nature of the problem, discuss openly possible solutions and collect evidence on the impact of different options. Yet less than one third of OECD countries reports engaging with stakeholders for all or major regulations before regulation is drafted. Effective practices to stimulate a public debate and seek input include issuing a green paper or consulting on a legislative intent or consultation document before legislation is drafted. These documents are designed to stimulate discussion on solutions for policy problems at early stages. While about half of OECD countries use these types of documents for consultation, most of them make them only available for some regulations. In less than half of OECD countries RIA documents are required to be released for consultation with the general public.

Given limited resources and the danger of "review fatigue", it is advisable to allocate resources to the evaluation of regulations proportional to their impact and to select evaluation instruments with a high impact/cost ratio. To avoid gaming, formal thresholds tests and significance checks by oversight bodies help to select high-impact regulations for in-depth reviews. Currently about one third of OECD countries have threshold tests in place to determine whether a full RIA as opposed to a simplified RIA is undertaken. In-depth reviews that focus on policy areas of particular economic or social importance can have very high returns and inform large scale regulatory reforms (OECD, 2013a). A targeted and systematic approach requires a standing capacity to regularly undertake in-depth reviews in key policy areas and sufficient resources for analysis. Currently nine countries

have a standing capacity that has undertaken in-depth reviews in the past three years (2014 Regulatory Indicators Survey).

Information on the performance of regulatory reform programmes is necessary to identify and evaluate if regulatory policy is being implemented effectively and if reforms are having the desired impact. Yet the majority of OECD countries make no or only limited attempts to systematically assess the implementation and functioning of their regulatory tools and processes. This means that most countries neither know whether regulatory policy is properly implemented nor whether it has an impact on decision making. For example, as highlighted in Figure 2.9, while governments of OECD countries generally emphasise the importance of consultation with stakeholders, only six countries publish indicators on the performance of public consultation practices (OECD, 2014c and 2014d). Less than half of OECD countries have published indicators on the functioning of RIA and only two on the functioning of *ex post* evaluation systems. By contrast, in line with the strong focus on administrative simplification programmes, 20 countries make indicators on the performance of these programmes available.

Figure 2.9. **Publicly available indicators on the functioning of regulatory management tools/programmes**



Source: OECD (2014c), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, *http://dx.doi.org/10.1787/9789264214453-en*.
StatLink *http://dx.doi.org/10.1787/888933262686*

Looking forward, while in many countries the basic systems for evidence-based decision making are in place, the next challenge will be to improve their effectiveness and integration into the decision-making process. Countries can do this by using evidence at early stages to consult with stakeholders on major policy problems to discuss solutions, possibly through the use of green papers or consultation documents. Publishing RIAs for consultation with stakeholders before a decision has been made will help. Quality control can be strengthened by making data on the uptake, quality and impact of evidence-based tools such as RIA and *ex post* analysis publicly available. For *ex post* analysis of regulations, the next big step will be to move from administrative simplification programmes to strategic regulatory reforms, targeting key policy areas and sectors.

Countries can create an independent standing capacity to undertake in-depth reviews. It should be endowed with sufficient resources for analysis. Publicly available reviews can inform the reform agenda of the government and help to make the development of party

programmes more evidence-based. For example, the Australian Productivity Commission is an independent research and advisory body that regularly publishes in-depth reviews to inform major regulatory and policy reforms. This includes benchmarking reviews of the performance of regulations in different regions or countries. For instance, its in-depth review to benchmark the performance of Australian Business Regulation in Occupational Health and Safety (OHS) in different regions and at the national level has informed subsequent efforts to harmonise OHS regulation across jurisdictions.

In addition, countries are increasingly using innovative methods to obtain data and information on the impacts of regulations *ex ante*. For example, the use of behavioural insights and crowd sourcing as well as of e-government and ICT has the potential to provide strategic information for decision makers. In Canada, the National Call for Concepts for Social Finance used crowd sourcing to obtain information, data and ideas for the use of social finance. It was an open, web-based, public policy engagement process with planned follow up through webinars, social media. The use of such methods is an area that governments could explore further, especially for certain sectors or groups such as young people.

Ensuring the effectiveness of regulatory frameworks requires looking beyond national borders and using the full range of international regulatory co-operation approaches in a suitable and efficient manner

As globalisation progresses, regulating has become increasingly challenging. This is recognised in principle 12 of the 2012 Recommendation, which recommends that "in developing regulatory measures, [countries] give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction". However, the 2012 Recommendation and further work by the OECD also recognise that formalised governance arrangements for international regulatory co-operation (IRC), and their practical consequences, are not well understood.

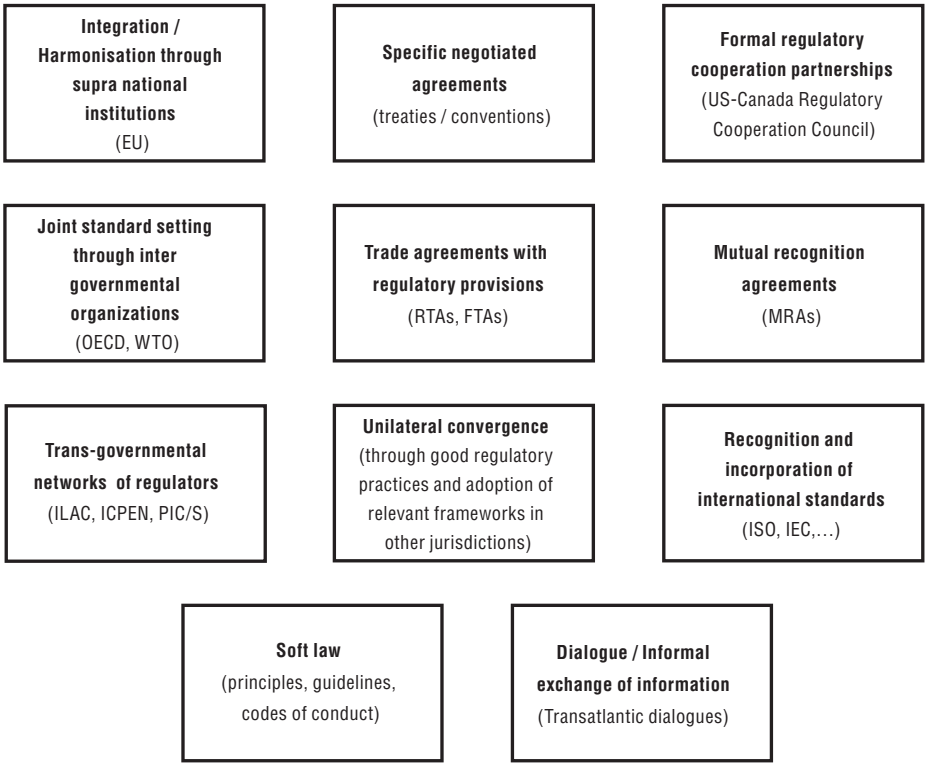
OECD (2013c) identifies 11 mechanisms (Figure 2.10) used by countries to support international regulatory co-operation, from complete "harmonisation" of regulation (i.e. uniformity of laws) to the least formal and comprehensive options such as exchange of information and provides evidence on the use of these various approaches by countries. Complete harmonisation through supra-national rule making and institutions remains the exception – for which the EU stands out as an emblematic example for the breadth and depth of its regulatory and economic integration. In many cases, regulatory harmonisation is deemed too "costly and will only be the best option in some circumstances" (Australia and New Zealand Productivity Commissions, 2012). On the other hand, less comprehensive and binding schemes may lead to lower compliance unless supported through appropriate institutional arrangements.

OECD (2013c) also notes the growing role of IOs as standard setting bodies and in supporting regulatory co-operation in multiple areas. Most countries belong to 50 or more international organisations that more or less promote IRC. They do so by offering platforms for continuous dialogue on regulatory issues and the development of common standards, best practices and guidance. Beyond standard setting, these discussions and tools foster regulatory co-operation by facilitating the comparison of approaches and practices, consistent application and capacity building in countries with less developed regulatory cultures. As permanent fora for discussion, they also provide member countries with

flexible mechanisms to identify and adapt to new and emerging regulatory areas or issues and contribute to the development of common language.

Trans-governmental regulatory networks, defined as "informal multilateral forums that bring together representatives from national regulatory agencies or departments to facilitate multilateral co-operation on issues of mutual interest within the authority of the participants" (Verdier, 2009) have emerged in the second half of the 20th century to complement the traditional treaty-based approach to IRC in areas such as securities regulation, competition policy, and environmental regulation. These networks may be supported by a lead organisation (for instance the International Organization of Securities Commissions, IOSCO), or not (International Competition Network). They also vary widely in their constituency, governance structure and operational mode. They facilitate the convergence of domestic regulation without necessarily implying the centralisation of rule making, although in some cases, such as in banking supervision, they do develop codes and rules that members are expected to implement in national law. These networks are multiplying fast.

Figure 2.10. **The OECD typology of IRC mechanisms**



Source: OECD (2013c), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, *http://dx.doi.org/10.1787/9789264200463-en*.

Mutual Recognition Agreement (MRA) is another example of IRC mechanism attracting increased interest for their capacity to preserve regulatory diversity OECD (2015c, forthcoming). The landscape of Mutual Recognition Agreements (MRAs) has drastically changed since the late 1990s: there are now some 130 MRAs in the world, often found in a small number of sectors – telecoms equipment and electronic goods for instance. MRAs are

based on hard law but with a limited scope: the transaction costs of exporters are reduced whilst regulations in that product market are unchanged. In that way, they reconcile the demand to accommodate/facilitate international trade and the mission of national regulatory authorities on protection. However, MRAs presuppose a close degree of equivalence and reciprocal confidence in the responsible institutions of the respective countries and may also encounter some issues of enforcement when not embedded in a hierarchical structure. In addition, MRAs involve substantial time and resources for their negotiations, and important capacity to use them.

OECD (2013c) identifies unilateral regulatory recognition through good regulatory practices and adoption of relevant frameworks from other jurisdictions as one option in regulatory co-operation. Indeed this approach may contribute to greater regulatory compatibility by removing the opportunity for "bad" regulation. Typically, tools such as RIA and consultation submit regulatory measures to a reality check, support evidence-based policy making and help channel the voices of affected parties, including trade-related concerns. Other benefits arise from regulatory practices being non-discriminatory in nature – all potential trade partners can benefit from better rules – and preserving regulatory sovereignty. The evidence from the 2014 Regulatory Indicators Survey shows that OECD countries assess a broad range of different impacts during the RIA process. However, while impacts on the public sector and on the budget are quasi systematically assessed, those related to trade and to the impacts on foreign jurisdictions remain the exception.

Looking ahead, any strategy to promote IRC will need to address the key challenges and bottlenecks arising from a regulatory policy culture eminently based on domestic jurisdiction and shift it to one that takes greater consideration of outside parties. This may involve as a first step establishing an effective co-ordination point in government on IRC activities to centralise relevant information on IRC practices and activities and to build shared understanding and common language on regulatory co-operation. A realistic IRC strategy will also need to take into account the variety of IRC mechanisms and their respective benefits and costs in different country size and context. The OECD is working on guidance and a toolkit that can help navigate across the various approaches and tools of IRC.

Notes

1. Based on the series of Roundtable discussions held in 2012-14 by the OECD on Regulatory reform in support of inclusive growth.
2. See for instance current work by the OECD Public Governance and Territorial Development Directorate on the governance of infrastructure, OECD (2015a).
3. As analysed by Baldwin and Black (2008), the concept of "responsive regulation" was put forward by Ayres and Braithwaite (1992) as an alternative to the polarisation of the debate thus far on enforcement. Risk-based regulation reflects the idea that inspection activities should be allocated on the basis of impact and probability.
4. The complexity of risk-based regulation was developed in OECD (2010).
5. AMSDE brings together the secretariats for economic development of the 31 federal states and the Federal District.
6. By Supreme Audit Institution is meant such public body of a state or supranational organisation which, however designated, constituted or organised, exercises, by virtue of law, or other formal action of the state or the supranational organisation, the highest public auditing function of that

state or supranational organisation in an independent manner, with or without jurisdictional competence. Source: *www.intosai.org/about-us/statutes/article-2-participation.html*

7. For example, the 1999 UK Government White Paper on Modernising Government establishes that "(Governments) must produce policies that really deal with problems that are forward-looking and shaped by evidence rather than a response to short-term pressures; that tackle causes not symptoms", *http://webarchive.nationalarchives.gov.uk/20140131031506/http://www.archive.official-documents.co.uk/document/cm43/4310/4310.htm*.

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Chapter 3

Stakeholder engagement and regulatory policy

Stakeholder engagement is a fundamental pillar of regulatory policy. OECD countries are clearly paying increasing attention to various ways to engage stakeholders in making, implementing and reviewing regulations. Virtually all governments have embraced the principles of open government and better participation in policy making. There are numerous attempts to involve stakeholders both in the process of developing new laws and regulations and in the process of reviewing the regulatory stock. However, there is still some way to go to change the culture and many obstacles to overcome on the way to effective stakeholder engagement. This chapter documents the uptake across OECD members in stakeholder engagement, the challenges faced and areas for further action.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Key findings

Trends

Stakeholder engagement is a central and fundamental pillar of regulatory policy. The Outlook shows that OECD countries are clearly paying increasing attention to various ways to engage stakeholders in making, implementing and reviewing regulations. The central objective of regulatory policy – ensuring that regulations are designed and implemented in the public interest – can only be achieved with help from those subject to regulations, be they citizens, business, civil society or other member of the community.

Across the OECD, the objectives of stakeholder engagement vary considerably. Stakeholder engagement allows governments to collect better evidence as a basis for their decisions. It aims to improve the quality of rule-making process by getting more diverse inputs and opinions from those that will be affected by government's decisions. Moreover, engaging affected parties in the process of developing new regulations have shown to increase the sense of "ownership" and lead to better compliance with regulations. At a more strategic level, stakeholder engagement appears to be motivated by the need to increase "democratisation" of the decision-making process. In addition, administrations may be pursuing public consultation in an effort to regain trust in governments and politics amongst the community.

Countries use a wide spectrum of instruments and tools to engage stakeholders in regulatory policy. The data shows that consultation is not evenly spread across the policy making cycle. There are numerous attempts to involve stakeholders both in the process of developing new laws and regulations and in the process of reviewing the stock of regulations. On the other hand, stakeholders are still rarely engaged in regulatory delivery, to better understand how laws and regulation are implemented and enforced. This is a new frontier, where countries could more actively engage with stakeholders with a view to improve the ways regulations are implemented, to limit unnecessary burdens and to better target the enforcement methods.

While the survey shows that virtually all governments have embraced the principles of open government and better participation in policy making, there is still some way to go to change the culture and many obstacles to overcome on the way to effective stakeholder engagement. Anecdotal evidence suggests that in some countries, a proportion of civil servants might still not see the value added and perceive stakeholder engagement as an additional burden when drafting or reviewing regulations. Some of these view may well be justified when the objectives of public consultation are not clearly spelled out, when the wrong tools are used or when engagement takes place too late in the policy process. Careful planning, better choice of engagement tools and training of civil servants is thus needed to change this attitude.

Likewise, stakeholders need to be educated to the engagement culture to increase the likelihood that their voice is heard. They need to be better informed on when and why they might have a chance to influence governments' decisions. In addition, governments have

to put in place the conditions for increased trust in the engagement process by providing sufficient feedback and by preventing that consultations are captured by strong lobby groups and special interests.

The doubts on whether stakeholder engagement activities are actually meeting their goals continue to raise serious concerns and constitute potentially a limiting factor on their effectiveness. These concerns create a case for assessing and measuring the success of the engagement efforts. However, evaluating the impact of stakeholder participation on regulatory decision making is fraught with uncertainty.

Areas for further action

To full exploit the benefits of stakeholder engagement, governments will need to affect a significant cultural shift on both sides of the equations, both in the mind-set of policymakers and stakeholders. As outlined below, this will entail moving away from traditional processes and establishing fundamental new relationships and lines of communication across society.

Governments should view stakeholders as beneficiaries of their policies and an integral part of regulatory policy. Stakeholder engagement, and regulatory policy more generally, should be predicated on the capacity of citizens to articulate problems and offer possible solutions. It should not be restricted to draft bills or regulations, but extend both upstream (at the initiation stage of a proposal) and downstream (at the monitoring and evaluation stages) so as to coexist all along of the regulatory governance cycle. It should also be designed with long-term impacts in mind and focus on developing a continuous relationship.

Civil servants should use public engagement in their work in a systemic and targeted manner. Ensuring that ongoing public engagement becomes a reality requires a cultural shift in the activities of the civil service. Stakeholder engagement must be firmly embedded in the planning of civil servants' work to make sure that public consultations are not conducted in a hurry in the end of the process only to comply with the requirements. Civil servants should act as guardians of the public engagement process, by ensuring representation, moderating, analysing and arbitrating across the community. While it is legitimate that governments do not systematically accept all inputs received during the engagement process, policymakers should set out openly and transparently the reasons for rejecting the inputs and maintain accountability for their decision. This commitment is a *sine qua non* condition to counterbalance the potential scepticism of engagement practices.

Recognising the various goals and objectives of stakeholder engagement, the choice of tools will depend upon a combination of purpose (why?), actors (who?) and context (how?). To incentivise engagement and enhance trust in the process, policymakers should always be clear about the purpose of engagement and its scope, and foresee feedback mechanisms on the findings of engagement activity. Engagement processes must remain – to the extent possible – policy neutral. The design of stakeholder engagement mechanisms should attract, empower and manage the expectations of the public.

Despite its enormous potential in democratising civic involvement in policy making, digital engagement is a complement not a substitute to conventional practices, such as working groups, advisory committees or public hearings. Its success in promoting

participation cannot be assumed but requires optimal design – taking into account the needs of both policymakers and the public – and investment of resources.

Governments should not limit their "engagement" to merely informing, consulting and allowing participation through conventional approaches. Where appropriate they may consider opportunities for "co-production" according to a "wiki" approach to policy. This involves that stakeholders' inputs are sought and welcome at all stages of the policy cycle, to continually guide, inform and orient the strategy of government.

While it may not be possible to identify universal best practices of engagement in policy making, a robust evaluation system would help improve stakeholder engagement mechanisms used by governments.

Introduction: The case for stakeholder engagement

Stakeholder engagement is both an administrative practice and a mind-set. It originates from the intersection of national regulatory reform efforts intended to promote more effective policy making with open government (participatory democracy) initiatives aimed to stimulate more transparent and inclusive policy making. The emergence of stakeholder engagement has been portrayed as a part of a wider shift from "government" to "governance", in which vertical and hierarchical forms of policy making are giving way to more horizontal and co-operative approaches. This shift has spurred a process of communication, consultation and participation of stakeholders in different phases of the regulatory governance cycle. It is increasingly perceived not only as fundamental for understanding stakeholders' needs but also for improving trust in government. It is recognised that making decisions without stakeholder engagement may lead to confrontation, dispute, disruption, boycott, distrust and public dissatisfaction (Rowe and Frewer, 2005).

OECD countries have been paying increasing attention to various ways to engage stakeholders in making, implementing and reviewing regulations. The central objective of regulatory policy – ensuring that regulations are designed and implemented in the public interest – can only be achieved with help from those subject to regulations (citizens, businesses, social partners, NGOs, public sector organisations, etc). While this assertion states the obvious, the value of open and inclusive policy making has only been widely accepted parallel to the renaissance of participatory democracy. Amid contemporary challenges of representative democracies, such as the increased distrust of political parties and civic disaffection (Altman, 2013; Dalton and Weldon, 2005; Dogan, 2005; Stevenson and Wolfers, 2011), OECD countries only recently acknowledged the importance of "pay[ing] more attention to the voice of users, who need to be part of the regulatory development process" (OECD, 2011a). "Inclusion" is one of the two dimensions of Open Government, as defined in OECD (2009).

The importance given to the issue of stakeholder engagement has been translated into one of the principles in the 2012 Recommendation (OECD, 2012), which recommends Member to "adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including on-line) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the

supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations."

The Open Government Partnership Initiative has helped to bring this issue forward and to put it on the agenda of a broader range of countries across the globe. The Open Government Declaration endorsed by 65 countries at the end of 2014, commits members of the Open Government Partnership, among other things, to "support civic participation". Countries which signed the declaration "value public participation of all people, equally and without discrimination, in decision making and policy formulation. Public engagement … increases the effectiveness of governments, which benefit from people's knowledge, ideas and ability to provide oversight." Countries also "commit to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities" and to "creating mechanisms to enable greater collaboration between governments and civil society organisations and businesses."[1]

The practice of stakeholder engagement in rule making

The practice of stakeholder engagement seen through the composite indicators

The composite indicators for stakeholder engagement in regulatory policy (Figures 3.1 and 3.2) measure four main areas; *i)* oversight and quality control; *ii)* transparency; *iii)* systematic adoption; and *iv)* methodology. *Oversight and quality control* measures whether there are mechanisms in place to externally control the quality of stakeholder engagement practices (mostly public consultations), to monitor stakeholder engagement and whether evaluations are made publicly available. *Transparency* looks at the extent to which the processes of stakeholder engagement are made open to the widest spectrum of stakeholders and how and if stakeholders' views and comments are taken into account. *Systematic adoption* investigates if there are formal requirements for stakeholder engagement and to what extent stakeholders are engaged in practice both in the early and in the later stages of the regulation-making process. *Methodology* examines the existence of guidance documents, methods and tools used for stakeholder engagement, including minimum periods for consultations and the use of interactive websites and social media tools.

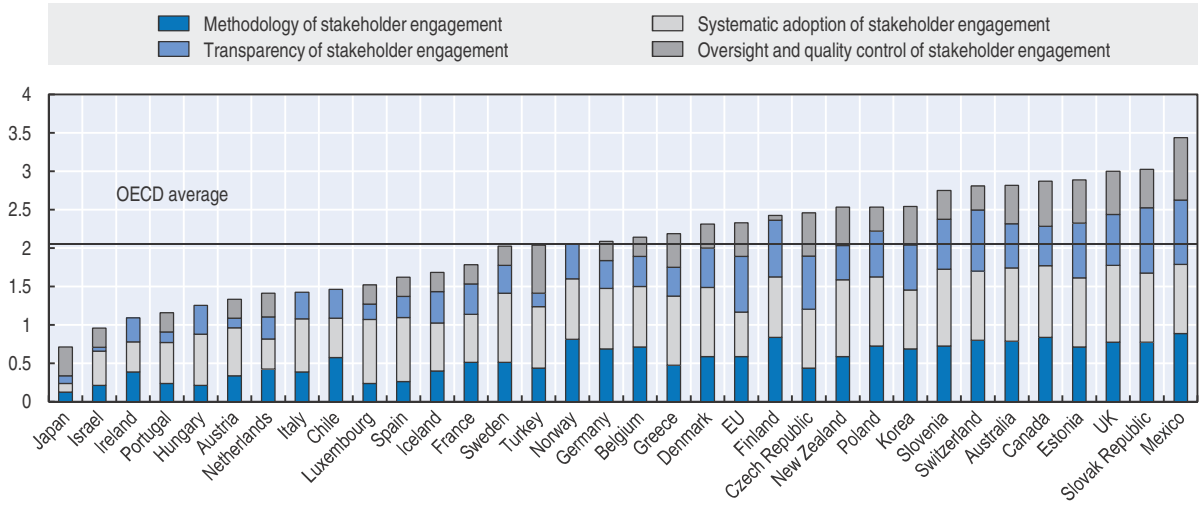
The results of the survey show that most OECD countries have systematically adopted stakeholder engagement practices and require that stakeholders are consulted especially in the process of developing new regulations. Austria, Chile, Iceland, Ireland and the Netherlands are examples of countries where either stakeholder engagement practices are informal or consultation is only required in specific areas of regulation. Otherwise, there are no significant differences among top performing countries concerning systematic adoption of stakeholder engagement, with the exception of the EU where emphasis is put on early-stage consultations and formal requirement for later-stage consultation is not in in place.

Concerning methodology, countries that do not systematically conduct public consultations open to general public (e.g. Spain, Portugal, Israel, Korea, Luxembourg) score low. Engaging general public in both early and later stage consultation can make a difference in scoring (United Kingdom, European Union) as well as setting minimum periods for submitting comments (Estonia, Finland). Having some formal procedures for taking comments received during consultations into account and providing feedback to

consultees (Estonia, United Kingdom) as well as publishing and justifying decisions not to conduct consultations (Finland, Slovenia) are critical pillars of the transparency of the engagement process.

The oversight and quality control of stakeholder engagement makes a significant difference in how countries perform. Having a dedicated body independent from the

Figure 3.1. **Composite indicators: Stakeholder engagement in developing primary laws**

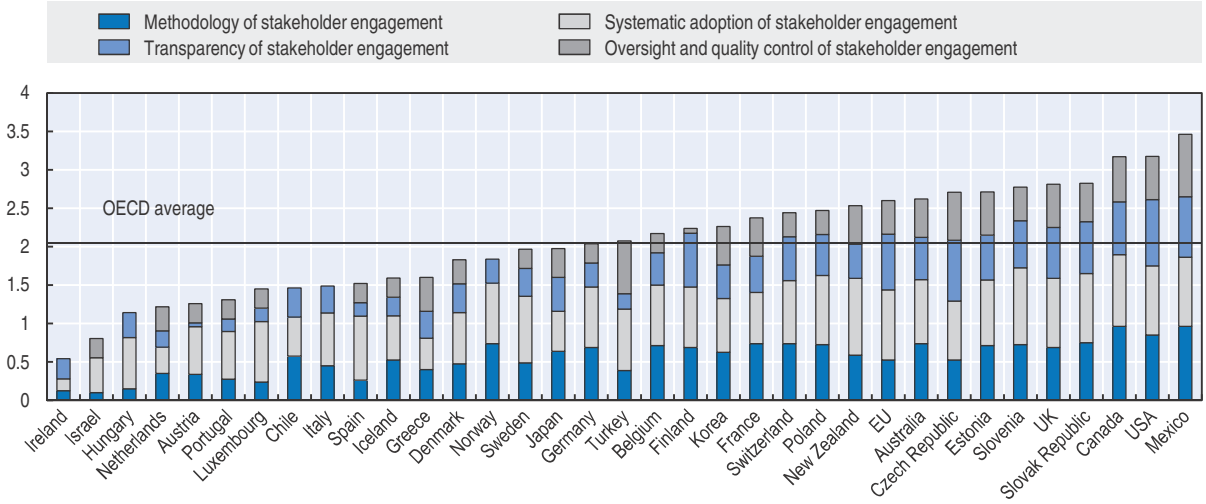


Note: The results apply exclusively to processes for developing primary laws initiated by the executive. The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. This figure excludes the United States where all primary laws are initiated by Congress. In the majority of countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by parliament/congress (respectively 90.6% and 84%).

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

StatLink http://dx.doi.org/10.1787/888933262736

Figure 3.2. **Composite indicators: Stakeholder engagement in developing subordinate 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.

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

StatLink http://dx.doi.org/10.1787/888933262745

drafting institution that checks the quality and comprehensiveness of consultations (such as the COFEMER in Mexico) can play an important role in the final scoring, especially if it has a right to return the draft based on insufficient consultations. Having such a body is also important in ensuring the quality of the engagement process itself. Few countries conduct systematic evaluations of stakeholder engagement. Mexico and partially Slovenia and the EU are among the exceptions.

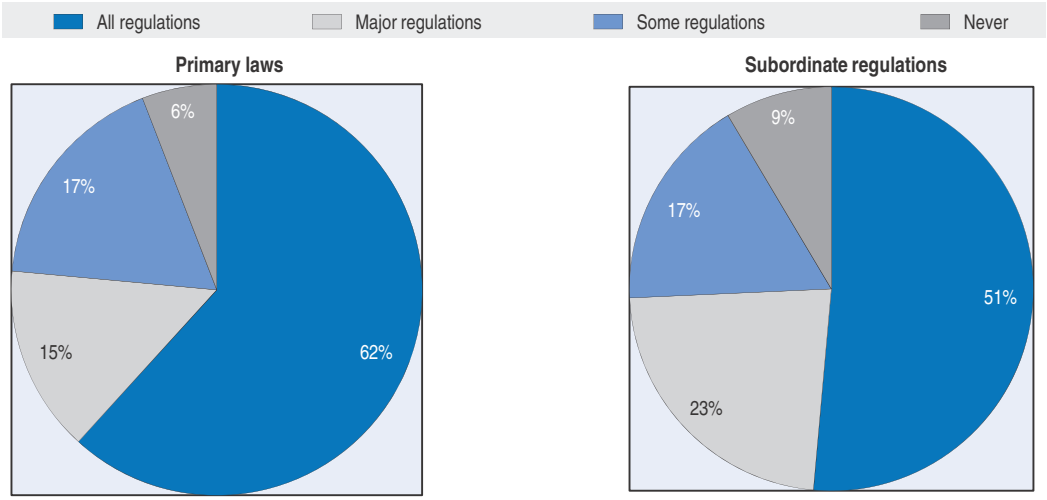
Countries in general engage stakeholders in developing secondary regulations slightly less than in developing primary laws. The factors influencing the scoring are very similar for primary and secondary regulations.

Stakeholder engagement has been continuously gaining importance

Based on the 2014 Survey of Regulatory Indicators, a majority of OECD countries have implemented a requirement to engage stakeholders in developing both primary and secondary regulations (Principle 2.1 and partially 2.2) (Figure 3.3).

Most countries ensure easy access to regulations (Principle 2.5) especially through publication of regulations in official gazettes either in paper or electronic form. An emerging trend is towards electronic version of bill and regulations. An electronic record reduces the publication cost of a gazette. In addition, electronic publication of primary laws and secondary regulations also enables the creation of fully searchable on-line databases of all existing regulations in their current but also historical versions (i.e. the Code of Federal Regulations in the United States) as opposed to simple electronic publication of the Official Gazette. Most countries that have such databases do not charge any fees for their use. Some countries have completely replaced the paper version of the Official Gazette by electronic versions (e.g. see Box 3.1, Estonia).

Figure 3.3. **Requirements to conduct stakeholder engagement: Primary and subordinate regulations**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.*

StatLink http://dx.doi.org/10.1787/888933262840

Box 3.1. **Online regulatory database: The case of Estonia**

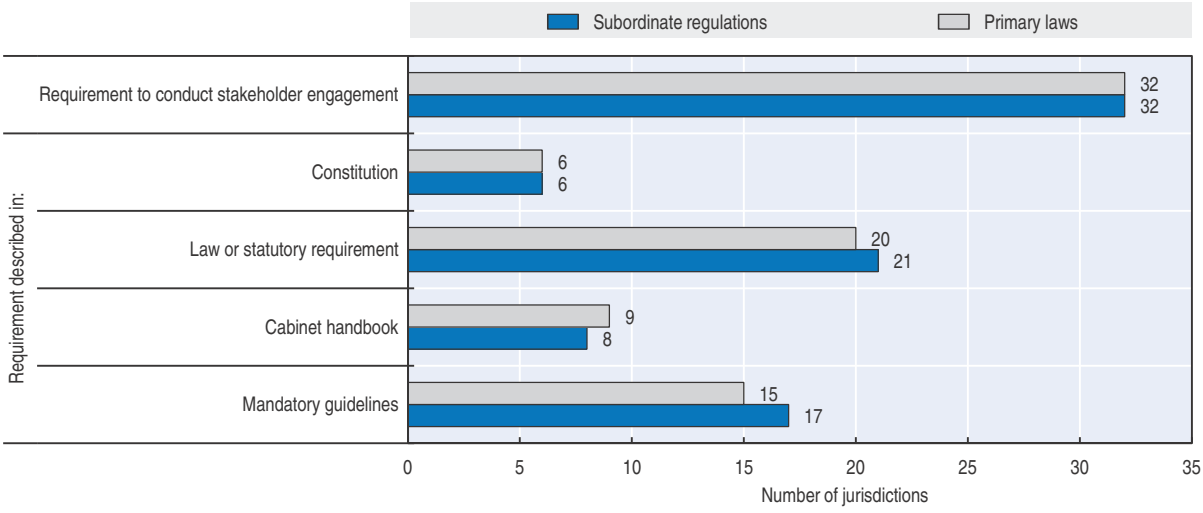
Riigi Teataja, the Estonian State Gazette, provides free online access to the text of all primary laws and subordinate regulations. The online texts are official and their publication makes regulation enforceable. The State Gazette was first made available on the Internet in 1997. The online version has the status of an official publication since June 2002 and entirely replaced the printed State Gazette in June 2010. The public can search the site (*www.riigiteataja.ee*) for original regulations and consolidated texts. Consolidated versions of a regulation are available for any point in time. Furthermore, it is possible to sign up for automatic notifications of legislative changes. Users can get help or make suggestions through a feedback form. An English demo video explains the website (*www.riigiteataja.ee/tutvustus.html?m=1*).

Source: OECD (2011b), "Regulatory Management Systems: Country Notes", Estonia, Question 6, *www.oecd.org/gov/regulatory-policy/rmscountrynotes.htm*.

Most of the OECD countries have adopted policies on using plain language in developing laws and regulations (Principle 2.6).[2] There is, however, only limited evidence on countries conducting "regular performance assessments of regulations and regulatory systems, taking into account … the impacts on affected parties and how they are perceived" (Principle 2.3). Only few countries have put in place specific and explicit "policies and practices for inspections and enforcement [that] respect the legitimate rights of those subject to the enforcement, are designed to maximise the net public benefits through compliance and enforcement and avoid unnecessary burdens on those subject to inspections" (Principle 2.4).[3]

The requirement for stakeholder engagement is implemented through various government instruments. An increasing number of countries are using a law or even a constitutional requirement to commit civil servants to stakeholder engagement (Figure 3.4). This illustrates the importance that countries give to this issue.

Figure 3.4. **Requirement to conduct stakeholder engagement**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262754

The objectives of stakeholder engagement vary, differentiated tools must be used to achieve different objectives

There are several objectives governments follow when increasing their efforts to engage stakeholders in regulatory policy. With the economic crisis, OECD countries have faced a decline, sometimes steep, in citizens' trust in government.[4] An increased openness and transparency of the decision making process should help them to increase legitimacy of government's decisions and regain the trust of society. At the same time, engagement of stakeholders enables external control of the decision-making process and strengthens accountability of the government as a whole and also of individual civil servants.

In addition, improved stakeholder engagement should allow governments collecting better evidence as a basis for their decisions. Involving a wide spectrum of interested parties and reaching out also to those that do not necessarily have to be used, able or willing to "get involved" should help to collect more diverse ideas and opinions, making the decisions more responsive to the society's needs and leading to a higher quality of regulations based on a better and sounder evidence.

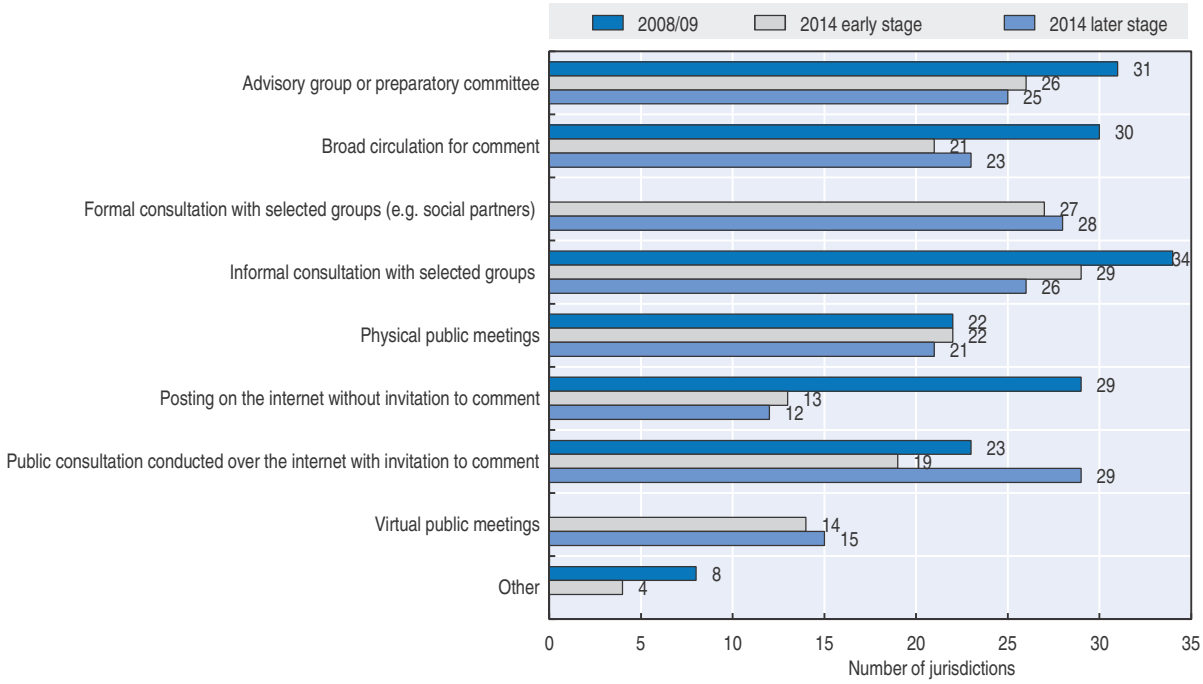
Finally, and this is sometimes overlooked, engaging affected parties in the process of developing new regulations usually helps to increase the sense of "ownership" among interested parties and lead to better compliance with regulations. As highlighted in Allan (2014) and in the findings of the 6th OECD Expert Meeting on Measuring Regulatory Performance (OECD, 2014), an inclusive regulation-making process is likely to facilitate the buy-in of affected parties even when regulations are against the narrow interest of some parties and therefore to higher compliance rates.

The goals of greater stakeholder engagement are not only diverse (even though largely complementary), they are also subject to change over time. The experience so far shows that the OECD countries tend to follow the instrumental goals (better input, strengthened evidence-base) rather than the intrinsic ones (more accountable and credible governments). As a consequence, stakeholder engagement is more likely to contribute to the legitimacy of the decision making process rather than to its overall democratic credibility and accountability.

Achieving different goals of stakeholder engagement will require the use of different tools. This only underscores the need to set the objectives of engaging stakeholders (what is the government trying to achieve through engaging stakeholders) at the early stages of stakeholder engagement projects, preferably before the administration starts working on the legislative draft or on an administrative simplification project. Figure 3.5 shows the different types of consultation processes and their changing usage. It illustrates, that some tools are used more in the early stages of stakeholder engagement, such as the advisory groups or preparatory committees, while other tools are used more frequently later in the engagement process, such as posting draft regulations on the Internet or formal consultations with social partners and all interested stakeholders. Some tools, e.g. public meetings, are used consistently in all stages of the process. Limiting consultations to the "usual suspects" through targeted consultations (i.e., over-relying on meetings with special groups) might discriminate against SMEs, new entrants, and foreign traders and investors.

Many OECD countries have established formal processes for consultations with the so-called social partners – elected representatives of employers and employees (Box 3.2). Usually these consultations are tripartite – between governments, employers, and workers – in the formulation of standards and policies dealing with labour, social or economic

Figure 3.5. **Types of consultation**



Notes: Early stage refers to stakeholder engagement that occurs at an early stage, to inform officials about the nature of the problem and to inform discussions on possible solutions. Later stage consultation refers to stakeholder engagement where the preferred solution has been identified and/or a draft version of the regulation has been issued.
Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink *http://dx.doi.org/10.1787/888933262760*

Box 3.2. **Formal consultation with selected groups**

According to the OECD Recommendation of the Council on Regulatory Policy and Governance, Regulatory Policy should consider the beneficiaries from regulatory protection as well as those that incur regulatory obligations. Stakeholders concerned include citizens, businesses, consumers, and employees (including their representative organisations and associations), the public sector, non-governmental organisations, international trading partners and other stakeholders. Governments should therefore make an effort to engage directly with specific groups that are likely to be affected by proposed changes in policy even if open consultations are being conducted on-line. This can provide regulators with valuable insights and information. Regulators and stakeholders may find that discussing policy proposals directly with representative groups is an easy and efficient method of communication.

Based on the 2014 Regulatory Indicators Survey, 14 countries report frequently or always conducting formal consultation with selected groups (where formal consultation is defined by exchanges with selected interested parties where the proceedings are formally recorded). This usually takes place during the later stages of consultation, when the regulation was already drafted. Countries report a variety of consulted groups including social partners, local authorities, business associations, environmental groups. Countries such as Estonia, France, Germany, Norway, Slovak Republic, Slovenia and Turkey specifically mention trade unions and other forms of elected collective representation of workers or employees. In addition, a number of countries engage in informal consultation, i.e. ad hoc meetings held at the discretion of regulators. Fourteen countries reported always or frequently using this method at some stage in the process, and a further 19 reported using it "sometimes".

Box 3.2. **Formal consultation with selected groups** *(cont.)*

In a number of countries, consultation on regulations is required by law as part of "social dialogue" processes involving trade unions and employer federations ("social partners"). According to the International Labour Organization (ILO), social dialogue comprises "all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employers' associations), with or without indirect government involvement. Social dialogue processes can be informal or institutionalised, and often it is a combination of the two. It can take place at the national, regional or at enterprise level. It can be inter-professional, sectoral or a combination of these." The ILO Convention C144 on Tripartite Consultation has been signed and ratified by 138 countries.[1]

At the level of the European Union, consultation with social partners is common in the regulatory and rule-making process. The EU recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems (Article 152 of the EU Treaty). It is a statutory requirement for all EU-level social and employment regulation (Articles 154 & 155 of EU Treaty). This "EU social dialogue" process is organised in two steps: first, at the early stage of the process the European Commission consults the social partners on the broad features of a future regulatory initiative; second, the commission consults the partners on a specific proposal. If, after each of these steps, the social partners fail to reach a common position and engage bipartite negotiations, the Commission can proceed unilaterally with its own proposal.

Germany provides an interesting case where consultation with social partners is formally required by law. According to the 2011 Joint Rules of Procedure, ministries must consult early and extensively with "associations" which refers to unions of natural or legal persons or groups to promote common interests including employers' associations and associations of workers and employees. According to the findings of the EU-15 Better Regulation project this traditional method of consultation appears to be well liked by those in the system and it was felt that economic and societal interests were heard and taken into consideration.

Another example of social dialogue can be found with the "economic and social committees" bringing together representatives of workers, employers and other interest groups such as consumers' associations that exist across Europe and at EU-level the European Economic and Social Committee (EESC).

Belgium provides another example with a long standing tradition (some 120 years) of consulting social partners on all economic and social regulations. Consultation in this case aims to provide comments before a regulation is adopted, to plan its entering into force and/or to give advice on implementation and monitoring of regulations. This usually takes place through various working groups and permanent committees (such as National Council of Labour, Economy Central Council, Competition Council, etc.). They are considered as "social parliaments". The government in general respects their unanimous views. In addition, each federated entity has established its own social and economic council, bringing together social partners.

Outside Europe, a number of countries include social dialogue mechanisms. In South Africa, the creation of the National Economic Development and Labour Council (NEDLAC) in the post-Apartheid era was an important step in ensuring inclusive policy and law making process. The NEDLAC includes representation of South African trade unions and employer federations.

In engaging with selected groups, regulators should try and consult with a broad range of social partners, paying attention to the breadth of representation expressed in particular groups. Consulting with groups which have a broad encompassing interest or membership for example can act as useful counter-weight to lobbying from narrowly focused interest groups. Regulators should also view this form of consultation complimentary to open consultation rather than a replacement as not all individuals are likely to be represented. Regulators should also consider weighting responses to help provide a more realistic comparison between views provided by individuals and views provided from a representative of a larger group of people. Canada, Korea, Slovak Republic and Switzerland reported they already assign weights to comments in a systematic way.

1. See the ILO website section on social dialogue: *www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm*.

matters.[5] Such consultations are important for ensuring that the interests of workers and businesses are taken into account in the policy-making process. However, they may take place relatively late in the process. If this is the case, it should be the standard practice that the employers' and employees' representatives are consulted also earlier, even though outside the formal tripartite consultations. An important issue might also be the representativeness of some of the associations involved. The level of participation of workers in the unions in some countries is declining. The growth of short-term employment and some new forms of contractual arrangements can also challenge the degree of representation of labour market institutions. Business associations do not necessarily cover all the sectors of the economy and interest of big companies might prevail over the interests of SMEs and individual entrepreneurs.

Public consultations in the final phase of developing regulations still prevail

Most countries engage the stakeholders when developing new or amending regulations. Concrete examples of consultation practices are described in Boxes 3.3 and 3.4.

Countries use various types of consultations with stakeholders at various stages of the regulation-making process. However, still, a typical engagement process takes place through a public consultation over the Internet at the final stage of the process (Figure 3.6). Interestingly, Finland has recently set up the Otakantaa.fi portal which is used as a channel

Box 3.3. **Public consultations in Canada**

In Canada, the appropriateness of the consultations conducted by departments with stakeholders prior to seeking Cabinet's consideration of a regulatory proposal, together with the outcome of the consultations, such as stakeholder support, play a role in determining whether Cabinet will approve the pre-publication of the proposal for comments by the public in general.

In 2009, the government of Canada issued a *Guide for Effective Regulatory Consultation*. The guidelines provide information on the components of effective regulatory consultation together with checklists on:

- Ongoing, constructive, and professional relationship with stakeholders
- Consultation plan
  - Statement of purpose and objectives
  - Public environment analysis
  - Developing realistic timelines
  - Internal and interdepartmental co-ordination
  - Selecting consultation tools
  - Selecting participants
  - Effective budgeting
  - Ongoing evaluation, end-of-process evaluation, and documentation
  - Feedback/follow-up
- Conducting the consultations
  - Communicating neutral, relevant, and timely information
  - Ensuring that officials have the necessary skills

Source: Treasury Board Secretariat (Canada) (2009), "Guidelines for Effective Regulatory Consultations," *www.tbs-sct.gc.ca/rtrap-parfa/erc-cer/erc-cer01-eng.asp* (accessed on 20 march 2015).

Box 3.4. **European Commission's framework of consultation and dialogue with civil society and other interested parties**

The obligation for the European Commission to consult is enshrined in the Treaty on European Union and forms an essential element of policy preparation and review.

The Commission adopted on 19 May 2015 its "Better Regulation Package" which includes strengthened consultation commitments. The Commission intends to listen more closely to citizens and stakeholders, and be open to their feedback throughout the policy cycle – from the first idea outlined in "roadmaps" or "inception impact assessments" to when the Commission prepares a proposal and assesses the likely impacts, through the adoption of legislation and its evaluation.

Key novelties are the establishment of a consultation strategy for each initiative before the work starts; obligatory 12 week internet-based public consultations for all initiatives subject to an impact assessment, evaluations and Fitness Checks and Green Papers; feedback opportunity for citizens and stakeholders on "roadmaps" and "inception impact assessment", on legislative proposals adopted by the Commission and on draft implementing and delegated acts.

Building on existing principles and minimum standards, new "Better Regulation Guidelines" have been developed to ensure high quality and transparent consultation activities. The minimum standards require in particular:

- Clear content of the consultation process and documents;
- Possibility for all relevant parties to express their opinions;
- Adequate awareness-raising publicity and communication channels adapted to the target audience. This includes publication of all open public consultations on the website "Your Voice in Europe" *http://ec.europa.eu/yourvoice/index_en.htm*;
- Provision of sufficient time for responses: minimum 12 weeks for open public consultations; and
- Acknowledgment and adequate feedback.

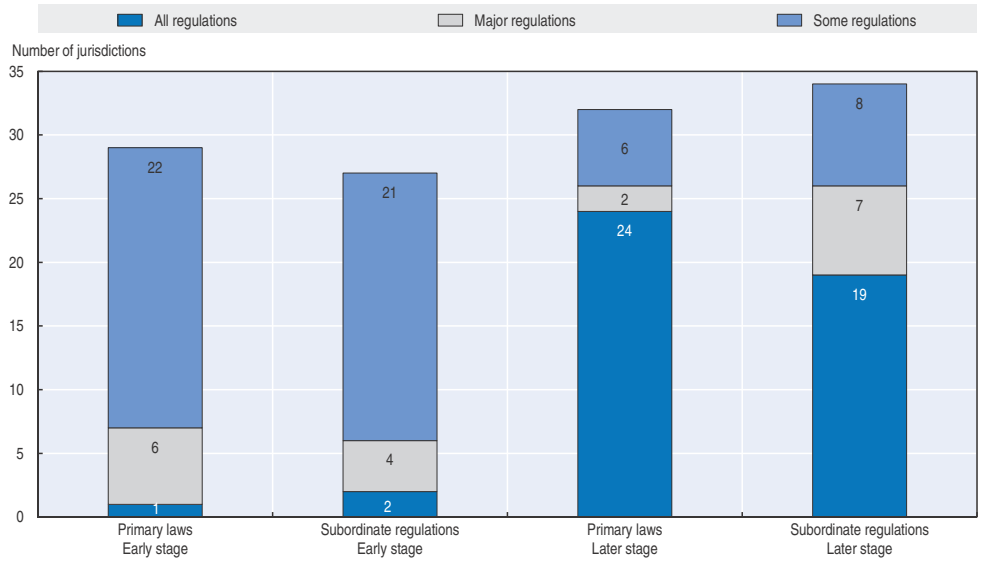
Source: European Commission (2015), Better Regulation website, *http://ec.europa.eu/smart-regulation/index_en.htm* (accessed 22 May 2015).

for early-stage consultations. Stakeholders may participate in the ongoing discussions or in the preparation of government's projects or start a completely new discussion on a topic of their choice. The online tools of the service may be used for finding out what kind of ideas and experiences the target groups have on a given topic. These ideas and experiences can then be utilised for example in the authorities' decision making, law drafting, planning of action plans, establishing needs for reforms, and assessing different subject matters. It is possible to combine different kinds of one-way, two-way and multi-way modes of participation in the projects, such as discussion forums, one-way open questionnaires, straw polls and real time chat discussions.

Countries are increasingly trying to engage with stakeholders when reviewing existing regulations, much less in the phase of monitoring and implementation

Countries involve stakeholders both in the process of developing new laws and regulations and in the process of reviewing the stock of regulations (Figure 3.7). To date, however, such initiatives have usually been driven from the top, not sufficiently taking the view of regulated subjects into account. This might explain the often unfavourable perception of their achievements. Some countries are, however, now actively seeking inputs in shaping regulatory reform programmes such as those focusing on administrative simplification and reduction of administrative burdens. The Red Tape Challenge initiative

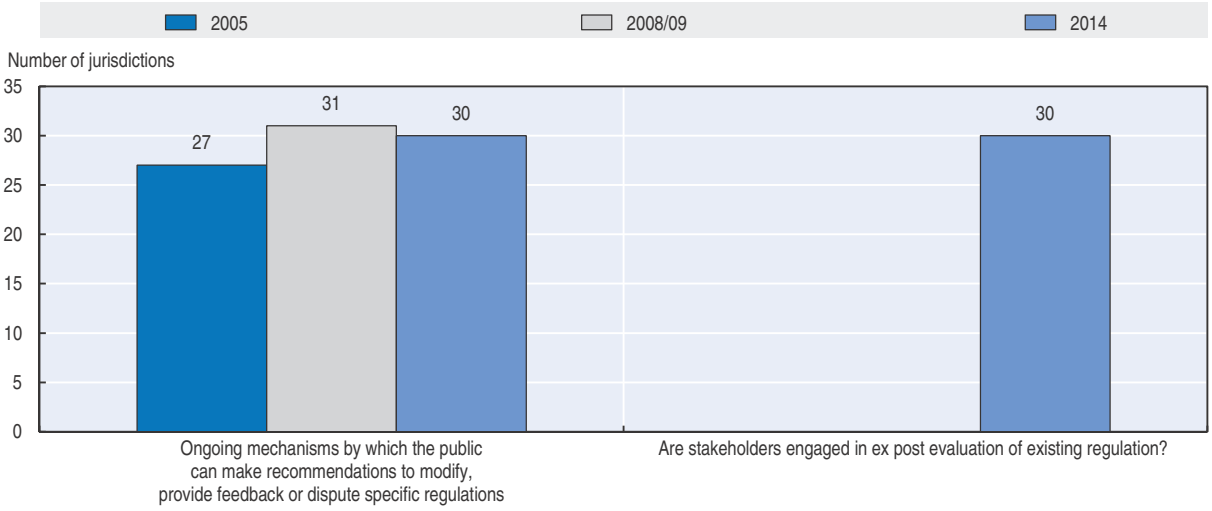
Figure 3.6. **Early stage and later stage consultations**



Notes: Early stage refers to stakeholder engagement that occurs at an early stage, to inform officials about the nature of the problem and to inform discussions on possible solutions. Later stage consultation refers to stakeholder engagement where the preferred solution has been identified and/or a draft version of the regulation has been issued.
Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262771

Figure 3.7. **Stakeholder engagement in *ex post* evaluation**



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262788

in the United Kingdom (Box 3.5) illustrates an innovative approach to using external input from a wide spectrum of stakeholders to simplify existing regulations. Having a representative panel of business representatives for a survey on administrative burdens in Belgium is another example of targeting simplification efforts based on the view of stakeholders. The Danish Burden Hunters project (Box 3.6) and the Swedish Better Regulation Hunt are examples of more targeted, proactive approaches of using close co-operation with stakeholders to analyse existing regulatory burdens and to find ways on how to simplify existing regulations. In Canada, the government tries to engage business stakeholders in shaping efforts to control the growth of administrative burden arising from subordinate regulations. The one-for-one rule requires regulators to "consult affected stakeholders on ins and outs prior to seeking approval to pre-publish … a regulatory proposal, or prior to final approval of the regulation" (Treasury Board of Canada Secretariat, 2015).

On the other hand, stakeholders are still rarely engaged in the final delivery stage of the regulatory policy cycle – implementation and enforcement (or, in other words, delivery of regulations). This is a new frontier, where countries could more actively engage with stakeholders with a view to improve the ways regulations are implemented, to limit unnecessary burdens and to better target the enforcement methods. In addition, better contact with regulated entities could result in improved measurement of compliance and a better understanding of the reasons for non-compliance. Systemic co-operation of the UK Better Regulation Delivery Office with businesses through the Business Reference Panel is one of a few examples. This explores the ways in which a better understanding of the needs of business could improve outcomes for the regulators and those regulated (LBRO, 2010).

Box 3.5. **The Red Tape Challenge and the use of crowdsourcing**

The Red Tape Challenge launched by the UK government in 2011 was designed to "crowdsource" the views from business, organisations and the public on which regulations should be improved, kept or scrapped. The comments received influenced the decisions to scrap or modify over 3 095 regulations out of the 5 662 examined by November 2012. Crowdsourcing is a means of decentralising decision making by asking the "crowd" to express their views, propose solutions and give insights on a particular issue and then using these views in public policy (Afuah and Tucci, 2012). The crowdsourcing in the Red Tape Challenge programme consisted out of inviting the general public to comment via the internet on the usefulness of regulations within a set time limit. People could comment (anonymously) both publically or privately on the rules in question. Those comments were then used to assess whether regulations should be kept, scrapped or improved. One part of the Red Tape Challenge focused specifically on enforcement issues. Crowdsourcing succeeded in significantly broadening the range of correspondents engaging with government in the policy process as over 30 000 comments from the public were received during the Red Tape Challenge.

According to some academics, the use of crowdsourcing was only partially successful (Lodge and Wegrich, 2015). Although crowdsourcing did give government officials additional information on the utility of rules and regulations, the usefulness of the comments received was not always satisfactory. In any case, the Red Tape Challenge was the biggest experiment with using ICTs in an innovative way to gather comments and views on such a wide spectrum of laws and regulations.

Source: Afuah, A. and C. L. Tucci (2012), "Crowdsourcing as a Solution to Distant Search", *Academy of Management Review*, Vol. 37, No. 3, p. 355.; and Lodge, M. and K. Wegrich (2015), "Crowdsourcing and regulatory reviews: A new way of challenging red tape in British government?", *Regulation & Governance*, Vol. 9, pp. 30-46, doi:.1111/rego.12048.

Box 3.6. **The Danish Burden Hunters Project and the Business Forum for Better Regulation**

The Burden Hunters Project is an integral part of the Danish better regulation effort. It supplements existing red tape reduction efforts by placing particular emphasis on the burdens experienced by enterprises, and on how other factors besides the expenditure of time can cause enterprises to regard business regulation as being a burden.

The burden hunter methodology is actually a wide variety of methodologies that involves businesses. Burden hunters focus on qualitative research and aims at including businesses into the development of smart regulation. The methods used to hunt burdens include: observation studies, process mapping, expert interviews, focus groups, co-production, nudging, service design and user-centered innovation. The burden hunter method allows the authorities to focus on removing the administrative burdens that businesses perceive as the most burdensome. By using qualitative methods the authorities can gain insight into how businesses perceive the regulation and how they perform the administrative task that stems from the rules.

Engaging in burden hunting means going to the person in the company facing the red tape – the end-user, i.e. the person who performs the administrative tasks required by the authorities. That is the person that can help identify the real problem and develop an appropriate solution. Burden hunting methodologies can be used for both explorative and focused projects. Explorative projects aim at uncovering the burdens in a specific area or from a specific law. This approach can be used when reducing the burdens without knowing where to begin. It can provide a better understanding of the real challenges businesses face. Focused projects give concrete solutions to specific problems. This type of project can create the groundwork for decisions about concrete workflows, guidelines or input for digital solutions.

The Business Forum for Better Regulation was established in 2012 in order to ensure a renewal of business regulation in close dialogue with the business community. It has the task of identifying those areas that businesses perceive as the most burdensome and propose simplification measures. It has members representing both business and workers organisations, concrete businesses and experts with knowledge of simplification. The proposals made by the Business Forum are covered by a "comply or explain" principle. This principle means that the government is obliged to either pursue the proposed initiatives or to explain why these are not pursued. There will be set concrete simplification targets in the areas identified by the Business Forum and the government regularly takes stock of the efforts. The status of the initiatives can be followed on the homepage for simpler rules: *www.enklereregler.dk* (in Danish).

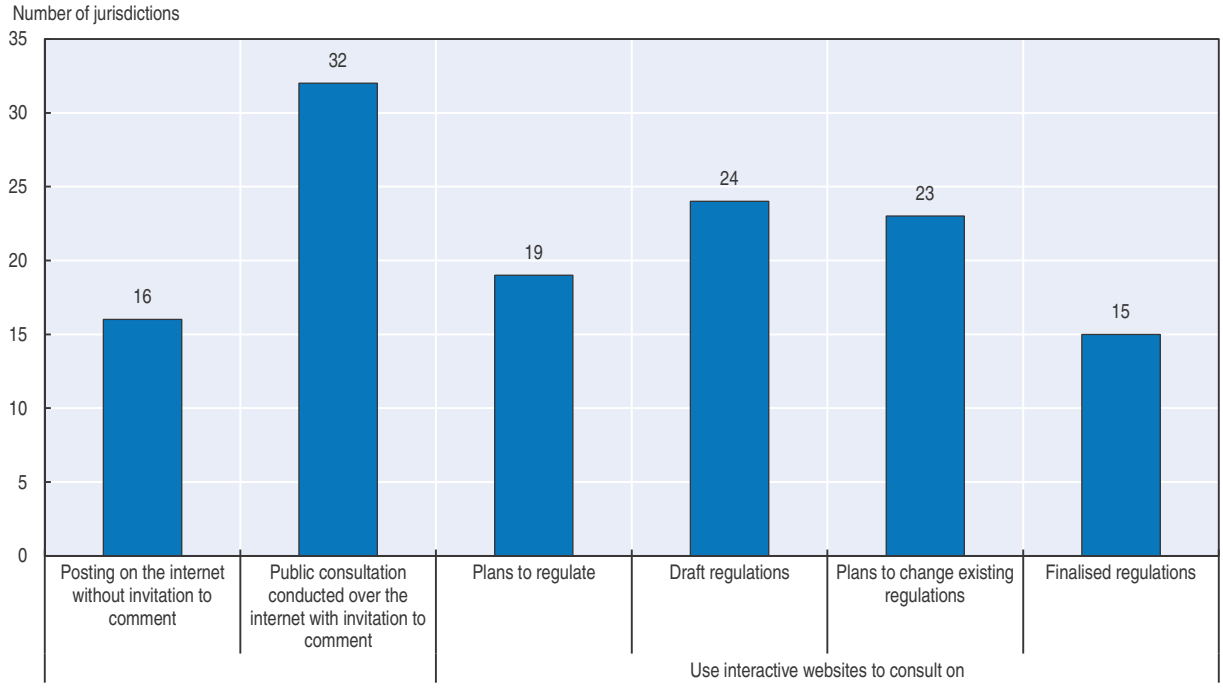
Source: Danish Business Authority (2015a), "Burden Hunter: Hunting Administrative Burdens and Red Tape", *http://danishbusinessauthority.dk/burden-hunters* (accessed 16 March 2015) and Danish Business Authority (2015b), "Business Forum for Better Activity", *http://danishbusinessauthority.dk/business-forum-for-better-regulation* (accessed 16 March 2015).

ICTs are playing an increasingly important role in stakeholder engagement. Countries are experimenting with new tools, however, the real change is yet to come

There is no doubt that the use of ICTs in engaging stakeholders in regulatory policy is widespread. It has become a standard practice that countries publish draft regulations on either ministerial websites or dedicated consultation portals (Figure 3.8). The Open Government Partnership Initiative has further contributed to the increased use of modern tools of communication when involving stakeholders in policy making. Many observers believe that the use of digital tools, by virtue of the democratising force of the Internet, should lead to wider participation, attracting those that are willing but unable (e.g. because they live in remote areas), or the able but unwilling (giving them an easy tool for communication).

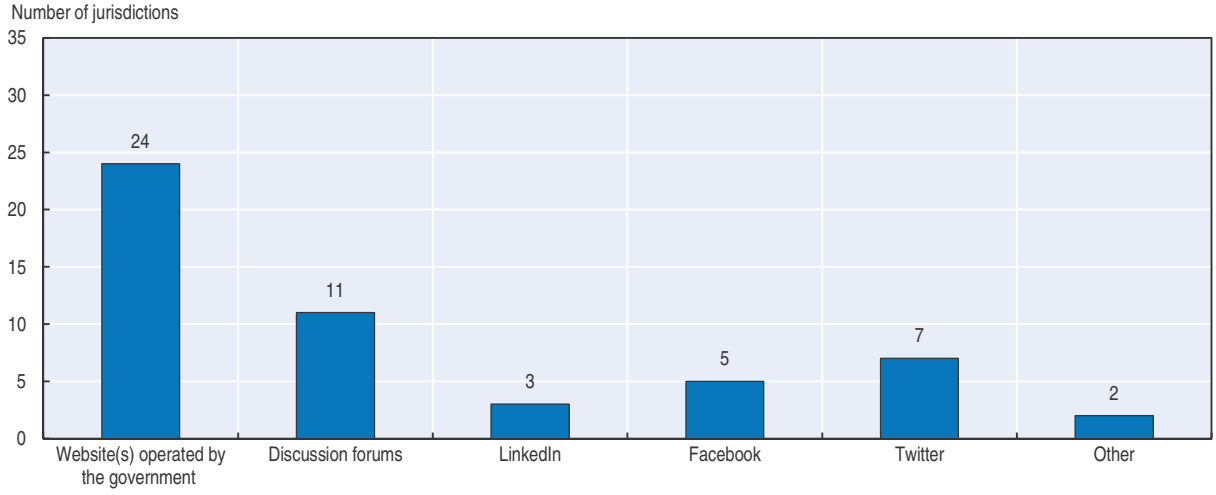
A relatively small but increasing number of countries are experimenting with more innovative tools such as social media, crowdsourcing, wiki-based tools, etc. (see for example OECD (2011c) (Figure 3.9). One of the examples of such "collaborative" policy

Figure 3.8. **Use of ICTs to consult in different stages of regulation development**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262794

Figure 3.9. **ICT tools used for consultations**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262802

making is the US ExpertNet (Box 3.7). Despite their potential, however, it is still too early to tell whether these experiments can revolutionise the engagement process.

The experience so far shows that the ICTs have failed to significantly increase the level of engagement in policy making or to improve its quality (Lodge and Wegrich, 2015).

Box 3.7. **ExpertNet**

The United States General Services Administration and the White House Open Government Initiative have created a wiki known as "ExpertNet" for the purpose of crowdsourcing "expert public participation". "ExpertNet" is still in its infancy, and is intended primarily for information exchange such as notifying experts of opportunities to participate in public consultations and providing a forum within which they can provide feedback to government officials. This falls short of the ideal of truly collaborative policy making, but is an interesting experiment in using ICT to enhance stakeholder engagement.

Source: The ExpertNet.

Despite the fact that the mechanisms of engagement have changed, the nature of the process has remained essentially the same as in the pre-digital era. ICT participation usually focus on one-way communication – providing information to stakeholders or collecting input from them, instead of actively engaging the widest possible spectrum of interested parties. The use of crowdsourcing and wiki-based tools present some potential in this aspect that is yet to be fully exploited. In general, the effect of the use of ICTs on the quality and quantity of stakeholder engagement is behind expectations.

The challenges in ensuring effective stakeholder engagement

Despite the many positive changes, there is still a long way to go to change the culture and many obstacles to overcome on the way to effective stakeholder engagement

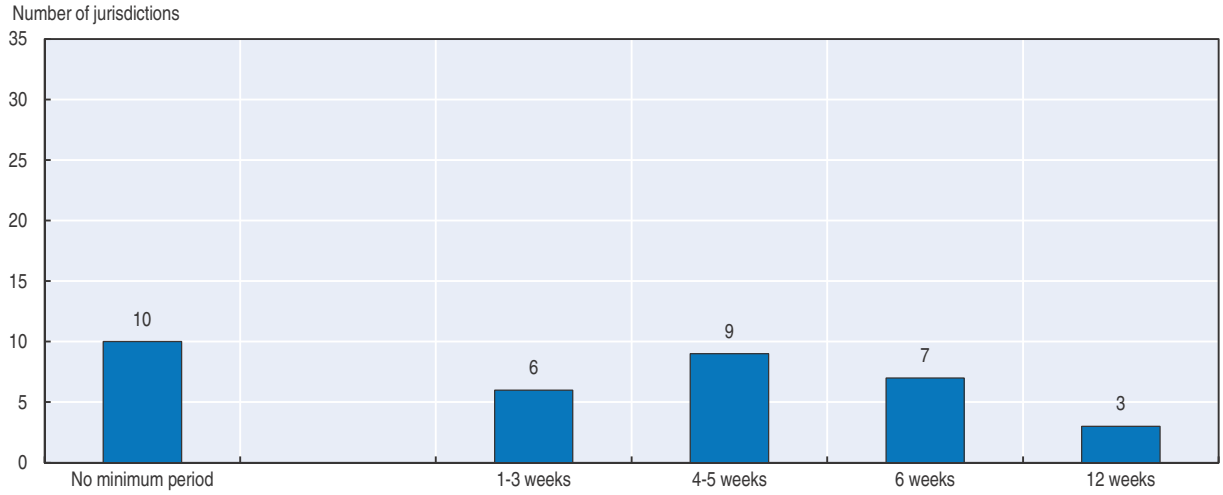
Evaluation of stakeholder engagement practices suggests that it has not yet become a firm part of regulatory policy (see for example European Commission, 2012). There still seems to be "a significant unsatisfied demand for effective consultation" and engagement (OECD, 2009).

Effective stakeholder engagement is rather resource-intensive for all parties involved. Public institutions need to carefully plan engagement activities and invest a significant amount of time and human capital if engagement efforts are supposed to meet their goals. Despite the fact that virtually all governments have embraced the principles of open government and better participation in policy making, anecdotal evidence suggests that, in some countries, a large proportion of civil servants might still not see the value added and perceive stakeholder engagement as an additional burden on them when drafting or reviewing regulations. This is a question of a cultural shift and also depending on the existence of a clear government communication strategy toward civil servants on the benefits of stakeholder engagement. As public consultations are in many cases conducted at the end of the regulation-making process, there is a limited space for manoeuvring and a lack of willingness for significantly changing the substance of draft regulations at this stage.

In addition, active participation in regulatory policy demands a significant amount of time, attention and cognitive abilities from the side of the citizens, businesses and civil society. Not everyone has or is willing to invest the time in these processes. This may present a problem when trying to attract those who are not used to actively participate in public decision making. At least, governments should allow sufficient time for those consulted to submit their comments. To enable this, 25 governments have set up a

minimum consultation period. However, this period is at least 6 weeks in only 10 countries (Figure 3.10).

Figure 3.10. **Minimum periods for consultations with the public**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262811

Other obstacles for effective public participation and engagement are described in Alemanno (2015) and Balla and Dudley (2015). In general, they can be grouped into the five categories that are described below. Recent in-depth OECD work on stakeholder engagement in water governance provides an illustration of these perceived challenges for a specific sector (Figure 3.11 and OECD, 2015).

Lack of awareness – While governments are trying to use the ICTs and media to spread information on ongoing consultations, the evidence does not seem to show an increased participation. Still, citizens and especially small business are not actively looking for information on where they could contribute to the debate. The well organised interest groups are more effective in using the traditional channels of communication with governments. A more proactive approach is needed from the side of the government to involve a wider spectrum of stakeholders.

Low participation literacy – Some stakeholders still do not have sufficient information on how to take part in the policy-making process. This is partially due to the fact that they do not perceive policy issues as being an important factor affecting their lives and therefore willingness to participate in consultations. Partially this might be because they do not understand the law-making process and the information provided by the government is not clear enough.

Information overload – Enabling public consultations on virtually any government document may cause consultation fatigue and information overload. In addition, officials are using lengthy and complex documents and a complicated language that does not make it easier for a wider public to express their opinions instead of simple, summarised consultation documents containing clear, targeted questions.

Consultation capture – Public debate is often captured by well organised interests and smaller players and individuals do not see a real chance to influence the decisions. Also, it

Figure 3.11. **Major obstacles to stakeholder engagement in the water sector**

215 respondents

Note: The graph considers the average response from the perspective of both targets and promoters for obstacles diagnosed as "critical" and "important", on a range from "critical" to "important", "somewhat important" and "not important", to the question "which obstacles does your organisation face when taking part in or promoting stakeholder engagement?"

Source: OECD Survey on Stakeholder Engagement for Effective Water Governance, 2014 in OECD (2015a), Stakeholder Engagement for Inclusive Water Governance, OECD Studies on Water, OECD Publishing, Paris, *http://dx.doi.org/10.1787/9789264231122-en*.

StatLink *http://dx.doi.org/10.1787/888933262821*

may be difficult for responsible authorities to identify relevant information among the inputs received and to differentiate it from attempts to lobby their decisions.

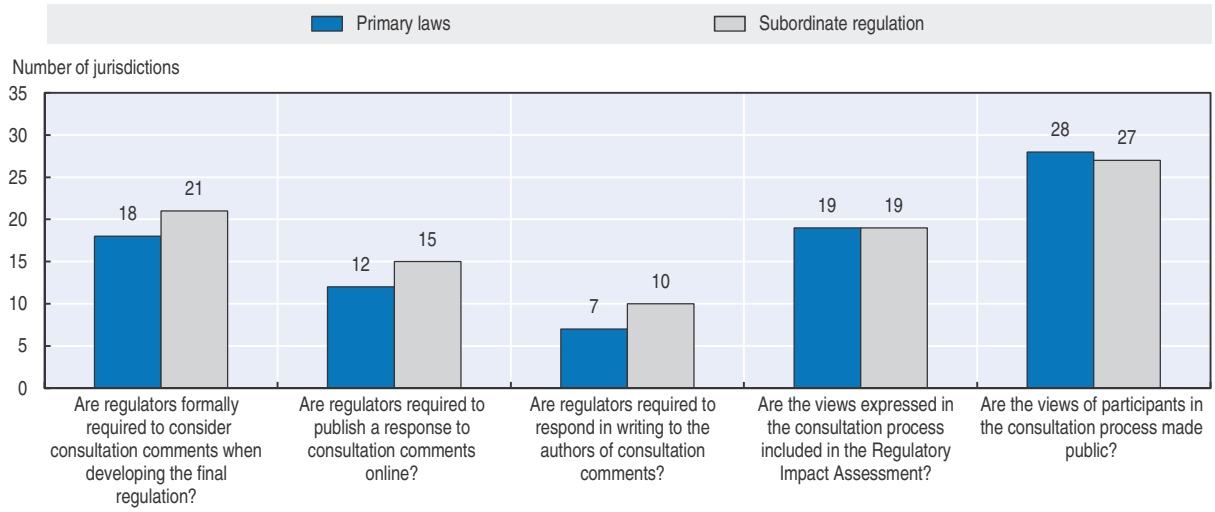
Bad experience due to past record – many stakeholders who have tried to participate in public consultations do not see the real impact of the consultation process on the final product. Governments often fail to provide adequate feedback on the received comments and on how they were (or were not) incorporated. Figure 3.12 illustrates the extent to which regulators in OECD countries are obliged to provide this kind of feedback. This may lead to cynicism among stakeholders and decreased willingness to repeat such experience. Badly conducted consultations therefore might do more harm than good.

There is not enough evidence that stakeholder engagement is actually delivering its goals, a lack of evaluation and many difficulties in evaluating engagement efforts

The doubts on whether stakeholder engagement activities are actually meeting their goals continue to raise serious concerns and constitute potentially a limiting factor on their effectiveness. While there is considerable anecdotal evidence that stakeholder engagement has contributed to a healthier democracy or more responsive governments, this cannot be proven with certainty. Nor can it be proved that stakeholder engagement has helped to improve the quality of laws and regulations. Also, stakeholder engagement activities have proven to be rather costly. Resources invested into such projects have to be well targeted.

This all creates a case for assessing and measuring the success of the engagement efforts. Despite the fact that most observers agree that evaluation should be a priority for governments, it is still rather rare. The attempts that exist are oriented on assessing the process rather than the actual outcomes (i.e. the evaluation focuses on the number of consulted subject, number of comments received, etc. instead of the extent to which

Figure 3.12. **Obligation to provide feedback on comments**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262835

stakeholder engagement actually affects the resulting draft regulation).[6] Setting explicit outcome criteria for evaluating effectiveness and efficiency of stakeholder engagement activities remains a significant challenge. This in turn requires that the goals are clearly set from the outset. Estonia provides an interesting case where the study on stakeholder involvement with government agencies (Institute of Baltic Studies, 2010) takes into account the objectives of engagement (e.g. to highlight alternative views and to provide stakeholders with the opportunity to express their views) and whether they are being achieved beyond the quantitative analysis of the number of stakeholders and tools used for their involvement.

According to Balla and Dudley (2015), stakeholder participation is salient as a means through which information about the economic and political ramifications of regulations is generated. On another level, stakeholder participation serves as a vehicle through which stakeholders become more deeply involved in regulatory policy making, by, for example, engaging in a "deliberative process that aims toward the achievement of a rational consensus over the regulatory decision" (Coglianese, 2006). In considering the dual nature of stakeholder participation itself, two standards of evaluation are immediately relevant. One standard is the quantity of stakeholder participation. To what extent do stakeholders take advantage of opportunities to participate in regulatory processes? A second standard is the composition of participating stakeholders. For example, do representatives of business firms and industry associations participate more frequently than consumers, environmentalists, and non-governmental organisations (NGOs)? To what extent do individual stakeholders, as opposed to organisational representatives, participate in regulatory processes?

In one respect, value can be attached to high levels of stakeholder participation in democratic policy making. Similarly, participation by diverse arrays of stakeholders can be seen as superior to involvement on the part of narrow sets of interests. Such assessments, however, are far from certain and universal across standards of evaluation. Additional increments of stakeholder participation and diversity might, for a variety of reasons, add

little to nothing to regulatory processes in terms of information provision and deliberative engagement.

Evaluating the impact of stakeholder participation on regulatory decision making is fraught with even greater uncertainty. Instruments of stakeholder participation occur within regulatory processes that are procedurally multi-faceted, making it difficult to connect specific agency decisions with particular manifestations of participation. Even if and when linkages can be made between stakeholder participation and regulatory outcomes, larger normative questions regarding the efficacy of stakeholder participation are naturally raised. For example, if regulation is not a plebiscitary process, then what should be the role, if any, of the respective quantity of participation by stakeholders representing divergent viewpoints in informing agency decisions?

Despite these many uncertainties and complexities of the evaluation process, a strong case still exists for creating robust evaluation mechanisms to help improve stakeholder engagement mechanisms used by governments. The evaluation goas and techniques will differ depending on the goals and context in which engagement is used. It is therefore important that the goals for stakeholder engagement are clearly set up front and that the governments are aware of why they are engaging in these endeavours.

Notes

1. *www.opengovpartnership.org/about/open-government-declaration* (accessed June 2015).
2. Based on the results of the 2008/09 Regulatory Management Indicators survey, quasi all countries have a general policy requiring "plain language" drafting.
3. See Reform of Regulatory Enforcement & Inspections in OECD Countries, an OECD paper written by Julie Monk for the OECD Workshop on Regulatory Enforcement and Inspections in Jerusalem, 2012, *www.oecd.org/gov/regulatory-policy/Reform%20of%20inspections%20-%20Web%20-%20Julie%20Monk.pdf* (last accessed 20 march 2015).
4. *www.oecd.org/gov/trust-in-government.htm*.
5. See for example the International Labour Organization (ILO) and its work and Tripartite Consultation (International Labour Standards) Convention, 1976, No. 144, *www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::p12100_ilo_code:c144*.
6. For example, the EU's evaluation of its consultation practices ("Review of the Commission Consultation Policy" 2012) focuses on indicators of stakeholder engagement, such as on the type of consultation, consultation tools, languages and length, as well as the availability of consultation outputs, and percentage of consultations with external parties in which the minimum consultation period was respected: *http://ec.europa.eu/smart-regulation/better_regulation/documents/document_travail_service_part1_en.pdf* (accessed 19 March 2014).

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Chapter 4

Evidence-based policy making through Regulatory Impact Assessment

Regulatory Impact Assessment (RIA) supports the process of policy making by contributing a rational decision framework that examines the implications of potential regulatory options. The use of RIA has expanded over the past 30 years to become universal across OECD countries. Despite significant progress in its adoption across OECD countries, challenges remain to make it an essential policy tool for regulatory quality. For instance, there is untapped potential to enhance the contribution of RIA through cost-benefit analysis. Also, the RIA system can be improved by pursuing stronger oversight and more systematic stakeholder engagement. This chapter documents the uptake across OECD members in the use of RIA, the challenges faced and areas for further action.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Key findings

Trends

The widespread use of Regulatory Impact Assessment (RIA) is a clear example of the trend across the OECD toward more evidenced-based policy making. RIA examines and measures the likely benefits, costs and effects of new or amended laws and regulations. It is a powerful tool that supports the policy-making process by contributing valuable empirical data. It corroborates policy decisions by providing a rational decision framework that examines the implications of potential regulatory options. Yet, despite significant progress in its adoption across OECD countries, challenges remain to make it an essential policy tool for regulatory quality.

While RIA is universally used across the OECD, there is no single model that is followed in implementing this regulatory policy tool. The design and evolution of RIA systems has taken into account the institutional, social, cultural and legal context of the relevant country or jurisdiction. However, despite existing differences in the purpose, scope and methods of RIA systems around the world, the process tends to follow a similar structure. The key steps of a typical RIA involve problem definition, identification of regulatory options, data collection, assessment of alternative options, identification of the preferred policy option and provisions for monitoring and evaluation.

This chapter identifies practices associated with effective RIA. First, an appropriate institutional framework can have an important role in quality control and oversight of RIA. The broader institutional context for policy making needs to be understood and serve as a basis for establishing how and where RIA can be effectively embedded into a specific setting. Second, countries should apply RIA to significant regulatory interventions with noticeable economic impacts. Analytical capability that underpins RIA is a scarce resource that needs to be allocated in a proportional and targeted manner. Third, RIA processes should be integrated to give an overall picture of costs and benefits, and supported by qualitative elements were appropriate and feasible. Most RIA cover a wide range of issues, from economic (competition effects) to social (gender effects) to environmental and distributional effects but lack a bottom line. Finally, while the formal requirement to consult as part of RIA is common, implementation is uneven in practice. Generally, the link between consultation for RIA and broader open government processes is weak.

Deepening the application of RIA in the policy process is not an easy task. A significant investment is required in the short term to trigger a change in the administration and strengthen the economic analysis of regulatory proposals in contexts often dominated by legal experts. Likewise, the need for additional administrative requirements in this area is not an easy case to make in an already complex policy pipeline, considering that the benefits are likely to be felt over the long-term and may well be difficult to communicate. In fine, the success of RIA chiefly depends on the level of commitment expressed by political leaders. This political commitment must be coupled with support from stakeholders, which often constitute a key source of motivation for governments to keep

investing in the adoption and mainstreaming of RIA. In addition, public officials have to be motivated to embrace and actively use RIA. All three ingredients are essential to make RIA a key tool of evidence-based policy.

Areas for further action

Many countries can improve their RIA system by pursuing stronger oversight. An important consideration is the scope of the oversight function – from a simple gatekeeping role to an agency that has a strong challenge function. Data presented in this chapter indicates that the challenge function is not yet a widespread characteristic of oversight bodies across OECD countries and could be strengthened.

Opportunities to pursue more stakeholder engagement in RIA are available. OECD countries have ample opportunities to take advantage and exploit ICT technologies to engage more with stakeholders as part of the RIA process. Strategies might include online disclosure of RIA, as well as consultation with stakeholders. This can contribute to widen the collection of evidence and contribute towards a better assessment of the benefits and costs of the proposed policy intervention.

Many OECD countries have adopted the practice of evaluating an extensive array of policy objectives as part of the RIA process. These might cover a broad range of policy objectives from the impact on competition to those on gender equality. Yet, the perennial challenges to mainstream RIA might be exacerbated by these wider and occasionally spurious policy evaluations. More could be done to support the proportional use of RIA with the application of "materiality" analysis – by which only the most significant impacts that are material to the possible outcomes of a regulatory intervention would be assessed.

Evidence across OECD countries suggests that much remains to be done to use RIA in a way which allows the public and the regulators to follow the regulation through its life cycle. This approach would allow one to monitor a regulation's implementation, compliance, performance, and real contribution to policy objectives and society's wellbeing. RIA is the initial link in a chain in which monitoring of implementation and *ex post* assessment of regulation help to close the regulatory governance cycle.

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

Introduction: The case for RIA

Regulations, as one of the levers of state power, are indispensable for the proper functioning of economies and societies. They create the "rules of the game" for citizens, business, government and civil society. Modern economies and societies need effective regulations for growth, investment, innovation, market openness, to support the rule of law and to promote better lives. A poor regulatory environment undermines business competitiveness and citizens' trust in government, and it encourages corruption in public governance. Hence, for regulations to properly underpin markets, protect the rights and safety of citizens and ensure the delivery of public goods and services, they must be

developed through a comprehensive framework in which policy options are assessed by employing valuable empirical data (OECD, 2011). RIA provides this framework.

RIA is both an administrative and decision-making tool and a regulatory quality process that helps policy makers to design policies which are evidence based and fit-for-purpose. The process assists integrity and trust in the regulation-making system through levers of transparency and accountability by disclosing the historical design of the regulation.

RIA represents a core tool for ensuring the quality of new regulations through an evidence-based process for decision making. A well-functioning RIA system can assist in promoting policy coherence by making transparent the trade-offs inherent in regulatory proposals, identifying who is likely to benefit from the distribution of impacts from regulation, and how risk reduction in one area may create risks for another area of government policy. RIA improves the use of evidence in policy making and reduces the incidence of regulatory failure arising from regulating when there is no case for doing so, or failing to regulate when there is a clear need (OECD, 2009). An example from the United Kingdom shows how RIA strengthens the process of evidence-based policy making (Box 4.1).

The practices of RIA

The practice of RIA seen through the composite indicators

The composite indicators for RIA evaluation measure four main areas; *i)* oversight and quality control; *ii)* transparency; *iii)* systematic adoption; and *iv)* methodology. Oversight and quality control measure whether the functions to monitor the practice of RIA and the requirements to assure the quality of the analysis are in place. Transparency looks at the extent to which the processes for conducting RIA are made open and whether stakeholders can engage in the process. Systematic adoption investigates if there are developed formal requirements for RIA which include the consideration of proportionality and institutional arrangements. And methodology shows the extent to which the assessments of impacts, cost and benefits, alternatives to regulation and risk considerations are assessed, and whether there is guidance provided for implementing the methodology.

Figures 4.1 and 4.2 show that all countries have taken measures to make RIA part of their policy process. The main drivers supporting this trend are the systematic adoption and underlying methodology for RIA. The data shows that all countries – without exception– have taken steps to establish a methodology for RIA for both primary laws and subordinate regulation. Likewise, the vast majority of countries have formal requirements for RIA.

The indicators shows that a number of jurisdictions take additional measures beyond formal requirements and methodology. This is the case, for instance, of the United Kingdom, Mexico and the European Commission, which have practices in methodological aspects of RIA and in systematic adoption – the formal requirement of RIA. However, what sets these jurisdictions apart is a deeper adoption and implementation of transparency in the RIA process, and in oversight and quality control of RIA; in fact this is also virtually true for almost all jurisdictions above the OECD average score. As a corollary, it seems that the biggest gains for countries when aspiring at implementing a RIA system will come from strengthening transparency practices and oversight.

Box 4.1. **The appointment of a small business appeals champions in the United Kingdom using RIA**

In 2013, evidence from the UK government's Focus on Enforcement Reviews and supplementary research showed widespread inadequacy in the provision of appeals and complaints mechanisms by national non-economic regulators – including an absence of transparent, effective procedures and poor explanation and signposting. According to the UK government, intervention was necessary to correct this failure and reduce the risk that poor enforcement decisions are left standing because of businesses' – and particularly small businesses' – inability to challenge them effectively.

In the RIA document, the UK government stated that businesses – and in particular small businesses – needed to be confident that they can ask for an explanation or challenge a regulator's decision without fear, disproportionate cost or long delays. Evidence gathered under the Focus on Enforcement programme showed that this was not always the case. The government used RIA to argue for the appointment of a small business appeals champions to scrutinise the transparency, operation and effectiveness of regulators' appeals and complaints processes.

According to the UK government, the creation of Small Business Appeals Champions would ultimately result in a simpler, more effective, more transparent, less costly and better understood series of processes by which businesses would be able to challenge regulators' decisions and behaviour.

The options identified in the RIA document were:

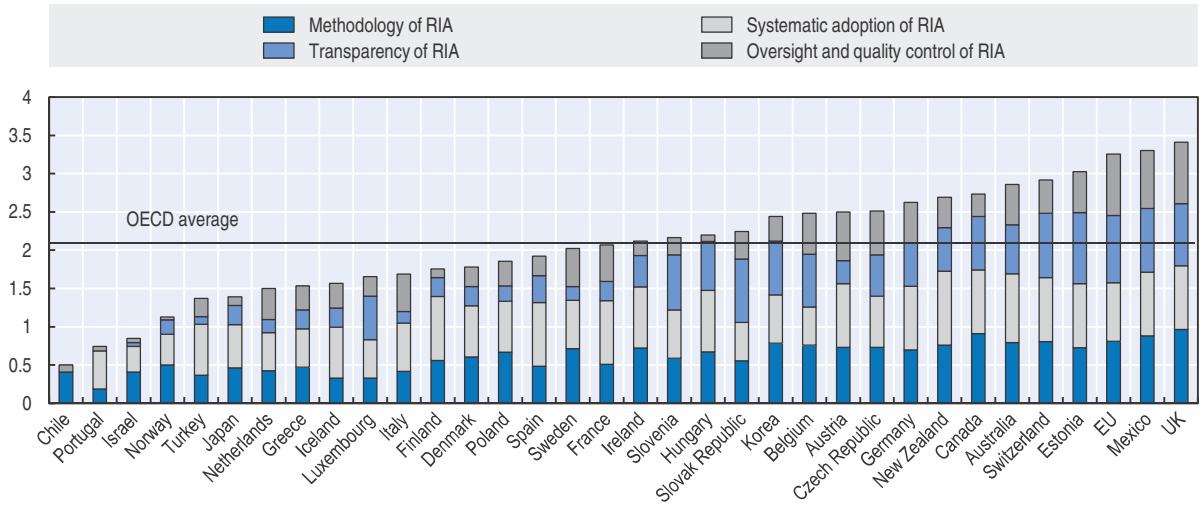
- Option 1. Do nothing, relying on the new Code, but making no provision for assurance of compliance.
- Option 2. Legislate to appoint an independent Small Business Appeals Champion within each non-economic regulator, responsible for delivering that assurance. (Preferred option)
- Option 3. Appoint such an officer by agreement with each non-economic regulator, without any legislative basis.
- Option 4. Create a single stand-alone body to deliver assurance in respect of all non-economic regulators.

The Small Business, Enterprise and Employment Act 2015 became law on 26 March 2015. It lays down that a Small Business Appeals Champion will be appointed to each non-economic regulator in scope, that will provide assurance to businesses and Government that regulators are delivering against the goals relating to appeals and complaints set out in the new statutory Regulators' Code. According to the UK government, this will help ensure that appeals and complaints processes and procedures are user-friendly, accessible, fair, work for business, and drive greater efficiency, accountability and transparency in the interaction between regulators and those they regulate.

Source: Adapted from Department for Business Innovation & Skills (2014), "Small Business Appeals Champions and non-Economic Regulators", *www.gov.uk/government/uploads/system/uploads/attachment_data/file/299097/bis-14-674-small-business-appeals-champions-and-non-economic-regulators-impact-assessment.pdf* (accessed 16 February 2015) and from TSO (2015), "Small Business, Enterprise and Employment Act 2015", *www.legislation.gov.uk/ukpga/2015/26/pdfs/ukpga_20150026_en.pdf* (accessed 24 May 2015).

In the United Kingdom, the Regulatory Policy Committee provides oversight as an independent advisory non-departmental public body. It provides opinions – that assess the quality of the evidence base supporting regulatory proposals – to government on regulatory proposals affecting business and civil society organisations. In Mexico, the oversight function of the RIA system is performed by the Federal Regulatory Improvement Commission (COFEMER), a body placed at arms-length of the government, with technical independence. The head of the commission is appointed directly by the President (OECD, 2014). In the European Union, the Impact Assessment Board reviews RIAs and an opinion of the Board is a prerequisite for a proposal to be considered by the Commission. Likewise,

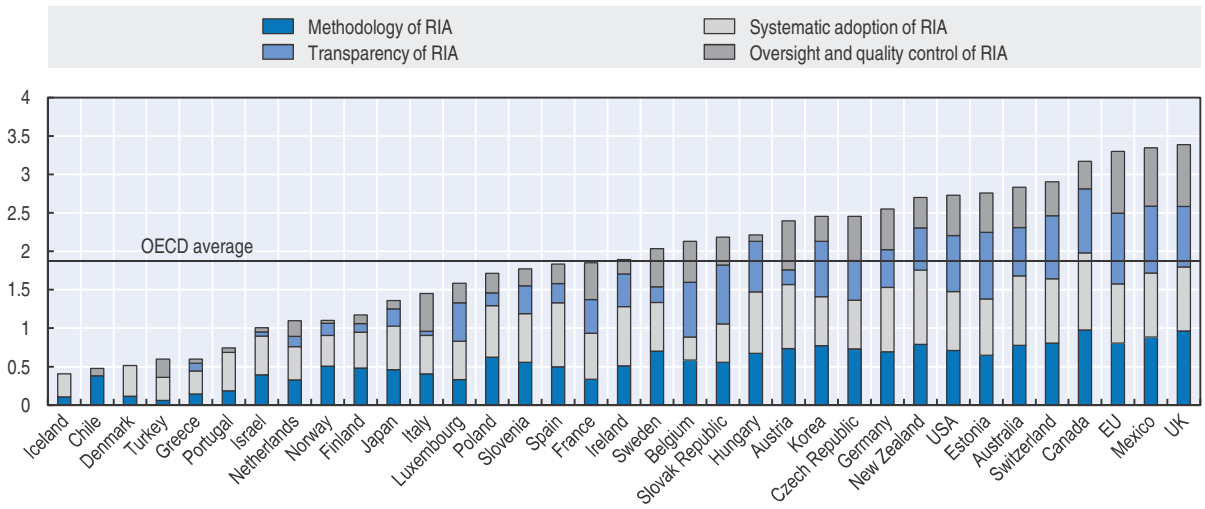
Figure 4.1. **Composite indicators: Regulatory Impact Assessment for developing primary laws**



Note: The results apply exclusively to processes for developing primary laws initiated by the executive. 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. This figure excludes the United States where all primary laws are initiated by Congress. In the majority of countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by parliament/congress (respectively 90.6% and 84%).
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262852

Figure 4.2. **Composite indicators: Regulatory Impact Assessment for developing subordinate 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.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262860

a dedicated unit in the European Parliament also conducts an assessment of the RIA once the proposal is submitted to the Parliament.

In summary, the data shows that a number of countries have ample opportunity to further strengthen their RIA systems through formal requirements and supporting methodology. Once these minimum requirements are in place, the biggest gains for many

jurisdictions are likely to accrue from strengthening oversight and deepening transparency practices in the RIA.

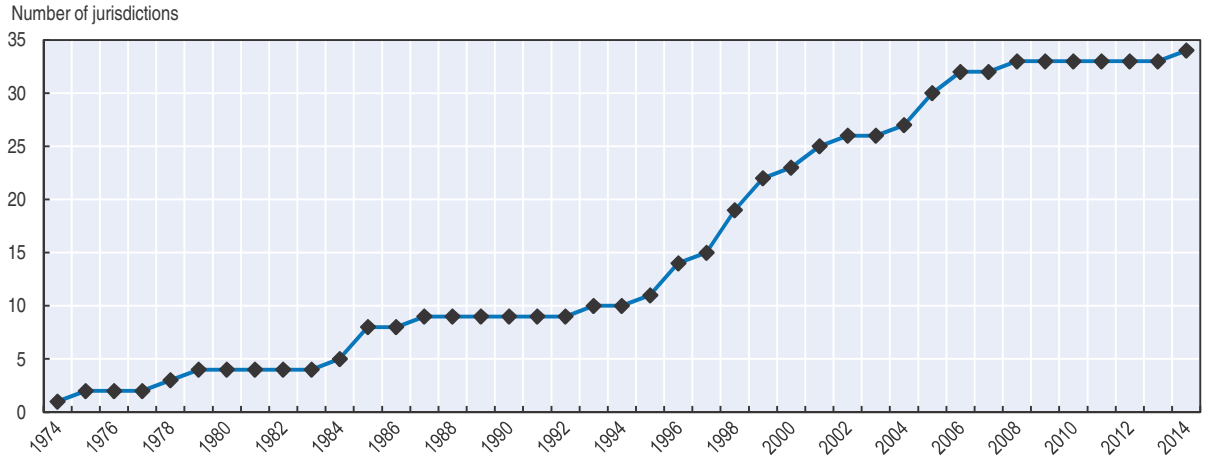
The practice of RIA has been continuously gaining importance

The use of RIA by OECD member countries has expanded over the past 30 years as illustrated by the 2014 Regulatory Indicators Survey results (Figure 4.3). The history of RIA as a formal regulatory quality tool extends over more than 25 years (OECD, 2009). Within the OECD context, the 10 point checklist accompanying the 1995 Recommendation of the OECD Council on Regulatory Quality highlighted the need to undertake an assessment to ensure that the benefits of regulations justified the costs. In 1997, the OECD formulated a set of RIA best practices (OECD, 1997). The recommendation to integrate RIA into the development, review, and revision of significant regulations, and use RIA to assess impacts on market openness and competition objectives was included in the OECD Guiding Principles for Regulatory Quality and Performance (OECD, 2005).

In 2008, the OECD issued both a handbook which provided provides practical guidance on using RIA as a way of improving regulatory quality (OECD, 2008b); and a framework to introduce policy makers on the main elements which can make a RIA system work effectively (OECD, 2008a). After examining more than 10 years of experience in implementing RIA across OECD countries, the OECD issued practical guidance on systemic factors which influence the quality of RIA, including methodological frameworks which can assist RIA to improve regulation, and guidance on using RIA to avoid unnecessary regulation of competitive markets (OECD, 2009). In 2010, the OECD identified areas for the improvement of risk governance through an analysis of the legal, procedural and practical challenges for risk regulation, in many cases through the use of RIA (OECD, 2010).

Finally, the 2012 Recommendation of the Council on Regulatory Policy and Governance (OECD, 2012b) establishes the principles to integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals. The important evolution of the 2012 Recommendation compared to previous OECD guidance is the recognition that the RIA process must be integrated into the overall rule-making system and not an add-on.

Figure 4.3. **Trend in RIA adoption across OECD countries**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262870

Yet, despite being one of the tools most widely adopted internationally as part of regulatory policy, effective implementation remains elusive in many cases.

According to Renda (2015), the most recurrent public policy motivations for the adoption of RIA are:

- Efficiency/burden reduction: When RIA makes use of methods such as cost-benefit analysis and cost-effectiveness analysis (CEA), its use helps the administration decide in favour of more efficient policy options, discarding less efficient alternatives. Over time, if it is correctly implemented, this should lead to greater social welfare through an increase in the net benefits of public policies.
- Transparency: RIA can increase the transparency of public policy since it forces public administrations to motivate their actions in writing and to explain why the proposed course of action is more desirable than available alternatives, including the option of doing nothing.
- Accountability: The use of RIA also promotes the accountability of governments, i.e. their responsibility for the outcomes generated by policy.
- Controlling bureaucracies: RIA has been used as a means to provide the centre of government with a tool that enables more effective control of what agencies do through regulation, without the need for the centre of government to acquire the same level of specialised knowledge as their agents. Modern government is based on the principle of delegation and oversight, and as such implies that specialised agencies, to which important government tasks must be delegated, are overseen by the centre of government (OECD, 2012a).
- Effectiveness and policy coherence: This implies the use of RIA as a tool to achieve the government's long-term plans and realise the government's agenda.

In many countries, there is more than one motivation for introducing the RIA system. Moreover, according to Renda (2015), more attention should be devoted in the introduction of RIA to its compatibility with the national legal context, and more reflection should be given to the regulatory governance arrangements that should accompany the introduction of RIA, or to the need to account for the full direct and indirect impacts of legislation. Box 4.2 provides an example from the United States of how RIA was introduced along with other governance arrangements.

The governance of RIA

One of the first and foremost ideas governments should keep in mind when seeking to develop or strengthen regulatory policy is the need to consider RIA as a crucial element of the "regulatory governance cycle" (OECD, 2011). The policy cycle includes both tools for the *ex ante* analysis and for the *ex post* evaluation of public policies; and both tools for the analysis of the flow of individual policy measures, and the stock of the existing corpus of legislation in given sectors.

Too often, governments have started experimenting impact assessment systems by adopting RIA as a stand-alone tool. As a result, many countries have failed in their regulatory reform not because of the bad design of RIA, but due to a lack of co-ordination between the various phases of the policy cycle. Even the best RIA system, taken in isolation, cannot succeed in making reform happen. Therefore, awareness of the entirety

Box 4.2. **The US RIA model: A brief overview**

The main reasons that led to the introduction of RIA in the United States were: *i)* the need to ensure that federal agencies would justify the need for regulatory intervention before regulating, and would consider light-touch means of intervention before engaging into heavy-handed regulation; *ii)* the need for the Centre of Government to control the behaviour of agencies, to which regulatory powers have been delegated ; and *iii)* the need to promote the efficiency of regulatory decisions by introducing an obligation to perform cost-benefit analysis within RIA.

Underlying the introduction of RIA was, from a more general viewpoint, the idea that policymakers should be led to take informed decisions, which are based on all available evidence. In the case of the United States, this idea was initially coupled with a clear emphasis on the need to avoid imposing on the business sector unnecessary regulatory burdens, a result that was in principle guaranteed by the introduction of a general obligation to perform cost-benefit analysis of alternative regulatory options and justify the adoption of regulation on clear "net benefits". Although the US system has remained almost unaltered, the initial approach was partly modified: the emphasis was shifted from cost-reduction to achieving a better balance between regulatory costs and benefits.

The first steps of RIA were also accompanied by a reform of the governance arrangement adopted by the US administration for the elaboration of regulatory proposals:

- RIA was introduced as a mandatory procedural step in an already existing set of administrative rules.
- The introduction of RIA required the creation of a central oversight body in charge of scrutinising the quality of RIAs produced, the Office of Information and Regulatory Affairs (OIRA).
- A focus on cost-benefit analysis. The US RIA system is clearly and explicitly based on the practice of cost-benefit analysis (CBA).

Source: Renda, A. (2015), "Regulatory Impact Assessment and Regulatory Policy", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris.

of the regulatory governance cycle is critical for a government that considers the introduction of RIA.

RIA has to be considered as the first step in a comprehensive cycle of good regulatory practice. It cannot be expected to deliver all the answers. Depending on the amount of information available and the predictability of regulatory outcomes, governments will have to make decisions as to how much to invest in the *ex ante* analysis, and how much to rely on the monitoring of regulatory outcomes and regulatory review after a number of years. In that perspective, it is an emerging good practice, when drafting a RIA document, to include a choice of performance indicators that will form the basis of a future monitoring and evaluation activity.

Awareness of the various phases of the life of a legal rule facilitates the decisions by policymakers of which activities to perform publicly, and which ones to delegate to third parties. Many governments are relying on self- and co-regulatory practices to address public policy problems, whereas in some cases only specific phases of the life's rule can be delegated: this practice can at once save money and lead to better enforcement whenever incentives are well designed.

Awareness of the importance of the policy cycle also allows governments to attribute responsibility to various institutions for different phases of the life of a rule. For example, in the United Kingdom the notion of "delivery" has become gradually more prominent, first with the creation of the Local Better Regulation Office, and then with the Better

Regulation Delivery Office. Part of the motivation for this move is the need to focus on the "end of the pipeline", i.e. the moment in which public administrations monitor compliance with legislation, and firms and citizens decide on whether and how to comply with the legal rules. In some countries, monitoring and *ex post* evaluation are performed by Parliament rather than by the government, which creates a potentially virtuous institutional tension towards drafting of rules that are easy to implement and ultimately effective.

The governance of RIA includes elements that should warrant a smooth and effective method to systematically review draft regulations by governments, with the purpose of contributing to broader policy objectives such as environmental issues, social welfare, and inclusive growth. Amongst the most important elements of RIA governance, one needs to consider *i)* the administrative status of RIA – whether it is established by law, decree, guidance, directive or resolution; *ii)* the degree of high level political support for RIA, which is reflected in an existence of an oversight body;* *iii)* the role of this oversight body; and *iv)* he integration of RIA in the decision making process and with public consultation.

Early findings from the 2014 Regulatory Indicators Survey indicate the existence of gaps and challenges in several of these governance elements across OECD countries that have hindered its adoption as an effective regulatory policy tool. Several of these gaps are discussed below.

Navigating the variety of RIA systems across OECD countries

Most OECD countries have adopted RIA. However, there is a significant gap between requiring RIA, as established in a legal or official document, and the actual practice of RIA

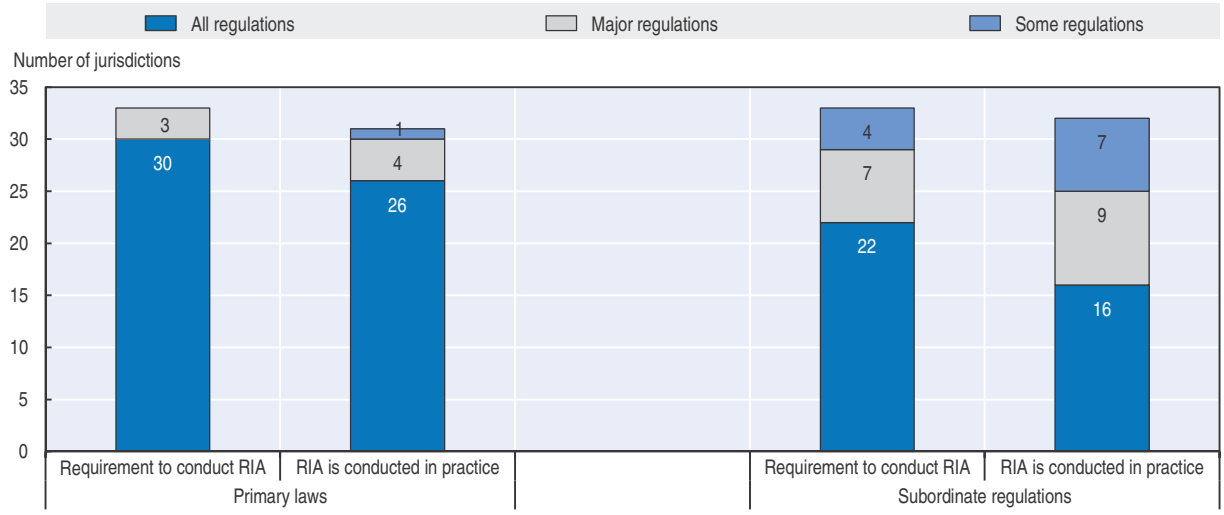
The survey data shows that the majority of OECD countries have both established the requirement to conduct RIA in a legal or official document, and are conducting RIA in practice (Figure 4.4). The data however show that the adoption of RIA remains a pending task for some OECD countries. Despite RIA being a cornerstone of evidenced-based policy making and one of the most promoted regulatory policy tools by the OECD for the past 20 years, there remains work to be done in ensuring its implementation in all OECD countries. In addition, a lower number of countries conduct RIA in practice, compared to those who have some type of legal or binding duty to do it. This gap is more pronounced in the case of subordinate regulation.

Renda (2015) identifies several possible paths for a government to introduce RIA. Each one has some advantages over the other, although they are not free from perils (Box 4.3). Key issues involve managing expectations, avoiding promising immediate results, and understanding that a cultural shift has to accompany the pervasive introduction of RIA and smart regulation tools in a government administration.

Additionally, OECD countries have established criteria under which RIA is not undertaken for specific pieces of regulation. Figure 4.5 shows that the most common case where RIA is not undertaken is when regulation is introduced in response to an emergency. Other instances involve implementation of an international law, and in particular

* Renda (2015) also includes as examples of political commitments towards RIA: introducing RIA as part of a comprehensive long-term plan to boost the quality of regulation; creating credible "internal constraints" such as the requirement that all new regulatory proposals be coupled with a RIA; and creating "external constraints", such as a commitment on "open government".

Figure 4.4. **Adoption of RIAs: Formal requirements and practice**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262889

Box 4.3. **Paths to introduce RIA**

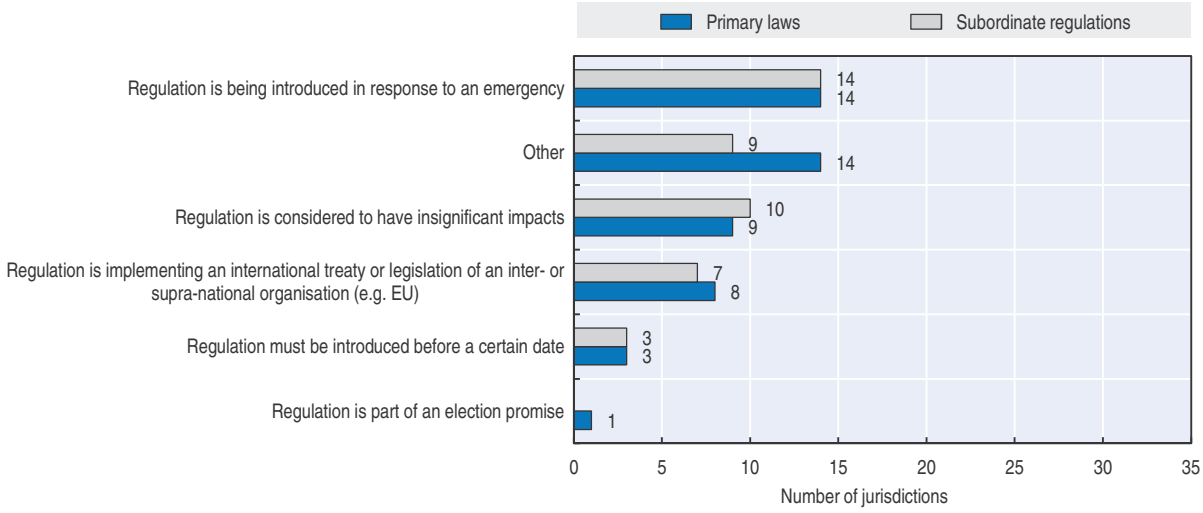
- **Path 1. A pilot phase, then the institutionalisation of RIA for all regulations.** This has been a largely recurrent way of seeking the introduction of RIA. However, many countries have struggled to capitalise on the pilot phase towards a more general application of RIA as a mandatory administrative requirement.
- **Path 2. Start with the least intrusive methodology, and then expand.** For example, the measurement of administrative burdens through the Standard Cost Model is widely seen as a less intrusive method to assess a specific set of impacts of legislation, since the measurement phase is mostly left to external consultants, and no major revolutions in the administrative culture of civil servants are needed in order to bring clear results. That said, the move from the SCM towards a more complete RIA system might take years and a careful management of expectations inside and outside of the administration.
- **Path 3. Start from some institutions, and then expand RIA to others.** Government might decide to introduce RIA – whether complete or limited to specific tests e.g. administrative burdens – by looking at the administrations in which the most advanced skills and the most concentrated external stakeholders are located. This would typically be a department or minister in charge of business regulation, of retail trade.
- **Path 4. Start from major regulatory proposals and then lower the threshold to cover less significant regulations.** The European Commission launched its IA system in 2000 by focusing (after two years of pilot phase) at all major proposals included in its yearly work programme. The requirement to carry out an impact assessment relies on whether initiatives are envisaged to have significant economic, social or environmental impacts. Over the years, the system has been gradually extended to cover major delegated and implementing acts (subordinate legislation). On average, around 100 impact assessments have been produced yearly over the past years.
- **Path 5. Start with binding regulation and move to soft-law.** Some countries have realised after years of implementation of the RIA system that soft law, private standards, self- and co.-regulation are sometimes more important that traditional, command and control legislation in terms of impacts on the economy and on the incentives of economic agents

Box 4.3. **Paths to introduce RIA** *(cont.)*

- **Path 6. Start with single- or multi-criteria qualitative analysis, and then gradually move to quantitative analysis (for instance Cost Benefit Analysis or other).** When a country lacks specific quantitative skills that would enable cost-benefit analysis or similar, this does not mean that no RIA can be introduced, or that RIA will ultimately lose its "scientific" appeal. Adopting a general procedure based on qualitative analysis and requiring administrations to motivate the adoption of a specific course of action as opposed to available alternatives in words or through qualitative-quantitative analysis (e.g. scorecards) is a very valuable step in the introduction of RIA. With the right governance and institutional settings, the move towards more evidence-based, quantitative analysis (if needed) will be dictated, over time, by the need to make the case for regulation against counter-analyses provided by stakeholders, experts or other institutions.
- **Path 7. From concentrated RIA expertise to more distributed responsibilities.** An administration might well lack RIA skills, and the gap might be difficult to fill in the short term. That said, many governments can rely on public or private institutions that can assist in the performance of specific calculations, thus supporting regulatory proposals with evidence. Likewise, some countries have started piloting RIA by training a limited number of employees in the central oversight body, and have then moved towards the appointment of contact persons or reference units for RIA in each of the departments with regulatory power.

Source: Renda, A. (2015), "Regulatory Impact Assessment and Regulatory Policy", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris.

Figure 4.5. **Exceptions to undertake RIA**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262896

implementation of an EU regulation or transposition of an EU Directive. A significant number of countries volunteer additional reasons for substantiating exceptions from RIA, including regulation that concerns national security, public order or the budget, and regulation related to the organisation of the State itself. Although in some of these cases an exception might be justified, an appropriate management of the regulatory governance

cycle would imply that for those regulation exempted from the RIA analysis, an *ex post* evaluation of impact is warranted.

Figure 4.5 also points to the need for more proportionality in the application of RIA, whereby only regulations with major impacts need to be comprehensively assessed. The OECD argues that a greater emphasis on risk-based approaches to the design of regulation and compliance strategies can improve the welfare of citizens by providing better protection from hazards and more efficient services from government (OECD, 2010). In fact, the 2014 Regulatory Indicators Survey shows that only a handful of countries apply threshold tests to determine whether RIA is undertaken at all, Box 4.4 contains some country examples.

Box 4.4. **Threshold tests to apply RIA: Some country examples**

In **Australia**, a Preliminary Assessment determines whether a proposal requires a RIA (or a RIS, regulation impact statement as they call it) for both primary and subordinate regulation (as well as quasi-regulatory proposals where there is an expectation of compliance). A Regulation Impact Statement is required for all Cabinet submissions. This includes proposals of a minor or machinery nature and proposals with no regulatory impact on business, community organisations or individuals. A RIA is also mandatory for any non-Cabinet decision made by any Australian Government entity if that decision is likely to have a measurable impact on businesses, community organisations, individuals or any combination of them.

Belgium applies a hybrid system. For example, of the 21 topics that are covered in the RIA, 17 consist of a quick qualitative test (positive / negative impact or no impact) based on indicators. The other 4 topics (gender, SMEs, administrative burdens, and policy coherence for development) consists of a more thorough and quantitative approach, including the nature and extent of positive and negative impacts.

Canada applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The Triage System underscores the Cabinet Directive on Regulatory Management's principle of proportionally, in order to focus the analysis where it is most needed. The development of a Triage Statement early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA, based on costs and other factors:

- Low impact, cost less than CAD 10 million present value over a 10-year period or less than CAD 1 million annually;
- Medium impact: Costs CAD 10 million to CAD 100 million present value or CAD 1 million to CAD 10 million annually;
- High impact: Costs greater than CAD 100 million present value or greater than CAD 10 million annually.

Also, when there is an immediate and serious risk to the health and safety of Canadians, their security, the environment, or the economy, the Triage Statement may be omitted and an expedited RIA process may be allowed.

Mexico operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulation. Regulators and line ministries must demonstrate zero compliance costs in order to be exempt of RIA. Otherwise, a RIA must be carried out. For ordinary RIAs comes a second test – qualitative and quantitative – what Mexico calls a "calculator for impact differentiation", where as a result of a 10 questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains less details in the analysis.

New Zealand employs a qualitative test to decide whether to apply RIA to all types of regulation. Whenever draft regulation falls into both of the following categories, then RIA is required: *i)* the policy initiative is expected to lead to a Cabinet paper, and *ii)* the policy initiative considers options that involve creating, amending or repealing legislation (either primary legislation or disallowable instruments for the purposes of the Legislation Act 2012).

Box 4.4. **Threshold tests to apply RIA: Some country examples** *(cont.)*

The United States operates a quantitative test to decide to apply RIA for subordinate regulation. Executive Order 12866 requires a full RIA for economically significant regulations. The threshold for "economically significant" regulations (which are a subset of all "significant" regulations) is set out in Section 3(f)(1) of Executive Order 12866: "Have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

In the **European Commission** a qualitative test is employed to decide whether to apply RIA for all types of regulation. Impact assessments are prepared for Commission initiatives expected to have significant economic, social or environmental impacts. The Commission Secretariat general decides whether or not this threshold is met on the basis of reasoned proposal made by the lead service. Results are published in a roadmap.

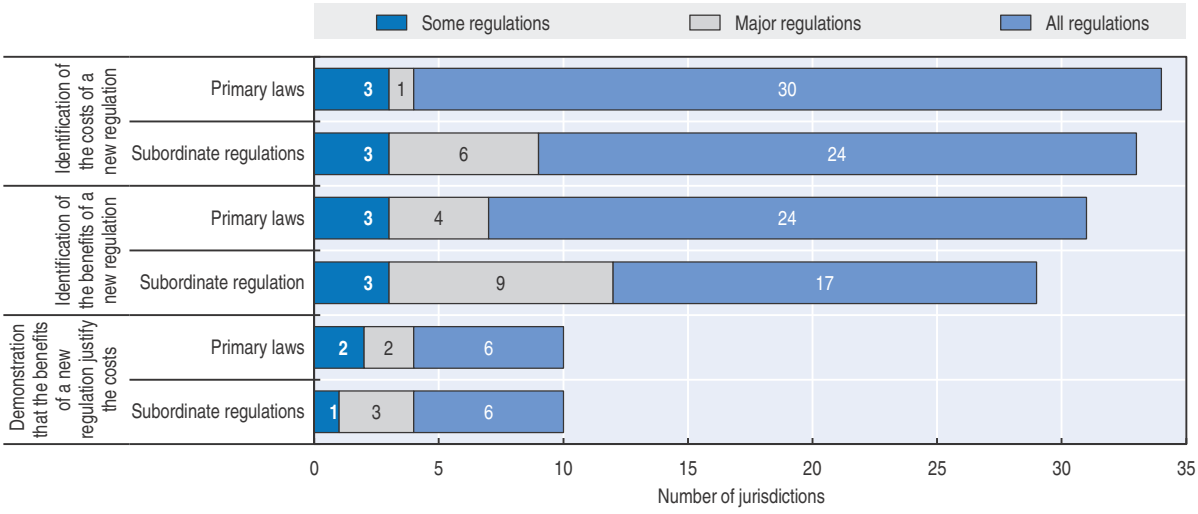
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.*

It is common practice across OECD countries to identify the benefits and costs of draft regulation as part of the RIA process. However, only a small minority of OECD countries demonstrate that the benefits outweigh the costs

High quality regulations are expected to bring net benefits to citizens and businesses and the society as a whole. However, they also bring about costs: implementation and compliance costs, administrative burdens and potential distortions in other markets (OECD, 2009). It is encouraging to report that the majority of OECD countries include the identification of these costs and benefits as part of the RIA process (Figure 4.6). Box 4.5 identifies some country experiences on mechanisms to ensure that the benefits and costs of the draft regulation are properly assessed.

One of the core objectives of RIA is helping countries to design and implement cost-effective regulations, which add to overall wealth of society, by providing net positive

Figure 4.6. **Analysis of costs and benefits in RIA**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.*

StatLink http://dx.doi.org/10.1787/888933262911

Box 4.5. **Ensuring correct assessment of cost and benefits: Some country examples**

In **Australia** a preliminary assessment determines whether a proposal requires a RIA and helps to identify best practice for the policy process. A RIA is required for all Cabinet submissions. There are three types of RIAs: Long Form, Standard Form and Short Form. Short Form assessments are only available for Cabinet Submissions. Both the Long Form and Standard Form must include, amongst other requirements, a commensurate level of analysis. The Long Form assessment must also include a formal cost-benefit analysis.

In **Canada** for the case of subordinate regulations, when determining whether and how to regulate, departments and agencies are responsible for assessing the benefits and costs of regulatory and non-regulatory measures, including government inaction. This analysis should include quantitative measures and, if it is not possible to quantify benefits and costs, qualitative measures. When assessing options to maximise net benefits, departments are to: identify and assess the potential positive and negative economic, environmental, and social impacts on Canadians, business (including small business), and government of the proposed regulation and its feasible alternatives; and identify how the positive and negative impacts may be distributed across various affected parties, sectors of the economy, and regions of Canada. Treasury Board of Canada Secretariat provides guidance and a challenge function throughout this process.

In **Mexico** RIAs are reviewed by the Federal Regulatory Improvement Commission (COFEMER) and if they are unsatisfactory, for example, by not providing specific impacts, COFEMER can request the RIA to be modified, corrected or completed with more information. If the amended RIA is still unsatisfactory, COFEMER can ask the lead ministry to hire an independent expert to evaluates the impact and the regulator cannot issue the regulation until COFEMER's final opinion.

In the United States, for the case of subordinate regulation, agency compliance with cost-benefit analysis is ensured through review of the draft RIA and draft regulation by the Office of Information and Regulatory Affairs under Executive Order 12866.

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

benefits (OECD, 2008a). Cost-benefit analysis can help policy makers guide their decision on policy intervention by providing the necessary supporting evidence. However, Figure 4.6 shows that countries still have ample opportunity to include a demonstration that the benefits of regulation outweigh their costs as part of RIA. This finding may demonstrate a use of RIA as a "least cost" appraisal exercise. It may also reflect the fact that countries face methodological issues, as well as challenges in human capital and resources, in conducting this analysis. The 2012 Recommendation recognises this difficulty. It specifies that "when regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative *whenever possible*" and highlights that "*ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify (…)". In any event, a more systematic comparison of benefits and costs would fundamentally improve the utilisation of RIA.

Challenges in implementing and running RIA

Introducing and developing a RIA system is a challenging task in all jurisdictions. The results of a well-functioning system emerge over the long-term where RIA is properly integrated into the policy-making process (OECD, 2009). But significant investments need to be made upfront to overcome a number of factors: the need to trigger a change in the attitude of civil servants, the need to introduce economic analysis in contexts often

dominated by legal experts, the difficulty of introducing an additional administrative requirement in an already complex pipeline and many other perceived obstacles.

Renda (2015) argues that these are some of the reasons why the successful introduction of RIA chiefly depends on the level of commitment expressed by political leaders. Any political commitment must also be coupled with support from stakeholders, which often constitute a key source of motivation for governments to keep investing in the adoption and mainstreaming of RIA. In addition, public officials have to be motivated to embrace the RIA challenge. All three ingredients appear essential for a successful introduction of RIA in the government policy process. They are also inter-dependent, since effective, credible political commitment is critical for stakeholder engagement, and demand for better regulation through RIA from stakeholders and from the political leadership also motivates civil servants in taking RIA seriously.

There are many ways in which governments can show their commitment towards RIA in the long run. This comes to no surprise, also given the variety of motivations that can inspire governments to introduce RIA in their own administrations. Despite this variety, it is possible to highlight a number of ways in which governments can show their commitment towards RIA and its introduction over time. See Box 4.6 for a brief selection.

Box 4.6. **Political commitments towards RIA: some examples**

Introducing RIA as part of a comprehensive long-term plan to boost the quality of regulation. RIA alone will not be successful to improve the quality of regulation, unless coupled with additional regulatory reform tools such as the use of consultation, the adoption of a "regulatory policy cycle" approach with use of monitoring and *ex post* evaluation alongside with regular reviews of existing legislation, etc.

Creating an oversight unit for RIA and locating it at the centre of government. The level of political commitment for RIA is maximised whenever governments create an institutional setting that is conducive to enhanced control over the development of the RIA system. This aspect is central to the effectiveness of RIA introduction, and is also related to the need for governments to "signal" their commitment to external stakeholders, and civil servants within the administration and other institutions (e.g. parliaments). A typical way to signal commitment in this respect is the creation of a strong central oversight unit, dedicated to a number of functions, which include the drafting and dissemination of guidelines on RIA, the provision of training to civil servants in charge of drafting RIAs, the possibility to scrutinise draft RIAs and request changes or even veto them, and other functions such as co-ordination consultation, advocating reforms, etc.

Creating credible "internal constraints". A commitment to RIA is more credible when governments create internal procedural constraints that make RIA an (almost) inevitable requirement. Such internal constraints may include: *i)* a well-structured system of regulatory planning, which establishes the incentives for administrations to start their work on regulatory proposals early enough that RIA can be accommodated in the regulatory process; *ii)* a requirement that all new regulatory proposals (or the ones with the most significant impact) be coupled with a RIA document, to be presented in due time to gather comments from the oversight body; *iii)* the creation of dedicated RIA units for each department, in charge of co-ordinating RIA work, with a clear incentive to promote the drafting of sound RIAs inside their administrations; *iv)* budgetary incentives related to the number of regulatory proposals coupled with sound RIAs.

Creating "external constraints", which guarantee that RIA will effectively be implemented. Along with internal constraints, also constraints of external nature are important to enhance the level of political commitment signalled to external stakeholders. These may include the following: *i)* a commitment to

Box 4.6. **Political commitments towards RIA: some examples** *(cont.)*

"open government", and in particular to a timely, sufficiently extended, fully open and participatory consultation process on major decisions; *ii)* the publication of yearly reports based on clear indicators, which track the government's current progress in implementing RIA; *iii)* the creation of dedicated representation bodies in charge of representing specific external interests as attached to the administration, or external to it; *iv)* the adoption of specific "screens" in the RIA methodology, which ensure that governments will be considering specific interests in all policies, and that failure to consider such interests could even be seen as grounds for invalidation; *v)* contemplating a role of non-government bodies in the regular or ad hoc scrutiny of the quality of the RIA process, and/or in-depth analysis of the quality of individual RIAs; *vi)* carrying out regular perception surveys on the government's ability to carry out high quality RIAs in support of better regulatory outcomes.

Source: Renda, A. (2015), "Regulatory Impact Assessment and Regulatory Policy", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris.

The evidence suggests that many countries face significant challenges to both introduce and run an effective RIA system. Amongst them the following stand out: political commitment in the long term, oversight of RIA, methodological challenges, engagement with stakeholders, and the political composition of the government in turn. Some of these challenges are addressed below.

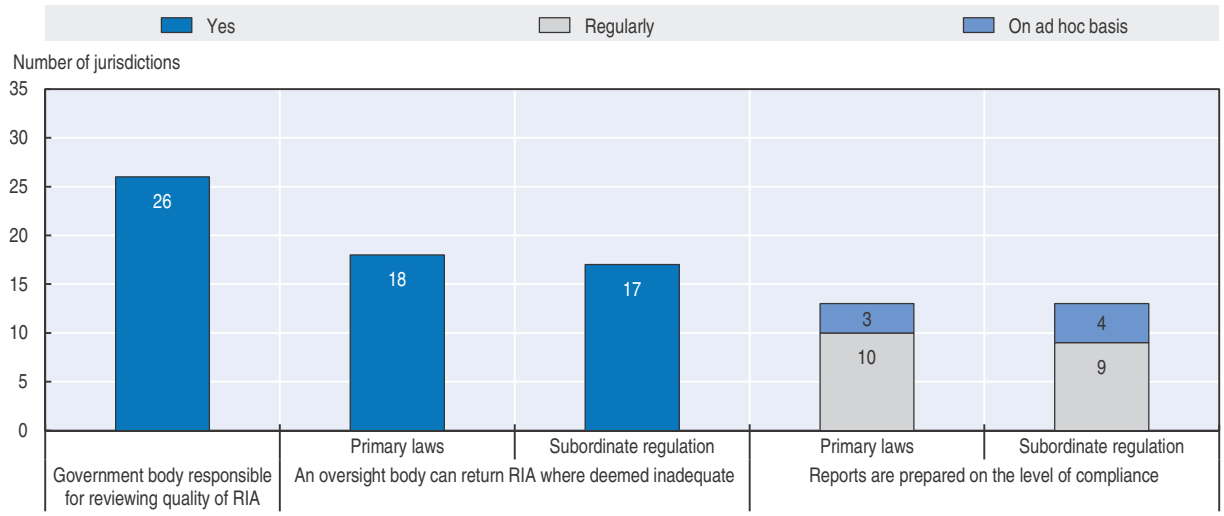
An oversight body for the RIA process has been established by the majority of OECD countries. However, in a significant number of cases these oversight bodies do not yet function as effective gatekeepers to guarantee regulatory quality

The 2012 Recommendation states that the oversight body should be tasked with four functions: "quality control" of regulation, playing a role in examining the potential for regulation becoming more effective, contributing to the systematic improvement of regulatory policy, and co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods.

The "quality control" function covers the task of improving the quality of impact assessments, by providing scrutiny of individual policy evaluations and challenging proposals that are not accompanied by a satisfactory assessment. Based on the survey answers, 26 countries have a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of RIA (Figure 4.7). However, not all of these bodies have a "challenge" fuction, namely the capacity to return the RIAs to line ministries and regulators when the oversight bodies deem them to be inadequate. Overall, only in 19 countries, these bodies are able to return the RIA for revision, either for primary laws, subordinate regulation, or both. This places a question mark as to the effectiveness of these RIA systems in warranting that the implemented regulations are "fit-for-purpose".

Oversight bodies in different countries have different procedures to ensure that a draft RIA that has been judged inadequate is actually improved before proceeding to the next step of approval. Methods include formal as well as informal means to persuade the responsible ministries. In Canada, for example, a RIA must be given approval by the body before it can be sent forward to the next stage of regulatory approval. Other countries describe passing on the results of the scrutiny to cabinet office or council of ministers. In 6 cases, the fact that the reviewing body of the RIA has not given his approval to the RIA is

Figure 4.7. **Oversight of RIA**



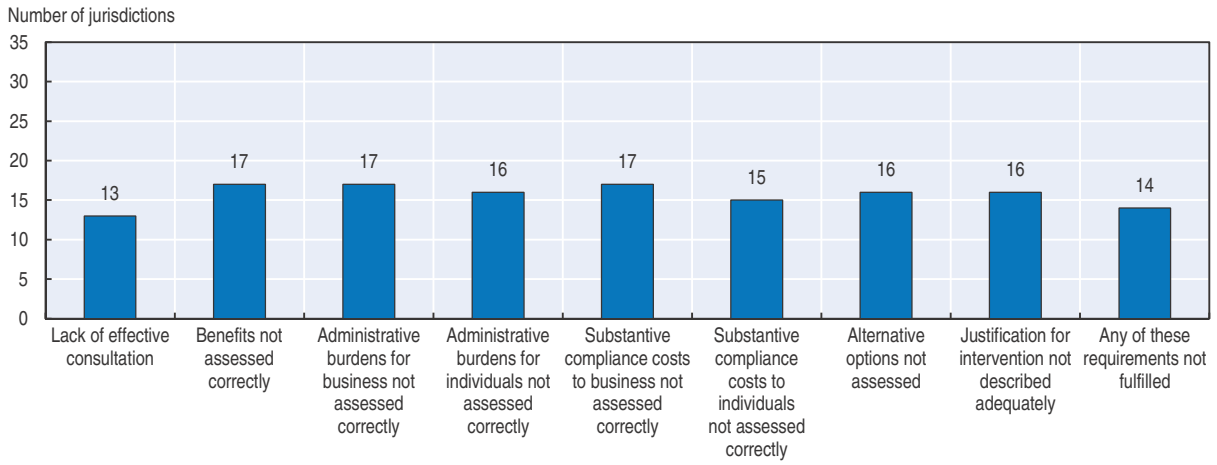
Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262903

made public. This can contribute to more transparency and also be a method to encourage ministries to increase the quality of their RIAs.

As shown in Figure 4.8, grounds for returning a RIA include benefits and costs of the regulation – including administrative burdens and substantive costs – not assessed correctly, as well as justification for policy intervention not described adequately, or lack of assessment of alternative to regulations. See Box 4.7 for a country example.

The 2012 Recommendation also states that countries should "regularly publish reports on the performance of regulatory policy and reform programmes" and that "such reports

Figure 4.8. **Grounds upon which an oversight body can return RIA for revision**



Note: Based on data from 34 countries and the European Commission. The figure displays the number of countries that have reported the different grounds on which an oversight body can return RIA for revision for either primary laws or subordinate regulations.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262929

Box 4.7. **The regulatory process in Canada**

The approval process for regulations in Canada is governed by the Statutory Instruments Act (SIA). Canada has three broad classes of regulations:

- Governor in Council (GIC) Regulations: These regulations require the authorisation of the governor general on the advice of the Queen's Privy Council (currently represented by the Treasury Board ministers). This means that a cabinet of ministers has the authority to accept or reject these regulations;
- Ministerial Regulations: Where an Act gives an individual minister the authority to make regulations; and
- GIC or Ministerial Regulations requiring Treasury Board approval: These regulations require approval from the Treasury Board (TB) when there are financial implications or when a department's enabling act requires Treasury Board recommendation to the Governor in Council.

The main features of the process of developing GIC regulations are:

- **Analysis:** Departments conduct analysis and develop the regulatory impact assessment statement (RIAS), that includes a description of the proposal, alternatives considered, a benefit-cost analysis, results of consultations with stakeholders, compliance and enforcement mechanisms. They obtain approval for the RIAS from the Regulatory Affairs Sector in the Treasury Board of Canada Secretariat (TBS-RAS).
- **Sign-off by sponsoring minister:** The proposed regulation package is signed off by the sponsoring minister. By signing the documents, the minister formally recommends prepublication or exemption from pre-publication and final approval. In cases where regulations require Treasury Board recommendation to the Governor in Council, the department will send a submission to TBS.
- **Review by TBS-RAS:** TBS-RAS will review the consistency with the Cabinet Directive on Regulatory Management and other government initiatives; review the supporting documents; and prepare a briefing note for consideration by TB.
- **Request to TB for pre-publication:** The first time that a regulatory proposal is seen by TB, the sponsoring minister is seeking approval for pre-publication in the Canada Gazette, Part I. Prepublication allows for public scrutiny and comment on the proposal, generally for a period of 30 days or 75 for regulations with an impact on international trade. It is expected that the department will address public comments in a revised regulation, or provide reasons why a given concern could not be addressed.
- **TB recommendation for GIC approval:** TB ministers make the decision to recommend approval of the regulatory proposal by the GIC. If approved, the governor general grants validity to the regulation by signing it; and the regulation is subsequently registered with the Registrar of Statutory Instruments. If not approved, the sponsoring department must decide whether to modify the initiative and go back to the beginning of the approval process or abandon the initiative entirely.

Source: Adapted from the website of the Treasury Board of Canada Secretariat, *www.tbs-sct.gc.ca* (accessed 16 February 2015).

should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA) … are functioning in practice". Yet, the Regulatory Indicators Survey collected only scarce evidence that such reports are undertaken. A country example from the United Kingdom is included in Box 4.8.

In the RIA process, a stronger engagement with stakeholders should be pursued by OECD countries

Data in Figure 4.9 are somewhat surprising, and at the same time a source of concern. Only a minority of OECD jurisdictions have the requirement to release RIA documents for consultation with the general public. For the case of primary regulations, this number is

Box 4.8. **Assessment of the performance of the RIA system in the United Kingdom**

In September 2012 the National Audit Office of the United Kingdom issued the report "Submission of evidence: controls on regulations". Its main aim was to review the controls on regulation by the Better Regulation Executive of the UK. The report acknowledges that "Regulation is an important means of achieving many public benefits, but some regulation also brings with it additional costs. Successive governments have sought to control the burden of regulation on business and civil society organisations in order to encourage economic growth and development of the voluntary sector. Since their introduction in 1998 impact assessments have been one of the main tools deployed to achieve this objective."

The report focuses on the effectiveness of departmental processes to support controls on regulation in a manner analogous with processes to support controls on public spending, and examines such processes in five case study departments: Department for Business, Innovation and Skills; the Ministry of Justice; the Department for Work and Pensions; the Department for Environment, Food and Rural Affairs and the Department for Transport. The methodology they employed for the assessment was the Financial Maturity Model – because they previously recommended that the flow of regulation had to be managed analogous to the managing of public expenditure – and look into detail in the areas of:

- governance and leadership;
- planning;
- monitoring;
- decision making; and
- performance reporting.

The overall conclusion from the assessment of the case studies is that departments have all demonstrated elements of the principles of the Financial Maturity Model and strong practice has developed in some cases. In particular, the review found that departments have systems in place to inform and support consistent decision making on proposed regulatory interventions, and that those systems aim to assure the completeness and compliance of impact assessments with Better Regulation Executive guidance and Regulatory Policy Committee requirements. However, according to the review, departments do not yet treat regulation as a resource, analogous to spend, that needs to be carefully managed to achieve their objectives. Instead the focus is currently on how to manage the flow of regulation not the overall burden.

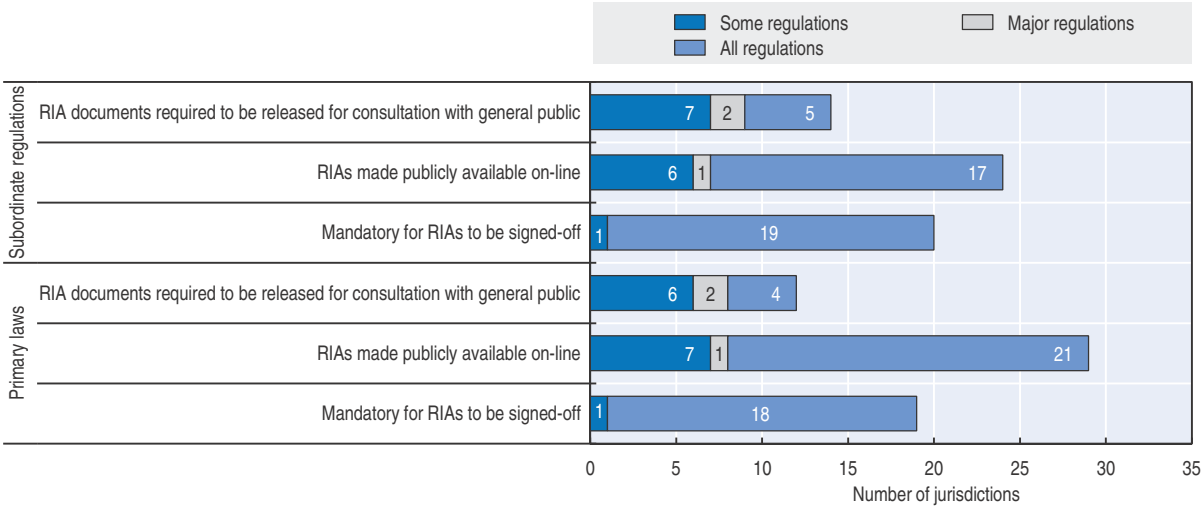
The report offers recommendations to be considered, amongst them: the need to apply a proportionality principle so as to focus the scarce resources in scrutinising the economic impact of regulatory proposals for the small number of relatively high value proposals; the recommendation that the Better Regulation Executive and departments should consider whether a more comprehensive understanding of which regulations impose the biggest costs would also help target effort on those areas with greatest potential for reducing the burden on business.

Source: 2014 Regulatory Indicators Survey results and adapted from National Audit Office (2012), "Submission on evidence: Controls on regulation", Better Regulation Executive, *www.nao.org.uk/wp-content/uploads/2012/09/controls_on_regulation_2012.pdf* (accessed on 22 February 2015).

even lower. In an era in which governments face the challenge of regaining public trust, and deliver more and higher quality services with fewer resources, public consultation of RIA could be a strategy to strengthen engagement with stakeholder.

OECD countries could benefit from better exploiting Information and Communications Technologies (ICTs) to strengthen the RIA process. Despite the current pervasiveness of ICTs and web based tools, there is a sizeable number of OECD countries which do not make RIAs publicly available on-line. For these countries, exploiting ICTs will

Figure 4.9. **Public consultation and review mechanisms for RIA**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262937

help to make the RIA process more transparent and open to the public. Consultation practices in Mexico underscore the advantage of using ICTs and a profound policy of engagement with stakeholders in the case of the RIA process (Box 4.9).

There is a number of strategies to ensure that consultation can deploy its value for the quality of public decision making, as well as the consensus on the whole RIA system (Renda, 2015). They involve:

- First, government should consult as early as possible on the content of regulatory proposals to start collecting the views of stakeholders and the risks associated with a specific type of regulatory intervention.
- Second, it is essential to differentiate between consultation on the content of the proposal, and consultation on the RIA document. The latter is particularly useful since it focuses on the structure of the document, the data used and the quality of the analysis adopted to reach a specific preferred policy option.
- Third, the consultation document should specify which aspects of the proposal (or of the RIA) are considered by the government to need inputs from stakeholders. This can help stakeholders focus on the most relevant questions: however, comments on other aspects of the document and the RIA should also be allowed, provided that they are well motivated.
- Fourth, it is important that stakeholders are given sufficient time to respond to the consultation. So-called minimum standards for consultation incorporate most often a minimum length (in weeks). At the EU level, the minimum duration was recently increased to 12 weeks, whereas the United States does not prescribe a minimum public comment period, although presidential Executive Orders 12866 and 13563 encourage agencies to provide at least 60 days for a notice and comment procedure. U.S. agencies often provide 30 days, although often allow much longer periods for more complex proposed regulations.

Box 4.9. **Consultation in RIA in Mexico**

Consultation in Mexico is strongly influenced by the requirements formally established in two separate pieces of legislation. First, the Federal Lay of Administrative Procedures sets out specific public consultation requirements as an integral part of the RIA process. Second, more recently adopted transparency legislation has established more general consultation requirements that are independent of the RIA process itself. In particular, this law requires all regulatory proposals to be published on the website of the relevant ministry or regulatory agency.

The RIA process itself provides important public consultation opportunities, as well as important safeguards to ensure that adequate account is taken of comments received from stakeholders. In particular, the COFEMER publishes in their website www.cofemer.gob.mx all draft RIA as soon as they are received, as well as its comments on the draft RIA and all inputs received from stakeholders. This generalised publication of a wide range of RIA-related documentation is possibly unique among OECD member countries. Importantly, publication of COFEMER's response to the draft RIA provides stakeholders with additional information that can potentially allow them to participate more effectively in the process. For example, by highlighting weaknesses in the analysis, this material may assist stakeholders to identify data or other materials they possess which could be fed into the analysis to enhance its quality. More generally, the publication of all stakeholder comments on the proposal provides the basis for a more detailed dialogue on its merits among interested parties. The COFEMER believes that the publication of this wide range of RIA-related documents is a key factor in ensuring that regulators take account of COFEMER's opinions and, hence, that it is a critical success factor for the RIA process.

The draft RIA is required to be open to consultation for at least 20 working days but, in practice, much longer consultation periods appear to be the norm. This reflects, in part, the need for the COFEMER to undertake its initial analysis of the RIA document and publish its response. Consequently, it appears that the process provides extensive opportunities for stakeholder input. The COFEMER also supports effective engagement in consultation by actively providing the draft RIA to key stakeholders and soliciting their inputs in many cases.

Source: OECD (2014), Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement, OECD Publishing, Paris, *http://dx.doi.org/10.1787/9789264203389-en*.

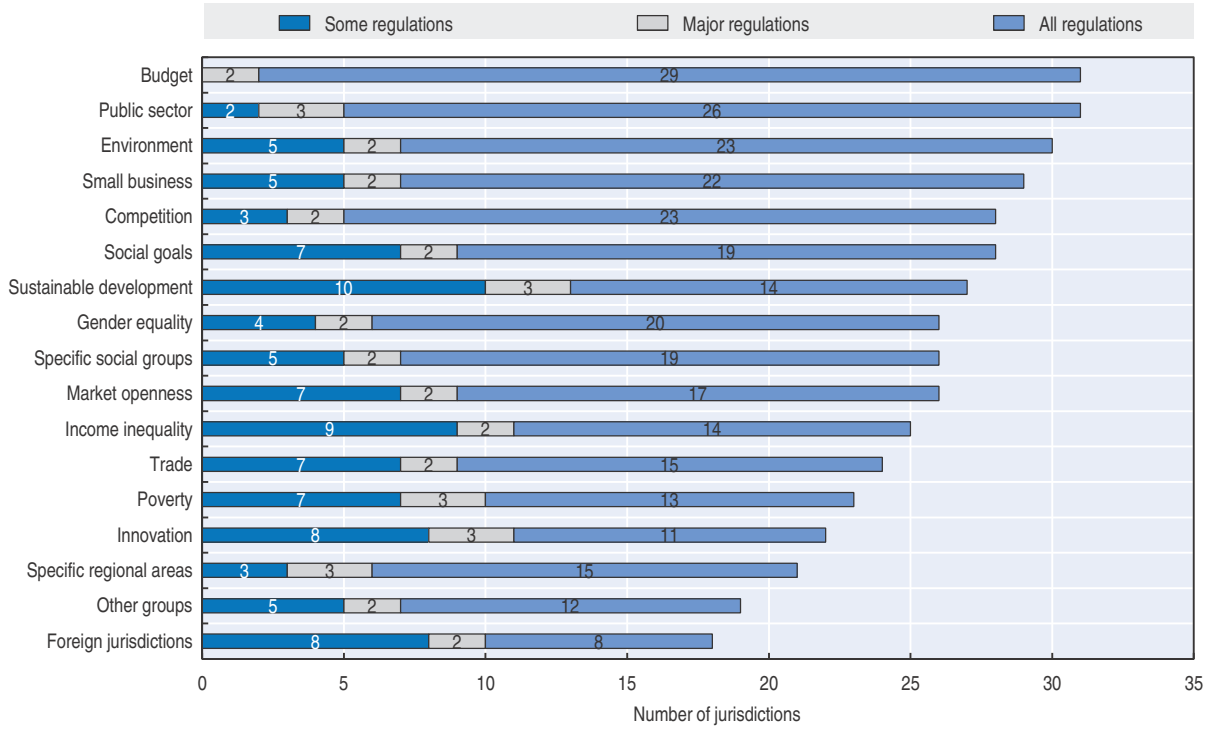
- Fifth, the government should provide feedback to each party that submitted its opinion during the consultation, explaining why the comment was/was not taken on board.

Another important aspect of securing stakeholder support is the avoidance of too high expectations from the outset of the rule making process. Governments must explain to stakeholders that RIA and the application of regulatory policy are a medium- to long-term investment for the quality of regulation and of the political debate in a country. A high degree of transparency, through the public availability of RIA, should trigger a learning process that will improve legislation and regulation over time.

Countries face the challenges of encompassing a wider evaluation of policies as part of the RIA process

Figure 4.10 shows the distribution of the range of impacts which are measured through the RIA process. The vast majority of countries measure impacts on budget, on costs, on SMEs, and on competition. The assessment of non-economic impacts is more mixed. Impacts on environment, on sustainable development and on specific social groups appear to be relatively well covered. At the same time, the data shows that there is less focus on a number of social policy concerns, e.g. income inequality, gender equality and impacts on poverty (OECD, 2015, forthcoming). Moreover, the impacts beyond domestic

Figure 4.10. **Assessment of impacts in RIA**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262942

borders also appear to be under studied. For instance, as regard international regulatory co-operation, 18 countries assess the impacts but only 8 do so on a permanent basis. These findings reflect the fact that governments remain underequipped for multi-criteria analysis (also found in Renda, 2015). Availability of relevant information remains an issue. The capacity to integrate an increasing number of dimensions relevant to policy making – such as, for example, social impacts; fundamental rights; territorial impacts and interactive and cumulative effects of regulation – is limited.

RIA should become an integral part of a regulatory management system

OECD identifies that a core challenge for effective regulatory governance is the co-ordination of regulatory actions, from the design and development of regulations, to their implementation and enforcement, closing the loop with monitoring and evaluation which informs the development of new regulations and the adjustment of existing regulations (OECD, 2011). In this process RIA should become a part of a broader regulatory management system, by providing a framework to analyse the different policy options using evidence, and by providing the basis for the other cycle stages through the definition of strategies for implementation and of performance indicators. Box 4.10 presents an example of the European Union to ensure monitoring and evaluation of the performance of regulation to achieve its goals.

Box 4.10. **Arrangements for future monitoring and evaluation of regulation in the European Commission**

The Guidelines on Impact Assessment of the European Commission require that new regulatory proposals should Identify how actual impacts would be monitored and evaluated. They specifically state that "Having the entire policy cycle in mind, the IA [impact statement] should identify monitoring and *ex post* evaluation arrangements to track whether the policy measure actually delivers the intended results and to inform any future revisions of the policy. At the end of this process, policy-makers should know how the policy will be monitored and evaluated, allowing for future policy-adjustments whenever needed." In particular, the Guidelines state that the IA should include:

- Monitoring and evaluation arrangements (including the definition of a set of indicators),
- Core indicators for the main policy objectives in relation to the preferred option where one is stated.
- Monitoring and indicators referring to the specific objectives of the initiative when no preferred option is presented.

The guidelines also specify that indicators must allow measuring to what extent the objectives of the policy have been achieved (and potential negative impacts). Additionally, "underlying data should be easily available and the cost of data collection, proportionate. If lack of data was a significant concern for the IA, the IA Report should sketch out how this issue will be addressed for the future policy evaluation."

Source: European Commission (2015), "Guidelines on Impact Assessment", Better Regulation, last update 19 May 2015, *http://ec.europa.eu/smart-regulation/guidelines/ug_chap3_en.htm* (accessed on 07 July 2015).

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Chapter 5

Closing the regulatory governance cycle through systematic *ex post* evaluation

Policy evaluation has become an institutionalised practice in the twentieth century and regulatory policy is no exception. However, evaluation of regulations is mainly carried out ex ante *through the Regulatory Impact Assessment (RIA) process while* ex post *evaluation remains the least developed of the regulatory tools. Country practices remain sporadic in this area. Important lessons can nevertheless be learnt from the application of* ex post *evaluation in a number of jurisdictions and provide promising opportunities to improve regulatory quality. This chapter defines the rationale for* ex post *evaluation, describes the possible approaches and their use in practice.*

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Key findings

Trends

There is a fundamental value in assessing the effectiveness of regulation once it is in force. Indeed, it is only after implementation that the effects and impacts of regulations can be fully assessed, including direct and indirect incidence and unintended consequences. Regulations may also become outdated as the result of a change in societal preferences or technological advancement. Consequently, regular reviews are needed to ensure that regulations are still necessary, relevant and fit for purpose.

Policy evaluation is becoming an institutionalised practice and most countries have taken decisive steps to develop evaluation systems in their public administrations (Furubo, Rist and Sandahl, 2002; Gaarder and Briceño, 2010). To acknowledge this trend and the importance of an evaluation culture, the United Nations has made 2015 the International Year of Evaluation. However, the culture of evaluation is unevenly spread across sectors and policy fields. In regulatory policy, evaluation is mainly carried out *ex ante*, through the RIA process. In other fields – such as public expenditure or service delivery – *ex post* evaluation is more widespread.

Reflecting the importance of *ex post* evaluation for regulatory quality, the 2012 Recommendation of the Council on Regulatory Policy and Governance (OECD, 2012) states that "The evaluation of existing policies through *ex post* impact analysis is necessary to ensure that regulations are effective and efficient". Most OECD countries have officially adopted a degree of *ex post* evaluation for regulatory proposals, both for primary and subordinate legislation. Yet, the practice among OECD countries varies considerably and in general would benefit from more consistent approaches. This includes developing *ex post* evaluation strategies as well as methodologies to ensure consistent application.

The majority of *ex post* evaluation exercises have been conducted on a principle-based approach, for instance on reducing administrative burdens or promoting competition. OECD countries could be more strategic and systematic in their evaluation efforts by conducting comprehensive reviews that assess the cumulative impact of laws and regulations in a sector as a whole, with a particular focus on the policy outcomes. This could entail an evaluation of an entire regulatory framework, such as education, health, energy or from a thematic perspective covering, for instance, SME regulation. Moreover, the survey demonstrates that countries should place a greater emphasis on evaluating the extent to which the policy goals that were initially identified have been achieved.

While *ex post* evaluation remains the least developed of the regulatory tools, some promising practices are emerging. Given the potential concern among governments of the resource implications for systematising *ex post* evaluation, the more methodical use of stakeholder engagement is an area for further development. In addition, conducting cross-sector or even cross-country evaluations may assist to maximise efforts where there are commonalities in approaches and lessons to be learnt across areas/borders. Finally, *ex post* evaluation should not be considered as the final stage in the life of regulations, but as a

deliberate and responsible "loop back" into the regulatory cycle, providing an understanding of areas for potential improvement and issues with implementation. In this way, countries could do more to connect the *ex ante* and *ex post* evaluation processes together.

Areas for further action

Strategies should prioritise and sequence *ex post* evaluations so as to maximise the efficiency of (scarce) resources and address potential "evaluation fatigue" due to over encompassing exercises. Because of political and technical challenges, evaluations should be geared towards solving contemporary problems, even if they shed retrospective light on what was regulated years ago. Combining individual evaluations of sectoral regulation with overarching reviews will strengthen the usefulness of evaluations and make exercises outcome-driven. Efforts in the analysis should be proportionate to the impacts of the regulations being assessed.

To enhance overall government efficiency, retrospective analysis should be integrated into the policy-making process. For instance, no new regulatory initiative should be adopted unless it is preceded by a retrospective analysis of the existing regulatory environment. To ensure this, a close link should be formally established between the *ex ante* and the *ex post* phases and be embedded in the Regulatory Impact Analysis process. These requirements are generally spelled out in formal guidelines adopted by a number of OECD countries.

Countries should move away from the assessment of the impact of individual regulations and seek to capture the overall coherence within the existing regulatory framework. This includes assessing the impact of regulations together with other policy tools. The nature of wider regulatory impacts needs to be better understood and methodologies and capacity need to be developed to undertake such targeted but in-depth reviews. When evaluating risk regulation in particular, impacts on investment flows, innovation, technology patterns should be considered along with changes in consumer welfare and the protection of the public.

Organisational and administrative capacity should be built to support evaluations. This includes issuing procedural and methodological guidelines for evaluation. Guidelines should provide uniform definitions; outline channels for data collection, as well as provide explicit techniques to identify and analyse causal relations, to account for uncertainty and to evaluate and compare (cumulative and more complex) impacts beyond administrative burdens and direct compliance costs.

Quality standards as well as information systems should be established for ease of data sharing and building a "good practice library" to facilitate institutional learning. From an organisational perspective, a central co-ordinating and oversight body coupled with a network of evaluation units or practitioners would help mainstream good practices and share evaluation initiatives.

Stakeholder involvement can greatly assist *ex post* evaluation and strategies to identify priority areas. Effective consultation is necessary to ensure that reviews are effective and credible. Stakeholders can be involved both in the process of identifying areas that may require reform as well as during the actual review process. End-users of regulation that may not be responsive to the usual consultation procedures need to be pro-actively engaged. A calendar of planned evaluations should be discussed with stakeholders and

published regularly. This would further contribute to structure the official evaluation activity and to increase transparency and accountability

Timely publication of retrospective analyses is also necessary. Evaluation reports should be written in an easy to read language and easily accessible with the related *ex ante* impact assessments (such as being published on the same portal), so as to publicly capture the entire legislative cycle. Periodic appraisals of the performance of the evaluation function should be carried out by independent bodies and parliaments should hold the executive accountable for the evaluation process and outcome.

Introduction: The rationale for policy evaluation

There is no single starting point for policy making in the real world. In modern society, most of the economic and social activities in the daily lives of citizens are already regulated. Often, problems arise with implementing existing regulation. As an integral part of the efforts to look back to what the current legal environment is delivering, *ex post evaluation* gives relevant information that is essential for planning, designing, updating and implementing policies and for decisions on the necessity for further regulatory interventions. As such, it contributes to more rational, structured and evidence-based policy making by highlighting the policy trade-offs and synergies (policy integration) when regulations are applied and identify potential streamlining efficiencies (reductions in regulatory burdens).

Ensuring that regulations are adopted using *ex ante* impact analyses is not sufficient. As the Australian Productivity Commission (2011) argues, "even if all new regulations were subjected to rigorous assessment, uncertainties about their effects in the longer term would remain in many cases. And even if a regulation was initially appropriate and cost effective, it may no longer be so some years later. Changes can occur in markets and technologies, or in peoples' preferences and attitudes." Moreover, the accumulation of regulations leads to interactions that in themselves can give rise to increased costs or have unintended consequences.

The evaluation of implemented regulations is furthermore instrumental to increase transparency and accountability – and hence also trust in public institutions. Approaches to evaluation can promote forms of stakeholder engagement in the regulatory process (Fetterman et al., 2014). A partnership approach that involves stakeholders can encourage a broader understanding of the role of the regulator or the evaluating entity in society. Transparency and stakeholder engagement in law evaluation can help to create ownership amongst stakeholders of the public policy outcomes. As it has been aptly pointed out, as a partnership approach, "participatory monitoring and evaluation is not just a matter of using participatory techniques within a conventional monitoring and evaluation setting. It is about radically rethinking who initiates and undertakes the process, and who learns or benefits from the findings" (IDS, 1998). This is an intrinsic form of stakeholder engagement that is less well understood or practised in OECD countries.

The institutionalised and systemic adoption of *ex post* evaluation offers further benefits such as being an important decision supporting tool for regulatory planning and improving regulatory performance. However the imperative for doing *ex post* evaluation also requires support, politically from elected representatives as well the public administration that sometimes may build upon existing achievements in improving the regulatory environment (Box 5.1).

Box 5.1. **Cutting red tape as a rationale for reviewing regulation: The United Kingdom, the United States and Germany**

In the United Kingdom, the notion and practice of evidence-based approaches to decision making are deeply rooted in the legislative process. The Government commitment to evaluating both *ex ante* and *ex post* implementation has consolidated over the past decades (UK Government, 2010c; OECD, 2010a) and Parliament also holds the executive firmly into account.

The United Kingdom regards robust evaluation as a key element of the domestic and European policy process. A particular area of engagement by the UK government is the reduction of regulatory burdens, notably affecting SMEs. It believes that effective evaluation of regulation makes a vital contribution to evidence-based policy-making, effective targeting of limited public resources and risk management. Evaluation also makes a significant contribution to the identification of unnecessary costs for business, disproportionately burdensome obligations for SMEs and overlapping or duplicative regulations. Minimising such factors, the UK government believes, is a key EU growth priority for the United Kingdom (UK Government, 2014).

In October 2013, the Prime Minister's Business Taskforce on EU regulation published a report proposing a series of reforms to minimise burdens on business. In October 2013, the Prime Minister's Business Taskforce on EU regulation published a report proposing a series of reforms to minimise burdens on business. The inclusion of evaluation in the COMPETE principles demonstrates its importance in burden reduction (UK Business TF, 2013).

Recent political commitment in the United States is grounded in a similar rationale. In 2011 President Obama adopted Executive Order (EO) 13579 explicitly dedicated to reinforcing "look-back" analyses. EO 13563 later extended the measure to the independent federal regulatory agencies, while EO 13610 focused on reducing regulatory burdens (US Government, 2011a,b; 2012b). While formal requirements to agency to evaluate the impacts and the performance of statutory instruments is by no means a novelty in the federal system,[1] *ex post* evaluation by federal agencies remains patchy and unsystematic (Greenstone, 2009; Lutter, 2013). As Coglianese (2013, p. 59) acknowledges, "it is fair to say that retrospective review is today where prospective analysis was in the 1970s: ad hoc and largely unmanaged". The latest measures taken by the Obama Administration seek to a more explicit institutionalisation of existing evaluation practices.

The commitment stems from beyond the executive, too. Some members of the US Congress have started discussing possible legislation that would establish a new, independent commission dedicated to the retrospective review of regulations. Such a commission would help determine whether certain existing regulations should be repealed.[2]

In **Germany**, despite rich experience with evaluation (Böhret and Konzendorf, 2001; Konzendorf, 2009), *ex post* review of federal regulation is not centrally formalised apart from a provision of the Joint Rules of Procedure of the Federal Ministries (GGO) requiring the memoranda supporting legislative proposals to include information on whether and, if so, after what period of time, a review is to be held.[3]

The situation changed upon the adoption in 2013 of the Committee of State Secretaries Resolution for the Reduction of Bureaucracy concerning the approach for evaluating new legislation.[4] That constituted the first commitment to carry out systematic *ex post* evaluation of laws, to be applied above certain threshold criteria (Prognos, 2013).

In particular, future regulatory reviews must be conducted three to five years after the entering into force of regulations for which annual compliance costs exceed:

- EUR 1 million citizens' material costs or 100 000 hours' time expenditure; or
- EUR 1 million in the business sector; or
- EUR 1 million for public authorities.

Box 5.1. **Cutting red tape as a rationale for reviewing regulation: The United Kingdom, the United States and Germany** *(cont.)*

1. The US Regulatory Flexibility Act requires agencies to review every rule that has "a significant economic impact upon a substantial number of small entities" within 10 years after the final rule is published. Further, Executive Order 12866 of 1993 requires agencies to develop a programme "under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated." On the matter, see O'Connor Close and Mancini (2007), p. 23 and Steinzor (2014).
2. In particular, see the so-called "Searching for and Cutting Regulations that are Unnecessarily Burdensome Act" – the SCRUB Act (H.R.4874) – introduced in Congress in July 2014, which would set up a "Retrospective Regulatory Review Commission"; or Bill S.1360 introduced in Senate in July 2013, which envisages the creation of a "Regulatory Improvement Commission" with an equivalent mandate. For a critical discussion on these developments, see RegBlog (2014).
3. See Paragraph 44.7 of the GGO. The National Regulatory Control Council can review the presentation of such information on evaluation in the framework of its scrutiny of draft federal legislation (Article 4 (2) of the Law establishing the National Regulatory Control Council.
4. *http://ec.europa.eu/smart-regulation/impact/best_practices_examples/docs/de/evaluierungskonzept_st_beschluss_23_1_13.pdf*.

Source: Allio, L. (2015), "*Ex post* Evaluation of Regulation: An Overview of the Notion and of International Practices", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris.

Based on the results from the Survey, the importance for evaluating policies and regulatory interventions is generally appreciated among governments and parliaments even though it has not yet been systematically implemented in most countries. The survey shows that despite only 20 countries having a mandatory requirement for the *ex post* evaluation of existing regulations, over the past 3 years 30 countries conducted some sort of *ex post* evaluation of existing regulations. This provides an opportunity for countries to learn from their experiences over the past 3 years and have a more formal adoption of *ex post* evaluation.

The nature of *ex post* evaluation

The OECD defines evaluation as "a systematic, analytical assessment addressing important aspects of an object (be it policies, regulations, organisations, functions, programmes, laws, projects, etc.) and its value, with the purpose of seeking reliability and usability of its findings" (OECD, 2004). Some countries have sought to define the differences between the types of evaluations conducted retrospectively (see Box 5.2).

Evaluation should not be confused with "monitoring". The latter refers to the continuous assessment of implementation in relation to an agreed schedule. Monitoring activities are concerned with the systematic collection of data on specified indicators of policy interventions that provide administrative management, affected parties and other stakeholders with an indication of progress and achievement of the objectives.

Evaluation should furthermore not be confused with "research", "audit" and "control". These activities differ primarily in their purposes. "While evaluation is intended to generate information on impact performance and of specific policies, research lays stress on the production of knowledge, control puts the emphasis on compliance with standards and audit judges how employees and managers complete their mission" (OECD, 2004).

The purpose that triggers an evaluation determines the nature and shape of the exercise. Broadly speaking, according to Harrington and Morgenstern (2003), it is possible

Box 5.2. **Disentangling the notion of retrospective analysis: The United Kingdom**

Committed to consider reviews of both primary and secondary legislation as forming part of an integrated approach to policy evaluation, the UK government has the relationship between policy evaluation, post-legislative scrutiny and post-implementation review:

- *Evaluation* is the general term referring to a systematic evaluation which may be carried out at any time, using methods of review as appropriate.
- *Post-implementation review (PIR)* refers to the review of regulatory policy that complements the *ex ante* appraisal contained in the Impact Assessment.
- *Post-legislative scrutiny (PLS)* is a review of how primary legislation is working in practice. Its primary location is parliament. Unlike PIR, it includes a review of the extent to which the legislation and the supporting secondary legislation has been brought into force.

Evaluating the extent to which legislation is working as expected is common to both. Ideally, PLS (review of a statute) and PIR (of the underlying policies) should be carried out in parallel.

Source: UK Government (2010a), "Clarifying the relationship between Policy Evaluation, Post-Legislative Scrutiny and Post-Implementation Review", Department of Business, Innovation and Skills, London; UK Government (2010b), "What happened next? A study of Post-Implementation Reviews of secondary legislation: Government Response", Department of Business, Innovation and Skills, London, *www.publications.parliament.uk/pa/ld200910/ldselect/ldmerit/43/43.pdf*.

to distinguish three main types of evaluation depending on whether attention is put on assessing compliance (process), performance (outputs) or function (outcomes):

- *Compliance tests* assess whether the regulatory quality tool, institution or programme are formally applied in compliance with the procedural requirements, as set out in laws, policies or guidelines as appropriate.
- *Performance tests* measure the quality of the analysis undertaken, going beyond the question of formal compliance with procedural requirements
- *Function tests* evaluate to which extent the regulatory tool, institution or programme actually contributes to improving the decision-making process and its outcomes.

Evaluating regulations after a period of implementation should be primarily focused on whether the outcomes that were intended to be achieved by the regulatory intervention have been realised. This is the main purpose of the retrospective analysis and it is the systemisation of this analysis that is recommended in the 2012 Recommendation. Currently there is not an internationally recognised or agreed upon guidance for regulatory evaluation. However, Allio and Renda (OECD, 2010c, Annex B) propose a set of evaluation criteria that could be applied and form a basis for an evaluation framework as shown in Table 5.1.

Ex post evaluation can be embodied in a wide variety of mechanisms and practices as illustrated in Allio (2015). The Australia Productivity Commission has attempted to explain these different approaches in its report *Identifying and Evaluating Regulation Reform* (2011). They are summarised in Box 5.3.

Table 5.1. **Principles for setting an evaluation framework**

General criteria

- Relevance – Do the policy goals cover the key problems at hand?
- Effectiveness – Was the policy appropriate and instrumental to successfully address the needs perceived and the specific problems the intervention was meant to solve?
- Efficiency – Do the results justify the resources used? Or could the results be achieved with fewer resources? How coherent and complementary have the individual parts of the intervention been? Is there scope for streamlining?
- Utility – To what degree do the achieved outcomes correspond to the intended goals?

Additional criteria

- Transparency – Was there adequate publicity? Was the information available in an appropriate format, and at an appropriate level of detail?
- Legitimacy – Has there been a buy-in effect?
- Equity and inclusiveness – Were the effects fairly distributed across the stakeholders? Was enough effort made to get the appropriate access to information?
- Persistence and sustainability – What are the structural effects of the policy intervention? Is there a direct cause-effect link between them and the policy intervention? What progress has the administration made from reaching the policy objectives?

Source: Adapted from OECD (2010c), "Annex B. Evaluating Administrative Burden Reduction Programmes and their Impacts", in OECD, Why Is Administrative Simplification So Complicated?: Looking beyond 2010, OECD Publishing, Paris. *http://dx.doi.org/10.1787/9789264089754-8-en*.

StatLink *http://dx.doi.org/10.1787/888933263023*

Box 5.3. **Approaches to regulatory review**

The Productivity Commission issued a research report that lists a number of good design features for each review approach which help ensure that they work effectively, drawn from Australian and international good practices. The Commission considered the following main approaches:

Stock management approaches (have an ongoing role that can be regarded as "good housekeeping"):

- *Regulator-based strategies* refer to the way regulators interpret and administer the regulations for which they are responsible – for instance through monitoring performance indicators and complaints, with periodic reviews and consultation to test validity and develop strategies to address any problems. Ideally, the use of such mechanisms is part of a formal continuous improvement programme conducted by the regulator.
- *Stock-flow linkage rules* work on the interface between *ex ante* and *ex post* evaluation. They constrain the flow of new regulation through rules and procedures linking it to the existing stock. Although not widely adopted, examples of this sort are the "regulatory budget" and the "one-in one-out" approaches.
- *Red tape reduction targets* require regulators to reduce existing compliance costs by a certain percentage or value within a specified period of time. Typically, they are applied to administrative burdens reduction programmes.

Programmed review mechanisms (examine the performance of specific regulations at a specified time, or when a well-defined situation arises):

- *Sunsetting* provides for an automatic annulment of a statutory act after a certain period (typically five to ten years), unless keeping the act in the books is explicitly justified. The logic can apply to specific regulations or to all regulations that are not specifically exempted. For sunsetting to be effective, exemptions and deferrals need to be contained and any regulations being re-made appropriately assessed first. This requires preparation and planning. For this reason, sunsetting is often made equivalent to introducing *review clauses*.
- *"Process failure" post implementation reviews (PIR)* (in Australia) rest on the principle that *ex post* evaluation should be performed on any regulation that would have required an *ex ante* impact assessment. The PIR was introduced with the intention of providing a "fail-safe" mechanism to ensure that regulations made in haste or without sufficient assessment – and therefore having greater potential for adverse effects or unintended consequences – can be re-assessed before they have been in place too long.

Box 5.3. **Approaches to regulatory review** *(cont.)*

- Through *ex post review requirements in new regulation*, regulators outline how the regulation in question will be subsequently evaluated. Typically, this exercise should be made at the stage of the preparation of the RIA. Such review requirements may not provide a full review of the regulation, but are particularly effective where there are significant uncertainties about certain potential impacts. They are also used where elements of the regulation are transitional in nature, and can provide reassurance where regulatory changes have been controversial.

Ad hoc and special purpose reviews (take place as a need arises):

- *"Stocktakes" of burdens on business* are prompted or rely on business' suggestions and complaints about regulation that imposes excessive compliance costs or other problems. This process can be highly effective in identifying improvements to regulations and identifying areas that warrant further examination, but their very complaint-based nature might limit the scope of the review.
- *"Principles-based" review strategies* apply a guiding principle being used to screen all regulation for reform – for instance removal of all statutory provisions impeding competition (unless duly justified), or the quest for policy integration. Principles-based approaches involve initial identification of candidates for reform, followed up by more detailed assessments where necessary. Approaches of this kind are accordingly more demanding and resource-intensive than general stocktakes. But if the filtering principle is robust and reviews are well conducted, they can be highly effective.
- *Benchmarking* can potentially provide useful information on comparative performance, leading practices and models for reform across jurisdictions and levels of government. Because it can be resource-intensive, it is crucial that topics for benchmarking are carefully selected. Benchmarking studies do not usually make recommendations for reform, but in providing information on leading practices they can assist in identifying reform options.
- *"In-depth" reviews* are most effective when applied to evaluating major areas of regulation with wide-ranging effects. They seek to assess the appropriateness, effectiveness and efficiency of regulation – and to do so within a wider policy context, in which other forms of intervention may also be in the mix. In the Australian context, extensive consultation has been a crucial element of this approach, including through public submissions and, importantly, the release of a draft report for public scrutiny. When done well, in-depth reviews have not only identified beneficial regulatory changes, but have also built community support, facilitating their implementation by government.

Source: Australian Productivity Commission (2011), *Identifying and Evaluating Regulation Reform*, Research Report, Canberra.

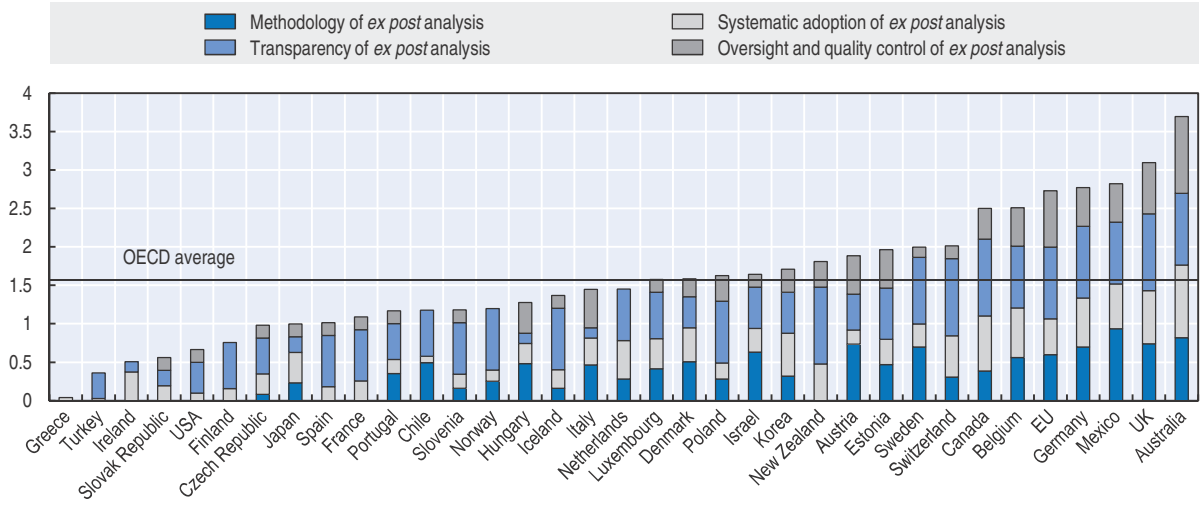
Ex post evaluation practices

The practice of ex post *evaluation seen through the composite indicator*

The composite indicators for *ex post* evaluation measure four main areas; *i)* oversight and quality control; *ii)* transparency; *iii)* systematic adoption; and *iv)* methodology. *Oversight and quality control* measures whether there are the functions in place to monitor *ex post* evaluation and whether evaluations made publicly available. *Transparency* looks at the extent to which the processes for conducting *ex post* evaluation are open and stakeholders can engage in the process. *Systematic adoption* investigates if there are formal requirements which include the consideration of proportionality, institutional arrangements and different types of *ex post* evaluations. *Methodology* shows what assessments are used in conducting *ex post* evaluation such as cost benefit analysis, achievement of goals, legal consistency and whether there is guidance established for implementing the methodology.

Most countries have systematically adopted *ex post* evaluation for primary and subordinate legislation and have measures of transparency in some way (Figures 5.1 and 5.2). However upon closer inspection many countries adoption is not fully implemented and most are yet to establish a methodology and or have oversight and quality control of *ex post* evaluations of either primary or sub-ordinate regulation. Therefore there is sufficient room for improvement amongst OECD countries in making use of and developing the requirements and systems to better implement *ex post* evaluation.

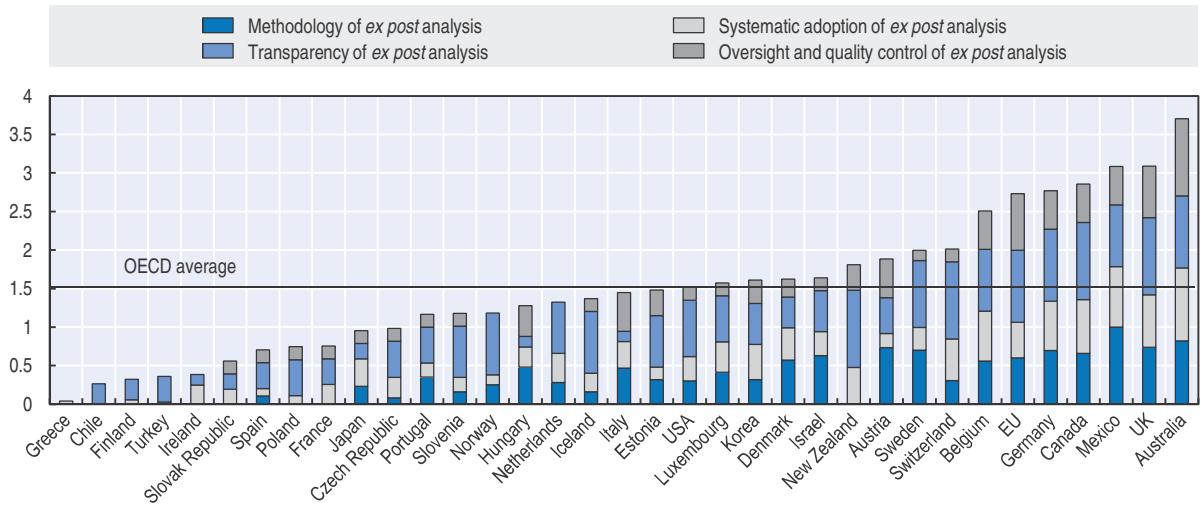
Figure 5.1. **Composite indicators: *Ex post* evaluation for primary laws**



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

StatLink http://dx.doi.org/10.1787/888933262953

Figure 5.2. **Composite indicators: *Ex post* evaluation for subordinate 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.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

StatLink http://dx.doi.org/10.1787/888933262966

Australia, the United Kingdom and Mexico show a high level of practice and implementation of *ex post* evaluation in the composite indicators. The EU also performs well. The European Commission has evaluation guidelines dating back to 2004 and updated in 2015 as part of an integrated package of Better Regulation Guidelines.*

In Australia, which has the most developed system in both primary and subordinate legislation, the *ex post* evaluation or "post implementation review (PIR)" is a well-established system and could be described as being a default setting within the regulatory process. Australian Government agencies must undertake a post-implementation review (PIR) for all regulatory changes that have major impacts on the economy. PIRs must also be prepared when regulation has been introduced, removed, or significantly changed without a regulation impact statement (RIS). This may be because an adequate RIS was not prepared for the final decision, or because the Prime Minister granted an exemption from the RIS requirements.

For regulations assessed by the Office for Best Practice Regulation that have a major impact on the Australian economy, a PIR must be completed within five years following the implementation of the regulation. All other PIRs should be completed within two years of the regulations being implemented.

In the United States *ex post* evaluation or "retrospective review" was recently institutionalised by Executive Order 13610 which was issued by President Obama on May 10, 2012. Through Executive Order 13610, agencies are required to report regularly on the progress of their retrospective review activities. In 2013, agencies have published their "look back plans" for adhering to this new requirement and have provided updates on their initiatives.

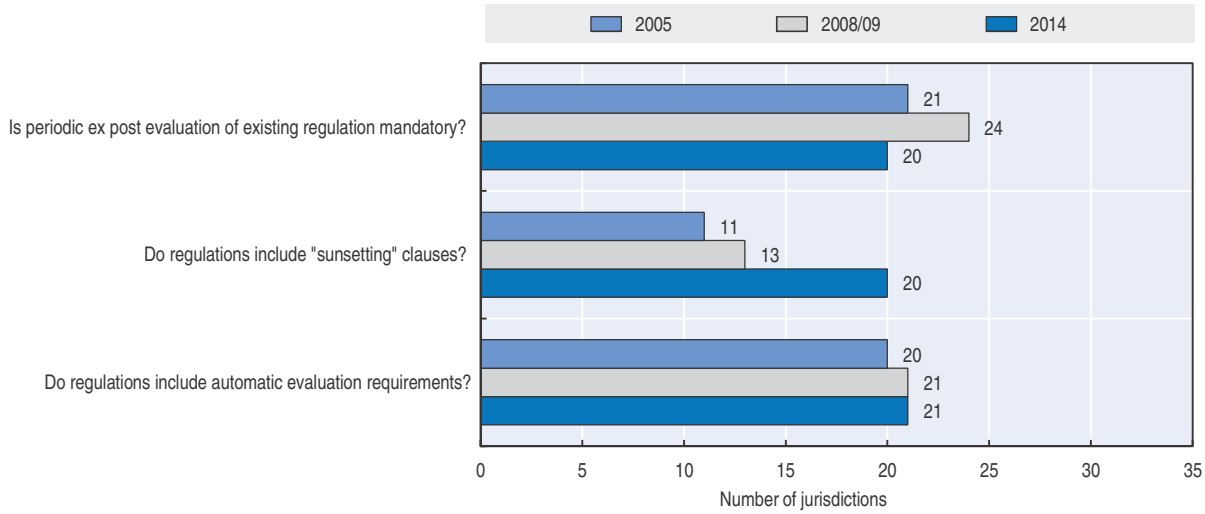
The practice of ex post *evaluation has remained the same or decreased among OECD countries*

The experience of conducting *ex post* evaluation varies considerably across countries and also domestically across different ministries or agencies within governments. This is in part due to the different interpretations and understanding of what *ex post* evaluation means. In addition there has been a maturity among OECD countries in their regulatory literacy since 2008/09. There is now a more sophisticated understanding of *ex post* evaluation that must include the assessment of the regulatory performance and the extent to which the objectives have been achieved.

Overall, however, very few OECD countries have actually deployed the *ex post* evaluation systematically and no dedicated governance structure is usually at hand to support the *ex post* evaluation function. Australia has embedded *ex post* evaluation into its regulatory system. However, it is positive to note from the survey results that twelve countries have conducted a periodic *ex post* evaluation exercise in the last 3 years despite *ex post* evaluation not being mandatory. More countries could conduct *ex post* evaluation exercises in specific sectors or priority policy areas even though it may not be mandatory to do so.

* *http://ec.europa.eu/smart-regulation/guidelines/index_en.htm.*

Figure 5.3. **Requirements for *ex post* evaluation**



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262978

The majority of ex post evaluation reviews have been principle based, yet the primary focus has been on administrative burdens, competition and compliance costs

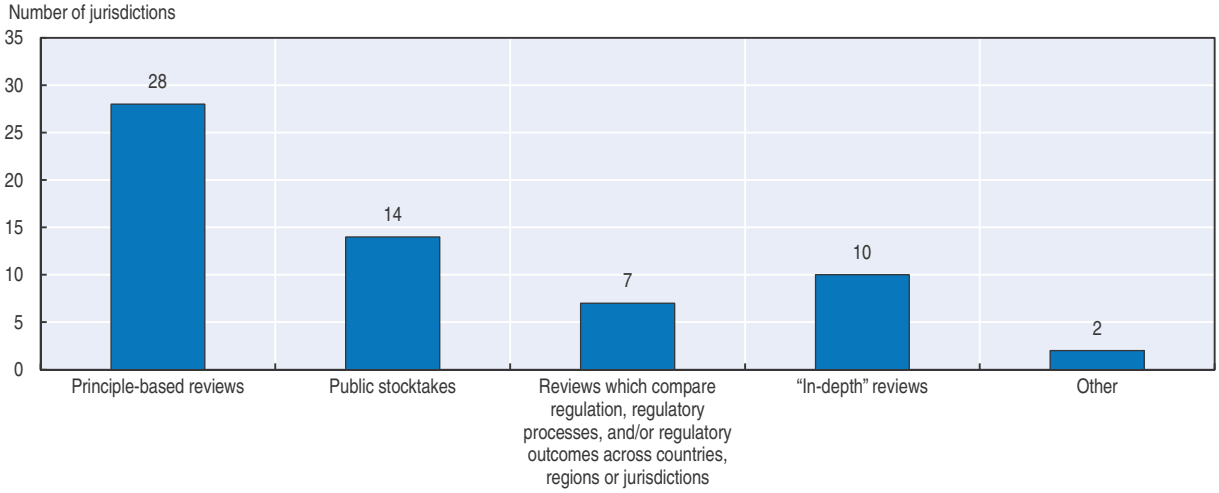
In the last three years, only seven countries have undertaken *ex post* evaluation frequently for both primary and subordinate legislation. The majority of *ex post* evaluations that have been conducted in OECD countries over the last 12 years have been of a principle based nature and not of another nature such as on a specific sector or policy themes (Figure 5.4). These have largely been administrative burden reduction based evaluation, which is effectively a subset of the more comprehensive *ex post* evaluation described in Box 5.3. Competition based evaluations were the second most popular principles based *ex post* evaluations by OECD countries, followed by compliance costs based evaluation. This provides an initial basis to expand *ex post* evaluation practices to assess economic and societal outcomes of policies more broadly.

Ex post *evaluation methodology could do more to assess the outcome desired or potential better ways to achieve the outcome*

Identifying and measuring the impacts of regulations is the main method used in *ex post* evaluation (Figure 5.5). For half of the survey respondents, ex post evaluation also contains an assessment of the achievement of the goals. An evaluation of legal consistency (nationally and internationally) exists in about a third of countries. Most countries have had ex post evaluations based on administrative burden reduction with an assessment of compliance costs using the standard cost model. As mentioned above, the main principle for ex post evaluation is to measure the outcome of the regulation in relation to the initial policy objective. This demonstrates that there is the opportunity to develop a broader understanding of ex post evaluation among OECD countries.

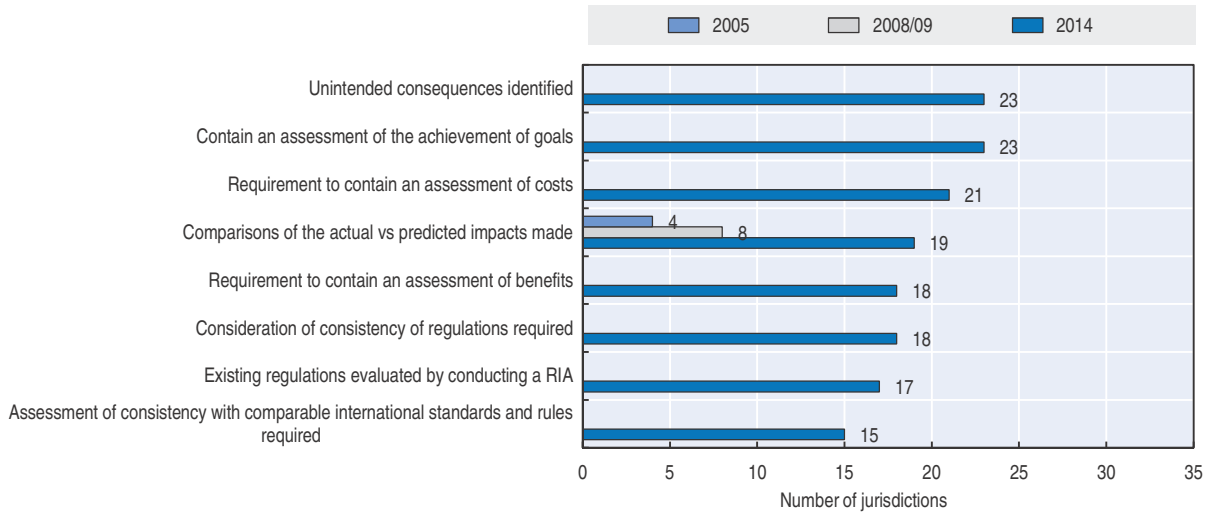
The survey results confirm the findings by Allio (2015) that countries focus on partial *ex post* assessment of regulatory burdens and rarely assess whether underlying policy goals of regulation have been achieved. The use of comprehensive reviews that investigate the

Figure 5.4. **Ad hoc reviews of the stock of regulation conducted in the last 12 years**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262980

Figure 5.5. **Methodologies used in *ex post* evaluation**



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.
StatLink http://dx.doi.org/10.1787/888933262994

regulatory impacts across sectors; cumulatively; and in terms of wider economic and societal implications should be applied more across OECD countries. This is particularly the case in risk management of areas such as food safety and public health; environment protection; or safety at work (OECD, 2010b).

A potential innovative form of *ex post* evaluation could involve cross-country comparisons of regulatory frameworks. This method to appraise the performance of the domestic regulatory environment consists of comparing regulations, regulatory processes and their outcomes across countries, regions or jurisdictions (Box 5.4). This is an

Box 5.4. **Cross-jurisdictional regulatory reviews: Australia and New Zealand**

In 2009, **Australia and New Zealand** carried out a performance benchmarking of their business regulation, with specific focus on food safety (Productivity Commission, 2009). The evaluation responded to the imperative of removing unnecessary compliance costs, achieving greater consistency and reducing regulatory duplication. The report identified opportunities for all jurisdictions to improve food safety regulation and its enforcement in order to reduce burdens on business and costs to the community. Areas where significant regulatory burdens remain across jurisdictions include:

- Some regulatory requirements in excess of national standards;
- Slow progress in developing national standards under the Australia New Zealand Food Standards Code for primary production and processing;
- Inconsistencies between jurisdictions on the assessment of risks of particular foods;
- For businesses operating in several locations, inconsistencies across Australian local councils and across New Zealand territorial authorities in the costs and intensity of regulation; and
- Higher costs and regulatory duplication for Australian food exporters compared to the regulation of New Zealand food exporters.

Domestic comparative reviews are also informative. In **Australia**, a 2010 evaluation identified differences in regulatory requirements and practices pertaining to occupational health and safety (OHS) across national and sub-national jurisdictions. The resulting report informed subsequent efforts to harmonise domestic regulation at a time when governments were making progress towards a national OHS Act. This is expected to introduce nationally consistent core legislative provisions.

Source: Australian government submission to the OECD 2014 Regulatory Policy Questionnaire; Australian Productivity Commission (2009), *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, *www.pc.gov.au/projects/study/regulation-benchmarking/food-safety/report*.

increasingly important type of evaluation given the global and regional nature of regulation and the different types of regulatory interventions, private and public, that are being employed.

Quality control systems for ex post *evaluation vary and could be strengthened*

The practice of quality control in *ex post* evaluation varies across countries. In some instances the centre of government either issues guidance or monitors *ex post* evaluation such the Office of Best Practice Regulation in Australia, the Chancellery and Regulatory Control Council in Germany or the Prime Minister's Office in Hungary. The main responsibility for conducting *ex post* evaluation is with the line ministry responsible for the regulation and in some instances they are also responsible for quality control, such as in Belgium. In the United Kingdom the independent Regulatory Policy Committee is responsible for quality control of *ex post* evaluation as well as *ex ante* evaluation. In general this is an area where further investment could be made to improve the overall standardisation and quality of *ex post* evaluations across OECD governments.

The support for the necessary capacity and oversight of ex post *evaluation is an area for enhancement*

Irrespective of the tools or methodologies of retrospective reviews, greater investment in building the capacities and skills to conduct effective *ex post* evaluation will help improve the understanding and application of evaluation. Setting legal obligations and procedural requirements to carry out *ex post* evaluation is only one side of the coin. To

ensure high quality and policy relevant deliverables, governments need to establish minimum standards and quality oversight, and assist evaluators and desk officers to design, manage and execute the evaluations (Box 5.5).

It is also important to be proportional in the adoption of *ex post* evaluation as it may not be realistic or beneficial to expect an in-depth study of every regulation *ex post*. Table 5.2 provides some examples of how a proportionality approach is applied across a selection of countries. In some instances countries have created a threshold for conducting *ex post* evaluations with exemptions, such as in Estonia, Germany and Mexico. There are also links to other regulatory management tools and requirements to expedite the *ex post* evaluation process if due process was not followed at the time of regulating such as in Australia, Slovenia. The European Commission provides a link between the creation and *ex post* evaluation of a regulation as a matter of principle.

Box 5.5. **Building capacity and providing support to evaluators: Canada, European Commission and Switzerland**

In **Canada**, recent developments include the training offered through the Canada School of Public Service and the community development facilitated by the Community of Federal Regulators:

- The Canada School of Public Service's regulatory courses offer civil servants the opportunity to build their skills and knowledge, helping to advance good regulatory practices and processes across the Government of Canada. For example, courses are offered on such topics as Cost-Benefit Analysis and Developing Effective Regulatory Impact Analysis Statements (Canada School of Public Service, 2015).
- The Community of Federal Regulators is an inter-departmental community of practice that supports opportunities to: develop shared approaches and solutions; strengthen knowledge and competencies; and, engage and inform regulatory professionals of opportunities to learn, share ideas and innovate.

In the **European Commission**, in the framework of the Smart Regulation strategy, central support and co-ordination is ensured by the Secretariat-General (European Commission, 2015a). The latter issues guidance; provides in-house training; and organises dedicated workshops and seminars. The Secretariat-General oversees the EC's evaluation activities and results and promotes, monitors and reports on good evaluation practice. Evaluation units are present in almost all Directorates-General. Several "evaluation networks" dedicated to specific policy areas are also at work (for instance in relation to research policy or regional policy).

Also in **Switzerland**, despite the fact that there is no central control body for the implementation and support of evaluation in the federal administration, experiences and expertise is shared thanks to an informal "evaluation network". The network exists since 1995 and is directed at all persons interested in evaluation questions, and comprises around 120 members from various institutions (Confédération Suisse, 2015).

Source: Canada School of Public Service (2015), "Learning Opportunities for Federal Regulators: Improve Your Abilities and Share Your Knowledge", *www.csps-efpc.gc.ca/BrowseCoursesBySubject/federalregulators-eng.aspx* (accessed July 2015); European Commission (2015), "Evaluation", Better Regulation, *http://ec.europa.eu/smart-regulation/evaluation/index_en.htm* (accessed July 2015); Confédération Suisse (2015), "Le réseau 'évaluation' dans l'administration fédérale", Office fédérale de la justice, *www.bj.admin.ch/bj/fr/home/staat/evaluation/netzwerk.html* (accessed July 2015); Australian Productivity Commission (2011), *Identifying and Evaluating Regulation Reform*, Research Report, Canberra, *www.pc.gov.au/inquiries/completed/regulation-reforms/report/regulation-reforms.pdf*; Prognos (2013), Expert report on "The implementation of *ex post* evaluations: Good practice and experience in other countries", Report commissioned by the National Regulatory Control Council, Berlin, *www.normenkontrollrat.bund.de/Webs/NKR/Content/EN/Publikationen/2014_02_24_evaluation_report.pdf?__blob=publicationFile&v=2*.

Table 5.2. **Examples of thresholds/proportionality approaches used for *ex post* evaluation**

Country	Thresholds used for *ex post* evaluation
Australia	Australian government agencies must undertake a post-implementation review (PIR) for all regulatory changes that have major impacts on the economy. PIRs must also be prepared when regulation has been introduced, removed, or significantly changed without a regulation impact statement (RIS) or where an exemption was granted from the RIS requirements by the Prime minister.
Canada	A number of statutes are required to be reviewed periodically, pursuant to the terms of the statute itself.
Estonia	In cases where *ex ante* assessment has showed the occurrence of significant impacts (as understood in the Estonian legislative system) then *ex post* assessment is required by rule and the plan for conducting it must be presented in the explanatory letter of the draft law. If the line ministry is of the view that *ex post* evaluation is unnecessary, then the reasons for it have to be shown in the explanatory letter of the draft law.
Germany	Within the evaluation framework proposals are deemed to be major if they give rise to regular compliance costs of more than one million euros a year for the citizens, businesses or the administration.
Mexico	It must be a High Impact Technical Standard according to COFEMER's "calculator" of impact.
Slovenia	*Ex post* evaluation must be conducted after 2 years, if the regulation was adopted under emergency procedure.
European Commission	Evaluate first principle: Commission is committed in principle to evaluate relevant regulation before making a new proposal in a related area.

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

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The full potential of ex post *evaluation for improving the regulatory system is an opportunity more OECD countries can benefit from*

A key factor in making *ex post* evaluation successful is ensuring the cumulative impact of regulations is assessed instead of individual regulations. The European Commission's Regulatory Fitness and Performance programme (REFIT), aims to make EU law simpler and reduce regulatory costs. In June 2014, the Commission reported on the progress in implementing REFIT and proposed a number of new initiatives for simplification and burden reduction, repeals of existing legislation and withdrawals of proposals pending in the legislative procedure (EC, 2013; 2014). Among the achievements so far are the withdrawal of 53 pending proposals in 2014 alone (and about 300 since 2006); and a reduction in administrative burdens by 33% since 2006 in 13 priority areas, leading to savings of EUR 41 billion (Box 5.6).

Box 5.6. **Coping with the accumulation of regulatory impacts: The European Commission, Switzerland and the United States**

Where evaluations are undertaken, the total impact of new regulations can be estimated on single regulation, on a sectoral level or in aggregate.

In the United States, the OMB's Office of Information and Regulatory Affairs (OIRA) must by law report annually to Congress on the expected costs and benefits of all new "significant" regulation passed in the previous year.[1] To the extent possible, OMB commits to provide an estimate of the total annual benefits and costs (including quantifiable and non-quantifiable effects) of Federal rules and paperwork in the aggregate, by agency and agency programme, and by major law.

Box 5.6. **Coping with the accumulation of regulatory impacts: The European Commission, Switzerland and the United States** *(cont.)*

In 2012, OIRA the issued a two page Memorandum requiring agencies to engage in assessing the cumulative impact of their rules (US Government, 2012a). The memo follows EO 13563 of 2011. The goals of this effort should be to simplify requirements on the public and private sectors (especially SMEs); to ensure against unjustified, redundant, or excessive requirements; and ultimately to increase the net benefits of regulations.

To this end, the directive calls agencies to take nine steps, including engaging in early consultation; using Requests for Information and Advance Notices of Proposed Rulemaking to obtain public inputs; considering, in the analysis of costs and benefits, the relationship between new regulations and regulations that are already in effect; and co-ordinating timing, content, and requirements of multiple rulemakings that are contemplated for a particular industry or sector.

The estimated annual benefits of major Federal regulations reviewed by OMB from 1 October 2003, to 30 September 2013, for which agencies estimated and monetised both benefits and costs, are in the aggregate between USD 217 billion and USD 863 billion, while the estimated annual costs are in the aggregate between USD 57 billion and USD 84 billion (US Government, 2014, p. 1).

The **European Commission** has also embarked in a similar exercise when it launched its Regulatory Fitness and Performance programme (REFIT), with a view to make EU law simpler and to reduce regulatory costs (European Commission, 2015b). The differences with the OMB review are substantial – REFIT is not grounded in a legal base; the Commission has no obligation to report annually to the European Parliament; and the scope of the review focuses on regulatory burdens on business. REFIT nevertheless requires a joined-up approach between the European Commission, the European Council, the European Parliament, Member States and stakeholders.

In June 2014, the Commission reported on the progress in implementing REFIT and proposed a number of new initiatives for simplification and burden reduction, repeals of existing legislation and withdrawals of proposals pending in legislative procedure (EC, 2013; 2014). Among the achievements were the withdrawal of 53 pending proposals in 2014 alone (and about 300 from 2006); and a reduction in administrative burdens by 33% since 2006 in 13 priority areas, leading to savings of EUR 41billion. In March 2015, a number of pending legislative proposals were further withdrawn that either did not match the new Commission's political priorities or where there could be better ways of achieving the same objective.

On 19 May 2015, the Commission reported on the progress in implementing REFIT as part of its Communication on "Better Regulation for Better Results – An EU Agenda" and highlighted key areas for future work. In particular, a REFIT Platform was set up to promote continuous dialogue with Member States and stakeholders on improvements to proposals of EU legislation. The REFIT Platform has two standing groups, one for Member State experts ("government group") and one for representatives of business, social partners and civil society ("stakeholder group").

Switzerland completed in 2013 a comprehensive review of the regulatory costs affecting business, which stem from federal legislation. The review was prompted by an initiative of the federal parliament and covered thirteen main sectors. In the exercise, the Federal Council pioneered a new methodology in Switzerland – the so-called "Regulatory check-Up" – heavily inspired by the German RCM.[2]

This methodology seeks to capture various direct compliance costs, including staff and equipment costs as well as investment and financial costs. A key stage in the assessment process is the identification of the "action obligations" which firms must face when complying with a given regulation or legal framework. Relevant regulatory costs are calculated from the difference between the overall gross costs and the "business-as-usual costs". This implies setting an alternative (counterfactual) scenario, which describes the activities that firms would have undertaken in the absence of the regulation under review.

Box 5.6. **Coping with the accumulation of regulatory impacts: The European Commission, Switzerland and the United States** *(cont.)*

The evaluation exercise enjoyed the active and steady involvement of the stakeholders most directly affected by the regulation. On the basis of the findings, the Federal Council has identified more than thirty simplification measures for the period 2014-15.

1. See *www.whitehouse.gov/omb/inforeg_regpol_reports_congress*. The legal obligation upon OMB is enshrined in the US Regulatory Right-to-Know Act of 2000.
2. See *www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=fr&msg-id=51395*.

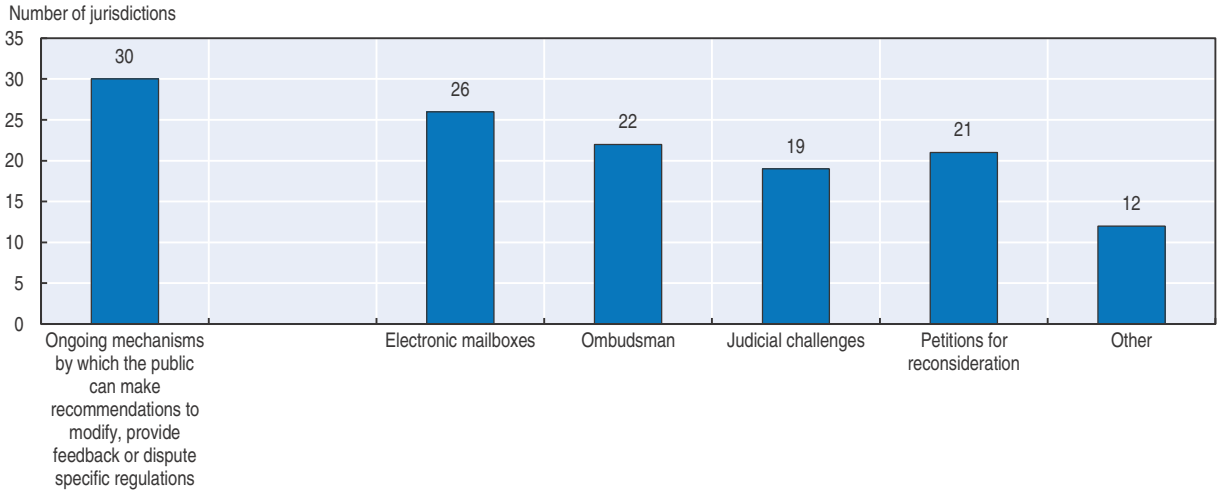
Source: US Government (2012a), "Cumulative Effects of Regulations", Memorandum by OMB-OIRA, 20 March 2012; European Commission (2015b), "Making EU law lighter and less costly: What is REFIT", Better Regulation, *http://ec.europa.eu/smart-regulation/refit/index_en.htm* (accessed July 2015); European Commission (2013), "Regulatory Fitness and Performance (REFIT): Results and Next Steps", COM(2013) 685 final of 2 October 2013; European Commission (2014), "Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook", COM(2014) 368 final and SWD(2014) 192 final of 18 June 2014.

The importance of stakeholders' involvement in ex post *evaluation is understood among OECD countries*

Another key element for *ex post* evaluations is the engagement of stakeholders for wider public governance benefits. A large proportion of countries involve stakeholders in evaluating existing regulations (see Chapter 3). Only five countries do not report engaging stakeholders in *ex post* evaluation. This is encouraging as *ex post* evaluation is a newer addition to many regulatory quality management systems. As such retrospective reviews can use other regulatory tools, such as stakeholder engagement, to ensure credibility and integrity in evaluations. It can also benefit from linking to RIA to ensure there is a connection between the *ex ante* assessment of regulation and the *ex post* evaluation.

There are different mechanisms to involve stakeholders in *ex post* evaluation exercises (Figure 5.6). In some instances stakeholders trigger the evaluation process through the Ombudsman or parliamentary committees such as in Belgium or through other means as in Korea. In other instances stakeholders are requested for their comments by the Line Ministry such as in Italy and Poland. In Belgium and Canada certain stakeholders are

Figure 5.6. **Mechanisms by which the public can make recommendations**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

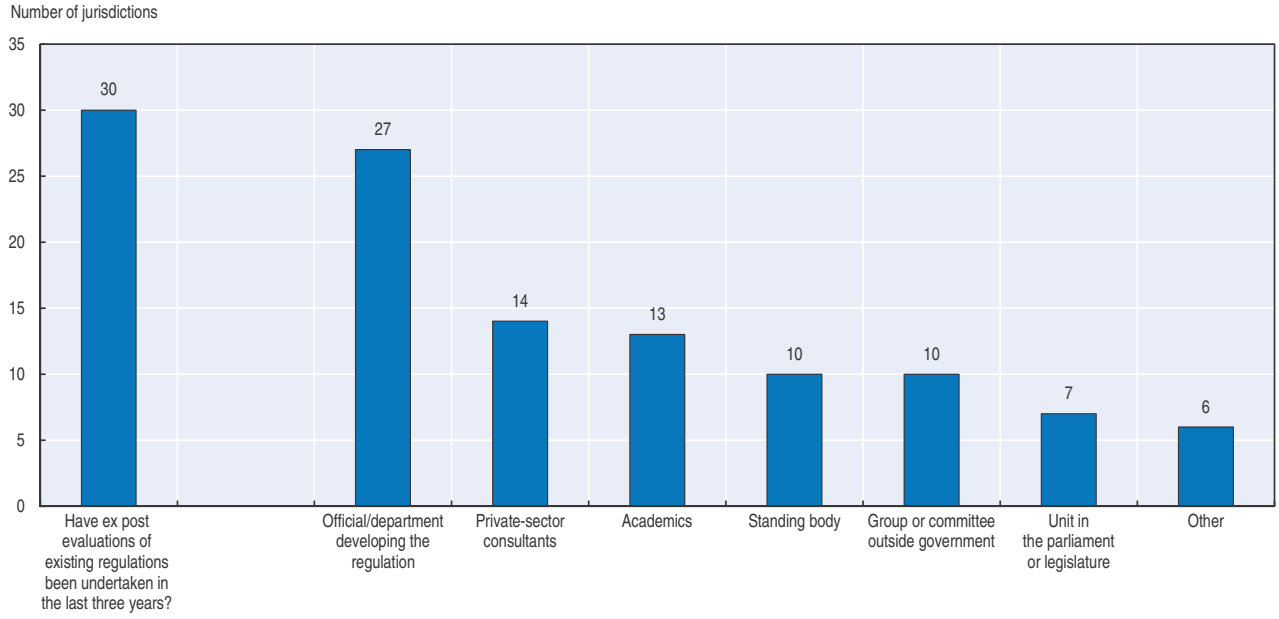
StatLink *http://dx.doi.org/10.1787/888933263007*

embedded into the entire regulatory process and therefore are also part of the *ex post* evaluation system. The use of ICT through creating a virtual forum for assessing post-implementation impacts is also applied in Chile.

"Who" prepares ex post evaluations is an area for further investigation as this also determines the nature of the assessment

The bodies responsible for *ex post* evaluation are largely the government bodies themselves (Figure 5.7). A number of countries also employ private sector consultants and academics to carry out these evaluations. Some standing bodies are also responsible for *ex post* evaluations. Surprisingly parliaments are not primarily responsible for *ex post* evaluations; however they may still be one of the main bodies to assess the evaluation that is conducted. Understanding the difference in the results of evaluations conducted by different actors in the regulatory system will further assist countries to determine the appropriate institutions that should conduct *ex post* evaluations. This will largely depend on the specific political context and administrative culture and will vary across countries.

Figure 5.7. **Who prepares *ex post* evaluations?**



Note: Based on data from 34 countries and the European Commission.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

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Chapter 6

Country profiles

This chapter provides a two-page profile for all OECD countries and the European Commission. These profiles systematically offer an overview of regulatory practices with key achievements and areas for improvement. It includes a "spotlight" that elaborates one specific practice that could be of interest to other countries wishing to improve their implementation of regulatory policy. It features the situation of the country against the composite indicators for stakeholder engagement, Regulatory Impact Assessment and ex post *evaluation.*

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Australia

Overview

In September 2013 the Australian government launched an extensive regulatory reform agenda to reduce regulatory burdens and boost productivity. The government has made commitments to reduce the regulatory burden for individuals, community organisations and business by a net minimum of AUD 1 billion each year. In line with this agenda, Australia has changed its RIA process to place a greater focus on regulatory costings, including the regulatory impact on individuals, and introduced a net benefit test for regulation. The Australian Government Guide to Regulation places significant emphasis on consultation in RIA.

To support its reform agenda, the Australian government has relocated regulatory oversight functions to the Department of the Prime Minister and Cabinet; established stakeholder advisory bodies for each ministry to consult on regulatory reform opportunities; and incentivised portfolios to cut red tape, including through ministers providing clear expectations to regulators and senior officials, and by linking the performance of senior executive service public servants to quantified and proven reductions in regulatory burden.

Regulatory reform is also supported by the Australian Productivity Commission, an independent research and advisory body that regularly publishes in-depth reviews to inform major policy decisions. This includes benchmarking reviews of the performance of regulations in different regions or countries.

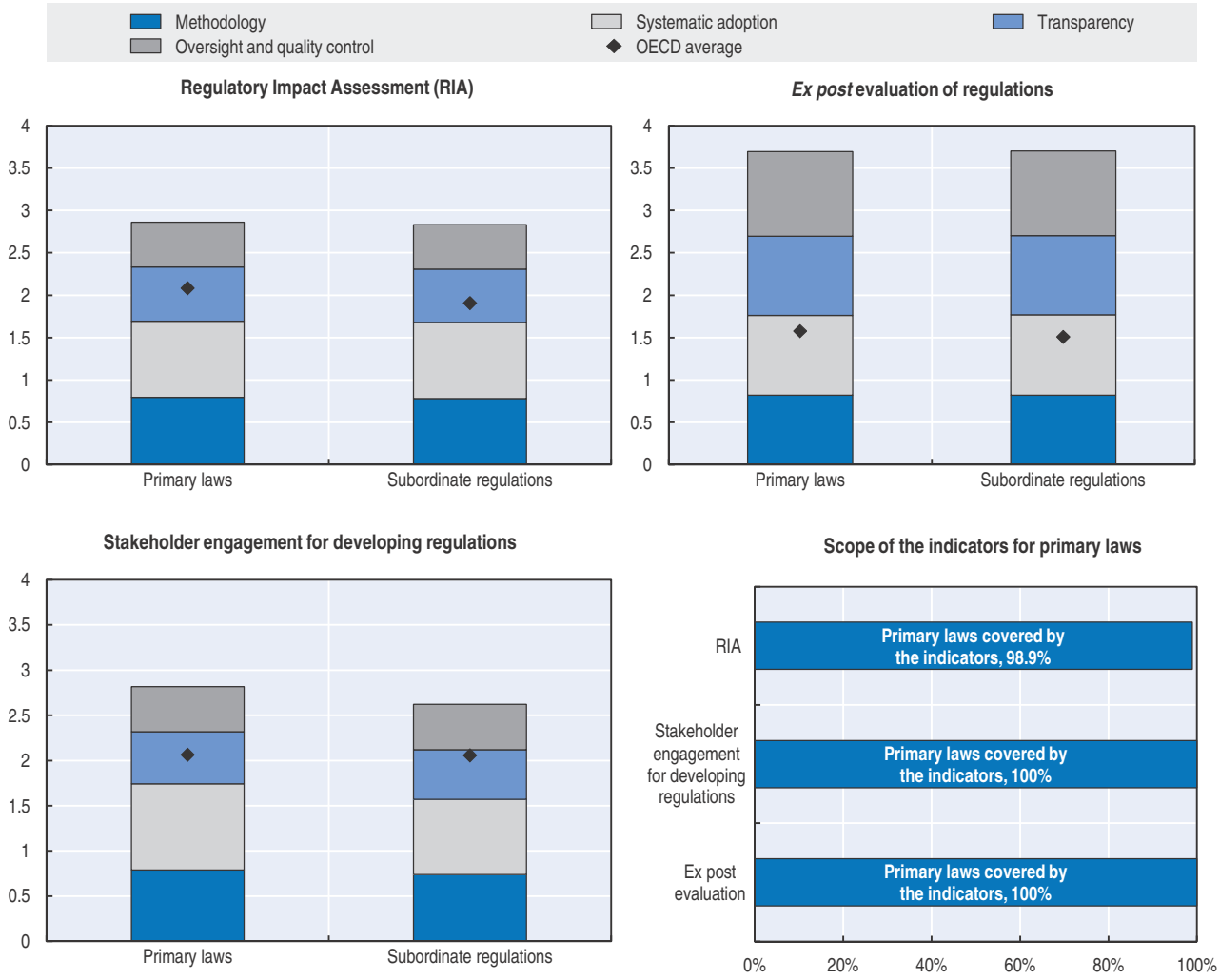
The Productivity Commission also has analysed the performance of previous RIA and *ex post* evaluation systems. The suggestions for improvement included making better use of RIA in the policy-making process and improved consultation with stakeholders. These recommendations support the revisions made to Australia's regulatory policy as part of the ongoing red tape reduction programme.

Australia's recent changes to its RIA processes included devolving responsibility for some RIA aspects to regulatory agencies. Australia could enhance its RIA system by introducing mechanisms to promote transparency of those aspects of RIA undertaken by regulatory agencies.

Spotlight: Regulator Performance Framework

In October 2014 the Australian government released the Regulator Performance Framework to encourage regulators to minimise their impact on those they regulate while still delivering the vital role they have been asked to perform. The Framework consists of six outcomes-based key performance indicators (KPIs) covering reducing regulatory burden, communications, risk-based and proportionate approaches, efficient and co-ordinated monitoring, transparency, and continuous improvement. The Framework provides measures of good regulatory performance to be used by all regulators to assess their achievement against the KPIs. All Australian government regulators will self-assess their performance against the Framework annually. A number of regulators will be subject to an external review of their performance as part of a three year programme, and a small number of regulators may be subject to an annual external review. External reviews will be conducted by review panels of government and industry representatives to provide further accountability, and provide additional transparency for stakeholders and the community in general. The Framework is based on a report by the Productivity Commission and was developed in consultation with regulators and stakeholders. The Framework will apply from 1 July 2015.

Indicators of regulatory policy and governance, Australia



1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.
2. The information presented in the indicator for primary laws on RIA only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in Australia approx. 99% of primary laws are initiated by the executive, the indicator on RIA covers approx. 99% of primary laws. There is no formal requirement in Australia for conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on stakeholder engagement and *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. The percentage of primary laws initiated by parliament is an average between the years 2011 to 2013.

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

StatLink http://dx.doi.org/10.1787/888933263041

Austria

Overview

Austria has recently introduced major regulatory reforms. Since 2013, all new primary laws and subordinate regulations have to undergo a RIA, as well as an *ex post* review five years after adoption. As of April 2015, thresholds based on various impact dimensions have been introduced to improve proportionality in the RIA framework. If these thresholds are not exceeded, a simplified RIA may be conducted.

The Federal Performance Management Office at the Federal Chancellery functions as a RIA oversight body, reviews the quality of RIAs and provides guidance for government officials. The Office also publishes annual reports on the implementation of the RIA system. The Federal Ministry of Finance plays a leading role in the reduction of administrative burdens. In 2012, the target of reducing 25% of administrative burdens for business was achieved. Further measures to reduce administrative burdens for citizens are also in progress.

The requirement for consultation does not cover all regulations. Consultation on draft regulations prevails, while early-stage consultations about the nature of the problem and possible solutions are only carried out in some cases and on an informal basis. Consulted stakeholders are granted in general six weeks to provide feedback. The public can provide comments on some draft primary laws via the website of the parliament. Austria would benefit from making greater use of stakeholder engagement tools that engage a wider public, such as interactive websites and public consultations over the internet with invitation to comment, and by carrying out consultations at an earlier stage.

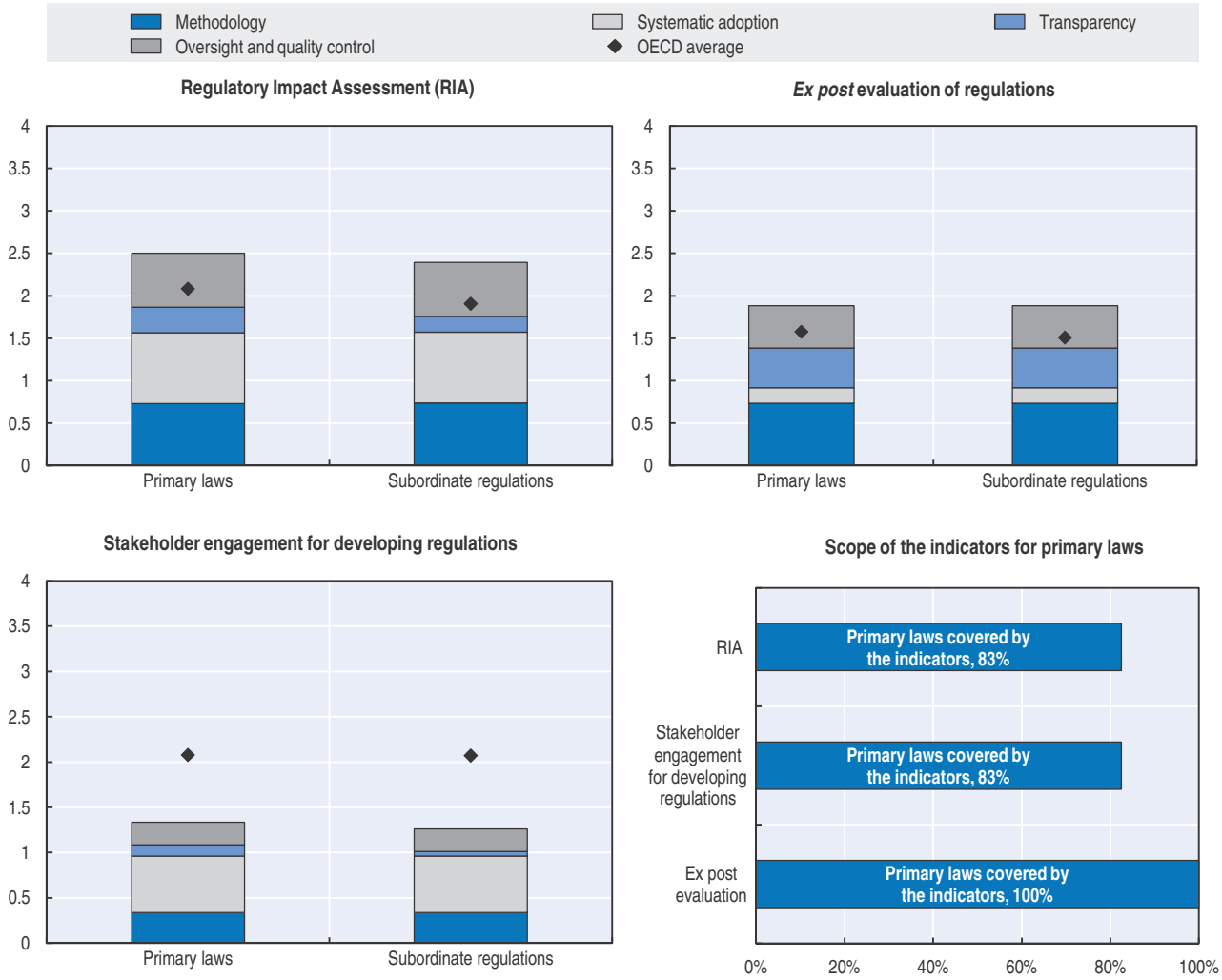
The formal requirements entered into force in 2013 for conducting *ex post* evaluations are quite extensive, asking inter alia for an assessment of the achievement of underlying policy goals, a comparison of actual and predicted impacts, and the identification and quantification of costs and benefits and unintended consequences. Since April 2015, these requirements for *ex post* evaluation are limited to regulations for which full RIAs have been conducted. The administration has only started to carry out first *ex post* reviews, so that as of now there is little experience in the implementation of these requirements.

Spotlight: The inclusion of gender objectives in Austria's regulatory framework

In the context of reforms towards greater outcome orientation, the Austrian administration aims to strengthen gender equality policies by enforcing a higher level of policy coherence. Austria endeavours to streamline policies in one coherent system ranging from the budget level to the level of individual projects and regulations.

Austria has included gender objectives in budgeting practices and ran a series of workshops to better align different gender objectives and indicators to improve the horizontal co-ordination between different policy actors. The assessment of impacts on the equality of men and women is mandatory in all RIAs. Guidance for this assessment is provided in a separate chapter of the RIA handbook. Areas to be screened for gender impacts include benefits granted by the government to citizens and businesses, education, employment, income, public revenues collected, health, and political participation.

Indicators of regulatory policy and governance, Austria



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

StatLink *http://dx.doi.org/10.1787/888933263054*

Belgium

Overview

Belgium has made progress towards strengthening policies and institutions aimed at improving regulation at the federal level. Formal consultations are often conducted with social partners, and the RIA, which is mandatory for all primary and subordinate legislation submitted to the Cabinet of Ministers at the federal level, is usually shared with social partners as a basis for consultation. Parliament and social partners have welcomed the RIA as a useful tool to facilitate policy coherence. Periodic *ex post* review of legislation is mandatory for some legislation and sun-setting clauses are sometimes used. In 2013 and 2014, a comprehensive review of economic legislation led to the development of a new code of economic law. *Ex post* review of legislation is facilitated through a parliamentary committee that can initiate reviews also at the request of citizens. Within the executive, since 2013 the Agency for Administrative Simplification (ASA) within the Prime Minister's Office, which was responsible for assessing administrative burdens, is also responsible for the whole better regulation policy. The ASA co-ordinates the RIA in partnership with four other ministries (economy, equality of women and men, sustainable development and development co-operation). An Impact Assessment Committee can provide advice on the RIA at the request of the responsible ministry.

Some areas appear to need further improvement. Ways of reaching out to the wider public could be strengthened, for instance, through a single central government website listing all ongoing consultations. The decision to bypass consultation could be also made public (as it is not currently the case). While RIA can be shared with social partners during consultation, it is not released for consultation with the general public. Also, the scope and focus of the RIA is adapted depending on the theme of the proposed legislation, without however a more formal threshold test. Such test could help better align the depth of the analysis and the resources to conduct it with the expected impact of the proposed legislation. While some *ex post* reviews assess whether the underlying policy goals of the regulation have been achieved, this requirement could be extended to all reviews to adequately evaluate the effectiveness of regulation and whether additional regulatory and/or non-regulatory interventions are needed.

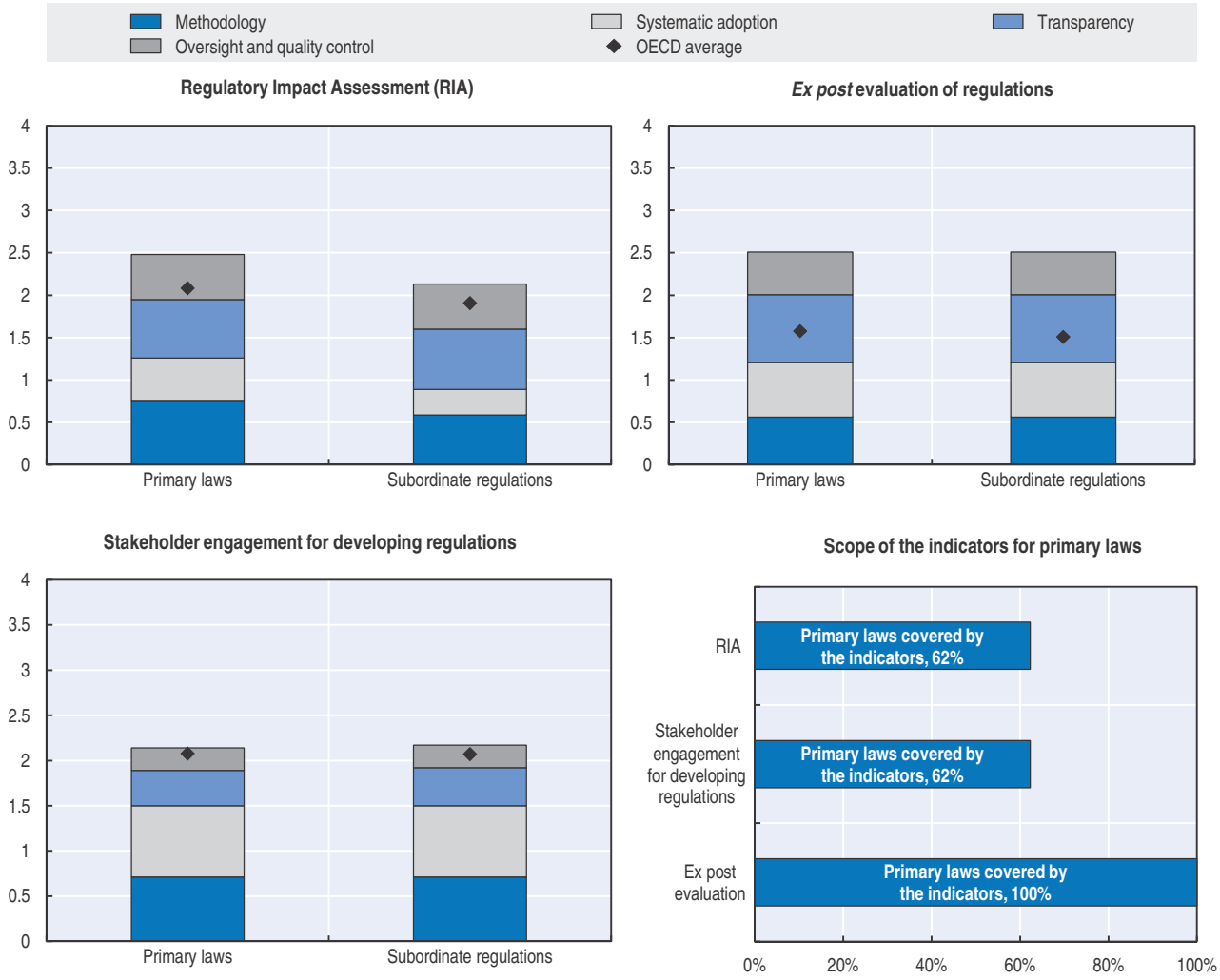
Spotlight: Engaging stakeholders in *ex post* reviews

Every two years, the Federal Planning Office conducts a survey on administrative burdens on business. Seven thousand enterprises are surveyed by mail and by phone. A website (*www.kafka.be*) also allows citizens and businesses to signal burdensome procedures.

Since 2007, a Parliamentary committee composed of 22 members of the Chamber of Deputies and the Senate is responsible for evaluating adopted federal legislation and improving its quality. Business, citizens or the public administration can signal issues related to existing legislation and the Committee can launch an evaluation and propose changes of an existing law.

www.simplification.be/fr/content/enquete-biennale; *www.comitesuivilegislatif.be/indexF.html*.

Indicators of regulatory policy and governance, Belgium



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2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only cover processes of developing primary laws that are carried out by the executive branch of the national government. As in Belgium approx. 62% of primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement cover 62% of primary laws. There is no formal requirement in Belgium for consultation with the general public and conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. The percentage of primary laws initiated by parliament is an average between the years 2011 to 2013.

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

StatLink *http://dx.doi.org/10.1787/888933263061*

Canada

Overview

In Canada the processes and requirements for developing primary laws (Acts) and subordinate regulations (regulations) differ significantly. Subordinate regulations typically elaborate on the general principles set in Acts and set out detailed requirements for regulated parties to meet. As such, the number of regulations made in a given year vastly outnumbers the number of Acts. The process for developing primary laws is outlined in the Cabinet Directive on Law-Making. The requirements for subordinate regulations are laid out in the Cabinet Directive on Regulatory Management (CDRM 2012). The Treasury Board of Canada Secretariat is responsible for providing oversight for subordinate regulations, playing a key role in helping to assure regulatory quality. For primary laws, Cabinet, supported by the Privy Council Office, is responsible for providing oversight in the areas of consultation and *ex post* analysis, and the quality of impact assessments are reviewed by the Privy Council Office.

When developing primary laws an assessment of impacts is presented to Cabinet. The full evidence and evaluation is not made publically available on a systematic basis prior to the regulation being put before parliament. As in other OECD countries, all primary laws are subject to parliamentary scrutiny. This normally includes a parliamentary committee study, where witnesses have an opportunity to publicly comment on the proposal. Some primary laws contain provisions to be periodically reviewed.

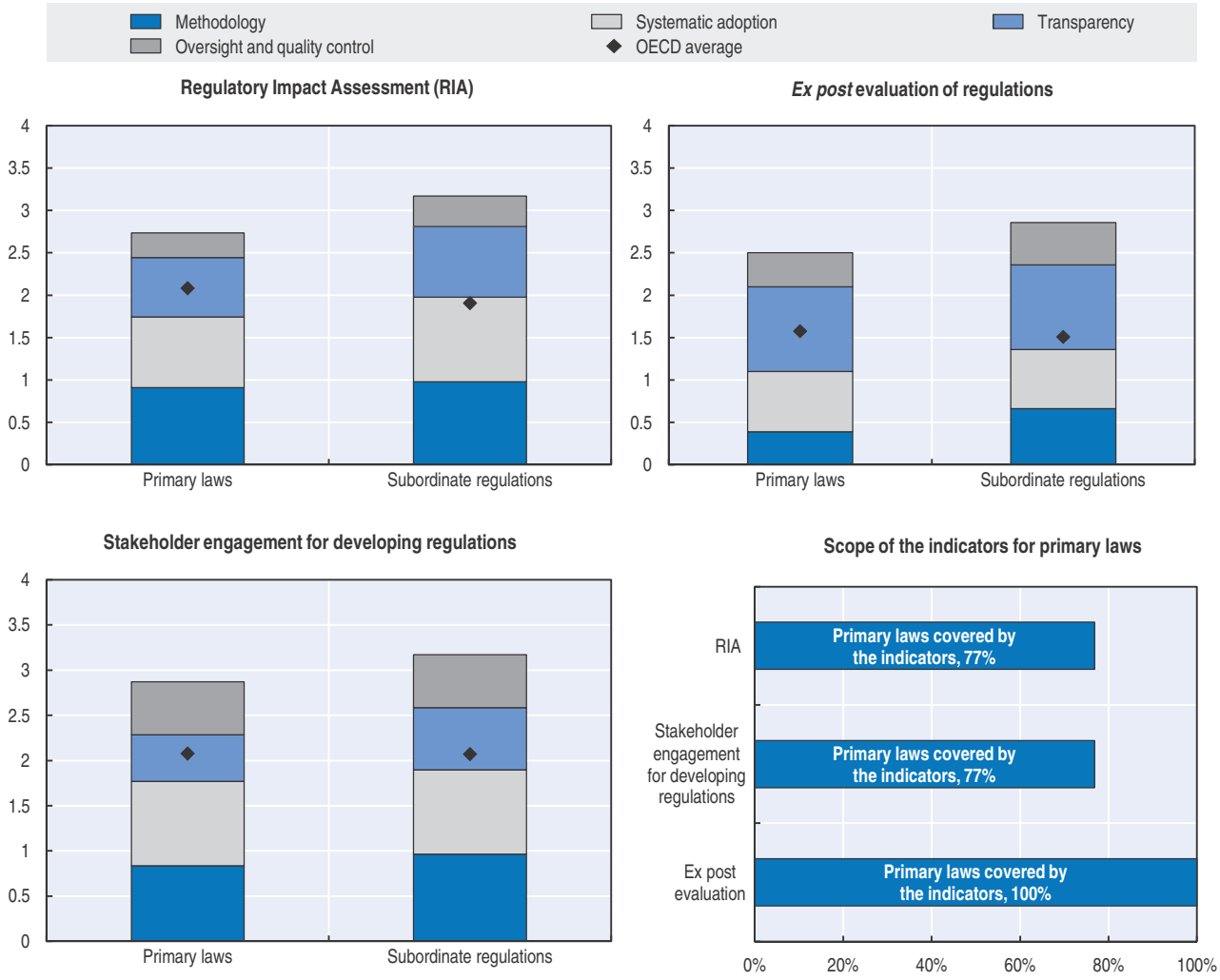
The processes for developing subordinate regulations are generally more detailed and transparent. A detailed RIA is mandatory for all subordinate regulations and all RIAs are made publically available on a central registry. Open consultation is conducted for all subordinate regulations and regulators must indicate how comments from the public have been addressed (unless the regulatory proposal is exempted from pre-publication). All subordinate regulations are subject to evaluation requirements, in accordance with the Treasury Board Policy on Evaluation.

The Treasury Board has recently published an annual Scorecard Report on the reduction of administrative burdens the results achieved in implementing systemic reforms under the government's Red Tape Reduction Action Plan. Similar reports regarding the quality of other areas of regulatory policy such as the functioning of the RIA system could support the existing strong oversight mechanisms.

Spotlight: Cabinet Directive on Regulatory Management

The recently introduced Cabinet Directive on Regulatory Management (CDRM 2012) sets out the roles and responsibilities for federal regulators in developing subordinate regulations. Key requirements include: early identification of a potential public policy issue; conducting strong and evidence-based analysis both in an preliminary triage statement of expected impacts and a detailed RIA; conducting widespread and meaningful stakeholder engagement; international regulatory co-operation; planning for implementation, issues of compliance and enforcement; and measuring, evaluating and reviewing regulation. The Treasury Board Secretariat plays a challenge function throughout this process and ensures that all key steps are followed, providing support and advice to regulators on all analytical requirements. The CDRM incorporates the regulatory reforms outlined in the Red Tape Reduction Action Plan (RTRAP). The cornerstone of the RTRAP, the one-for-one rule, controls both the number of regulations and the growth of the administrative burden on businesses. The rule requires regulators to reduce existing regulatory administrative burden on business equal to any new burden imposed. Also, each time a brand new regulation that imposes administrative burden is introduced, an existing regulation must be removed.

Indicators of regulatory policy and governance, Canada



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2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in Canada approx. 77% of primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement cover approx. 77% of primary laws. There is no formal requirement in Canada for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. In the Canadian context, laws initiated by the executive are called Government Bills and laws initiated by parliament are called Private Members' Business. The percentage of primary laws initiated by parliament is an average between the years 2011 to 2013.

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

StatLink *http://dx.doi.org/10.1787/888933263071*

Chile

Overview

Key national regulations provide the general framework for administrative procedures and an efficient state administration. However, the lack of a comprehensive regulatory reform programme has reduced the possibilities to achieve better economic outcomes and unleash resources to boost productivity. There is evidence that the Chilean regulatory stock is complex, with a constant yearly production of laws. As there is no RIA system in place, most regulators prepare norms without clear evidence that this is the best way to intervene, and good practices in rule-making procedures are rather limited. The government of Chile has launched the National Agenda for Productivity, Innovation and Growth, which constitutes a good framework to use regulatory reform as a driver to foster these goals. Measure 33 of this agenda, for example, states that a regulatory oversight body should be established.

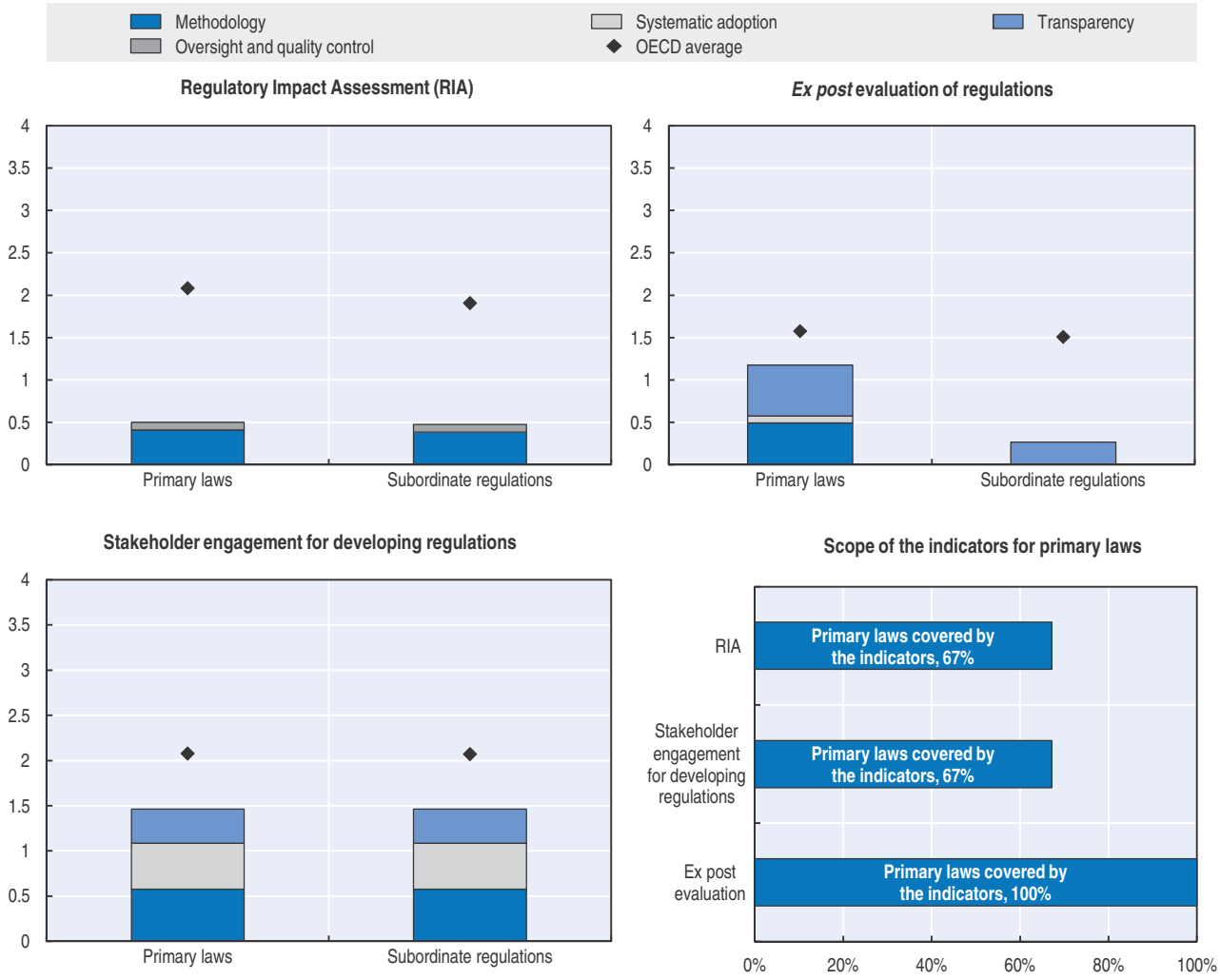
Even though recent reforms have mandated an upgrade of consultation mechanisms (i.e., Law No. 20 500 and Presidential Instruction No. 7 of 2014), there is no standard consultation practice for the whole-of-the-state administration and criteria (i.e., length, scope, timing, and procedures) still have to be consistently applied.

Four institutions play key roles in the rule-making process. The Ministry General-Secretariat of the Presidency (SEGPRES), the Ministry of Finance, the Ministry of Economy, and the General Comptroller of the Republic. However, one of the main weaknesses of Chile's institutional set up for regulatory reform is the lack of a regulatory oversight body.

Spotlight: The Law Evaluation Department (LED)

The Chamber of Deputies has made relevant progress in setting up a Law Evaluation Department (LED) that conducts *ex post* evaluations of selected laws. The LED developed a three-stage methodology to evaluate the effectiveness of laws, consisting of a technical analysis of the law, citizens´ perception, and the preparation of a final report. The LED has also designed tools to collect information about citizen perception, such as online questionnaires, online chats, focus groups, and workshops. In addition, it built a database containing registries of civil organisations and experts that regularly participate in legislating, supervising, or representing stakeholders. Reports are published and used as input for discussions on law amendments. The Department is exploring the possibility to also conduct reviews on secondary regulations.

Indicators of regulatory policy and governance, Chile



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

StatLink *http://dx.doi.org/10.1787/888933263081*

Czech Republic

Overview

The Czech Republic has made a significant progress in ensuring regulatory quality, especially by strengthening its Regulatory Impact Assessment process and its quality oversight through establishing an independent watchdog (see the Spotlight box). While a dedicated unit exists in the Government Office for RIA, there is no single body responsible for a whole-of-government regulatory policy.

The RIA system is quite strong as all draft primary and secondary legislation prepared by the executive has to be accompanied by an impact assessment. The quality of impact assessments could be strengthened especially in terms of quantifying all impacts.

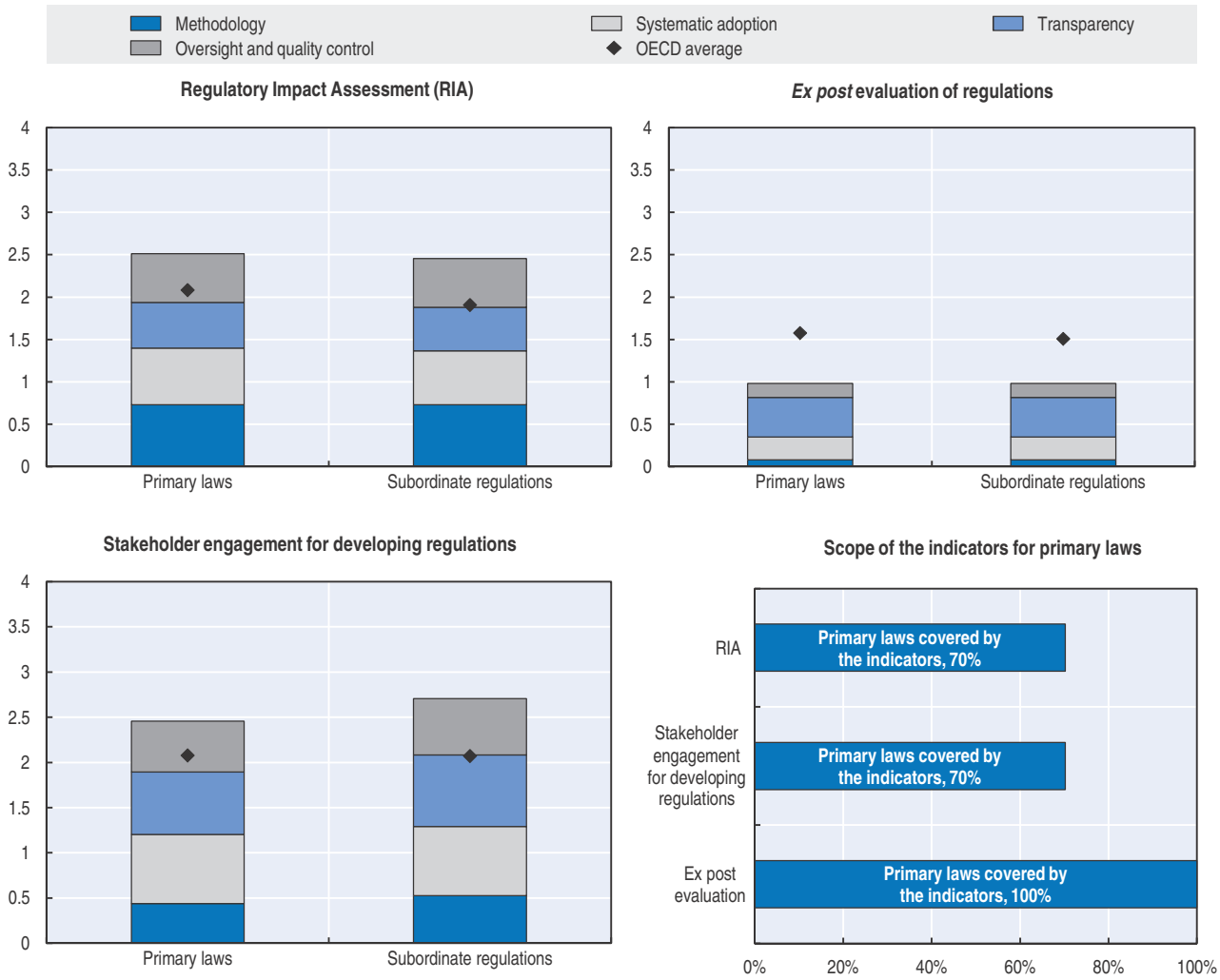
Consultations on every draft regulation developed by the executive are conducted automatically. All legislative drafts which are submitted to the government are published on a government portal and anyone can submit comments to the responsible ministry. There are, however, no rules for handling such comments. In addition, this channel for consultation is used insufficiently due to the lack of information on ongoing consultations among the public.

The Czech Republic was among the first to launch a programme on reducing administrative burdens. Cutting red tape is still a priority for the government, however, contrary to many other countries, the focus has not been widened to other regulatory costs. Evaluation of the performance of existing regulations takes place usually on an ad hoc basis and is used rather rarely.

Spotlight: Review of effectiveness of Regulatory Impact Assessment

The RIA Board is one of the commissions of the Legislative Council of the Government – an independent advisory body to the government overseeing the quality of legislative drafts. The Board consist of independent experts, mostly economists, representatives of business associations, academics and other experts. The Board discusses the quality of impact assessments provided with draft regulations submitted to the government, gives suggestions on improving these IAs and has a right to issue a negative opinion to the adoption of proposals due to insufficient quality of IAs. It also provides recommendations on the necessity of producing an RIA on planned legislative drafts when they are listed in an annual legislative plan. The quality of government RIAs improved significantly subsequent to the establishment of the Board in November 2011.

Indicators of regulatory policy and governance, Czech Republic



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

StatLink *http://dx.doi.org/10.1787/888933263099*

Denmark

Overview

Regulatory reform has been on the agenda of the Danish government for over two decades. Initial policies for regulatory quality and simplification were established in the early 1980s as part of a comprehensive deregulation programme to modernise the economy. They aimed mainly at removing regulations harmful to the competitiveness of the business sector. Over the years the focus moved from "deregulation" to "regulatory quality".

Since 2000, Better Regulation has integrated efforts to improve the law-making process, as well as the simplification of existing regulations, in particular through the reduction of administrative burdens.

Developments in consultation practices (i.e., public hearings, notice-for-comment on dedicated websites in preparation for larger reforms, and the establishment of the Consultation Portal in 2005) are boosting transparency and the engagement of a wider range of stakeholders. This is reinforcing a tradition of deeply anchored consultation with key stakeholders, as well as extending the reach of consultation to a broader audience. Communication on new regulations is particularly robust.

Requirements for *ex ante* impact assessment have been significantly reinforced since 2000. As of January 2015, new requirements for RIA have been established. All ministries must conduct RIAs on the compliance costs for businesses of all new regulation with significant consequences for the business sector. If a proposal has major impacts, these must be quantified before the consultation process. The RIA is then published as part of the consultation to increase transparency and facilitate the removal of any unnecessary burdens.

The development of new regulation is carried out within a well-organised framework. However, the Danish impact assessment system could benefit from a streamlined institutional monitoring framework. Currently a dispersed map of institutional responsibilities weaken overall management and monitoring and slow the spread of further culture change among ministries. Furthermore, strengthening the system for *ex post* evaluation to ensure *ex post* evaluation of regulations is conducted systematically, could improve significantly the quality of the stock of regulation.

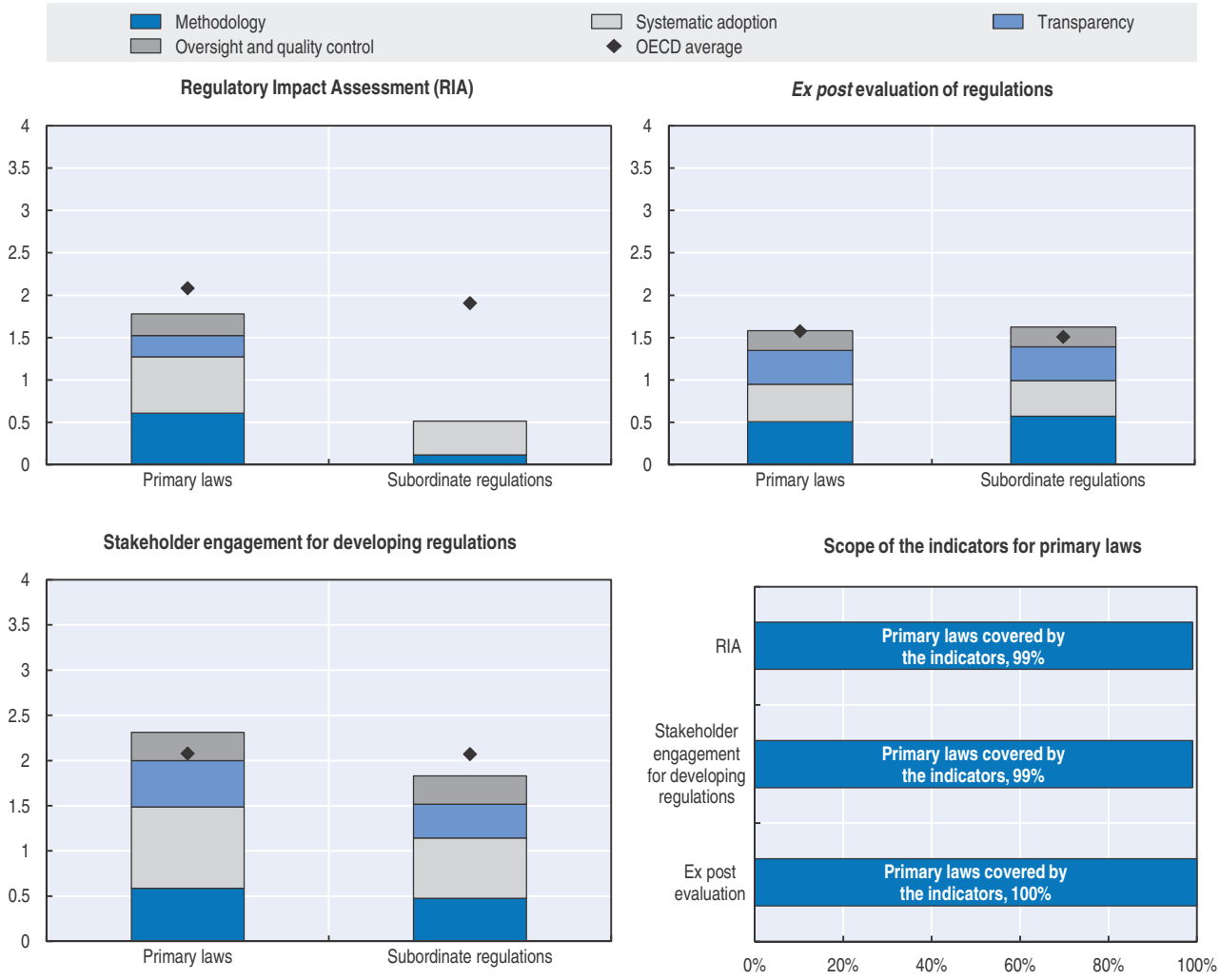
Spotlight: Business Forum for Better Regulation

The Business Forum for Better Regulation was established in 2012 to ensure a renewal of business regulation in close connection to the business community. It identifies areas that businesses perceive as most burdensome and proposes simplification measures.

The Business Forum has members representing both business and labour organisations, as well as experts in the area of administrative simplification. The proposals made by the forum are governed by a "comply or explain" principle, which means that the government is obliged to either follow the proposed initiatives or to explain why these are not pursued. So far, the forum has sent 460 proposals for simplification. The Danish government has replied to 419 submissions and complied with 341 proposals fully or in part. The status of the initiatives can be tracked at www.enklereregler.dk (in Danish).

The *Burden Hunter method* is sometimes used in the preparation of initiatives from the Business Forum. It involves working with end-users of regulation to understand how they are affected by administrative tasks required by authorities and develop smarter regulation. Methods used include observation studies, process mapping, expert interviews, nudging, service design etc.

Indicators of regulatory policy and governance, Denmark



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

StatLink *http://dx.doi.org/10.1787/888933263102*

Estonia

Overview

Estonia recently implemented significant reforms to improve its regulatory system. In 2012, it adopted "The guidelines for development of legislative policy until 2018" which form the basis for an explicit whole-of-government policy for regulatory quality. The document defines an activity plan for improving the quality of regulatory activity. It sets down common principles of legislative policy and long term principles that the public sector has to consider upon planning its activities. The aims and obligations deriving from the guidelines are given a precise content in different acts, most importantly in "The rules of legislative drafting". A formal methodology of impact assessment which also covers *ex post* evaluation and regulatory oversight was endorsed by the government in December 2012.

The Minister of Justice has responsibility for promoting regulatory reform. The Legislative Quality Division of the Ministry of Justice provides an oversight and challenge function for RIAs and *ex ante* evaluations with regards to primary legislation. For government strategies, EU negotiations and subordinate regulations, oversight responsibilities lie within the Government Office.

Later stage online consultation is conducted for all major primary laws accompanied by a draft text of the regulation and explanatory memorandum. In 2007, a participation website, *www.osale.ee*, was introduced to allow interactive communication between regulators and the general public. Implementing systematic consultation earlier in the process to inform officials about the nature of the policy problem and identifying policy options to address the problem could help improve the design of regulations.

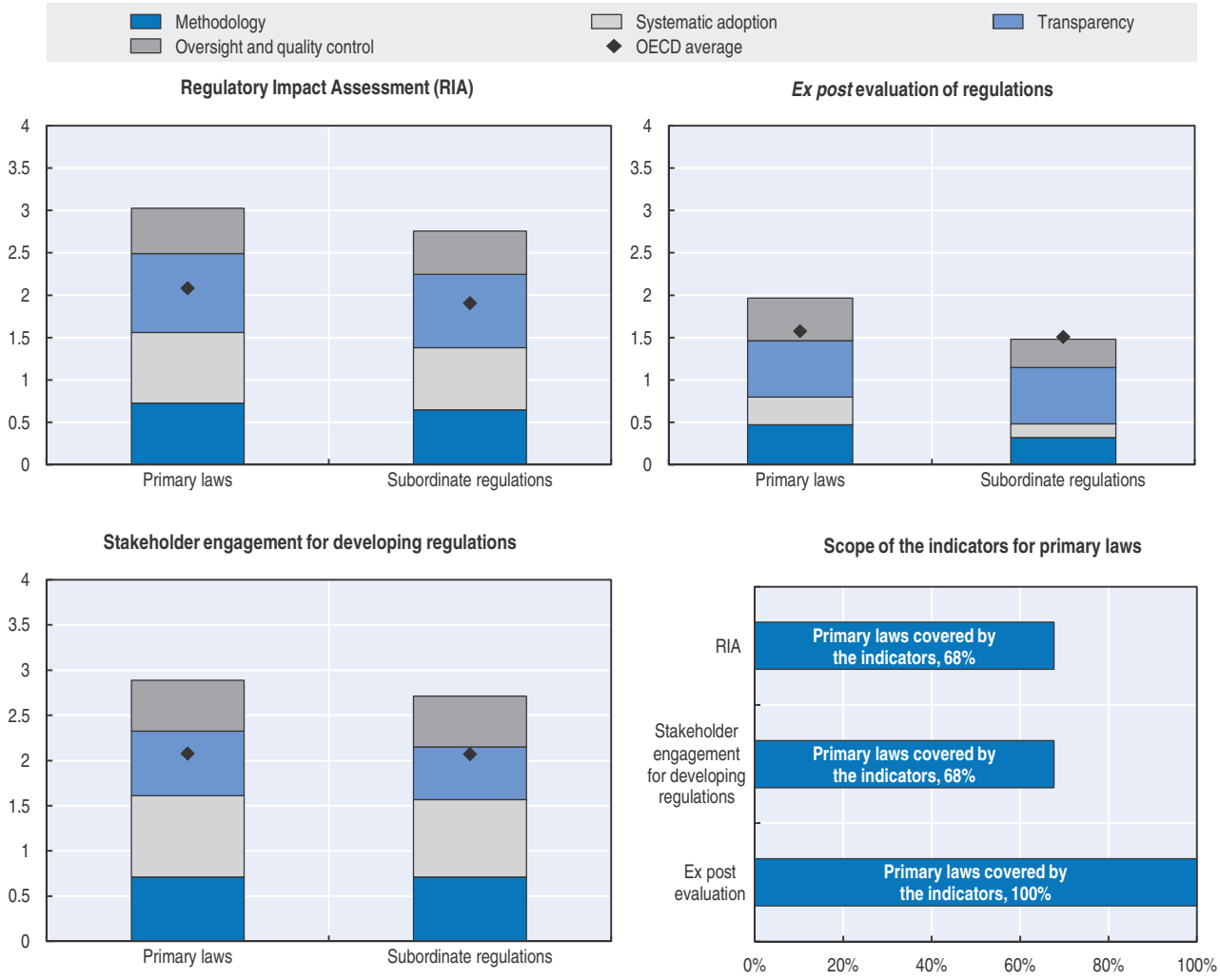
Preliminary RIA is conducted in practice for all primary laws and selected subordinate regulations. The necessity for conducting an in-depth RIA is determined by applying a threshold test. Having established the requirement and a comprehensive methodology for conducting RIA, Estonia would benefit from an assessment of the effectiveness and usefulness of its current RIA system, and thus trace gaps in its implementation and identify areas for improving the quality of RIA.

In 2012, Estonia introduced the obligation to conduct *ex post* evaluation for all new major primary laws adopted, but no *ex post* evaluations have yet taken place.

Spotlight: Use of online tools for greater transparency

The government of Estonia has placed a strong focus on accessibility and transparency of regulatory policy by making use of online tools: There is an up-to-date database of all primary and subordinate regulations (*www.riigiteataja.ee/*) in an easily searchable format; and an online list of primary laws to be prepared, modified, reformed or repealed within a year (*www.just.ee/et/eesmargid-tegevused/oiguspoliitika/oigusaktide-moju-analuus*). An online information system tracks all legislative developments, and makes available RIAs and documents of legislative intent (*http://eelnoud.valitsus.ee/main*). Estonia also established the website *www.osale.ee/*, *an interactive website of all ongoing consultations* where every member of the public can submit comments and review comments made by others.

Indicators of regulatory policy and governance, Estonia



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

StatLink *http://dx.doi.org/10.1787/888933263119*

European Commission

Overview

The European Union is based on a common political and legal foundation, mainly the Treaties and European legislation. The European Commission, as the executive of the Union, proposes new initiatives and legislation, which are adopted by the European Parliament and the Council, and monitors the application of Union law in the 28 Member States. The Member States are responsible for the effective implementation and enforcement of European law.

The European Commission has developed a comprehensive Better Regulation policy, with independent oversight functions for regulatory policy placed within the Commission's Secretariat General under the special responsibility of the Commission's First Vice-President. The Commission, which initiates all EU legislation, is required to engage with stakeholders in the early stages of development of major primary and subordinate legislation. Stakeholders are informed of upcoming consultations through roadmaps listing planned new legislation and amendments to existing legislation. The Commission is also required to conduct RIAs for major primary and secondary legislation. An Impact Assessment Board reviews RIAs and an opinion of the Board is a prerequisite for a proposal to be considered by the Commission. A dedicated unit in the European Parliament also conducts an assessment of the RIA once the proposal is submitted to the Parliament. In addition, the Commission is also required to undertake proportionate *ex post* assessment of legislation.

Some areas could be further improved. For example, legislative initiatives could be consulted with stakeholders not only in the early stages of development but also systematically at the proposal stage (which is currently only the case for social policies, where social partners are consulted, and for implementing and delegated acts, where consultation takes place through committees of national experts). The RIA could be part of this consultation process. The Commission already makes significant efforts to systematically evaluate legislation *ex post*. Some additional steps could contribute to strengthening these assessments. For example, more legislation could be systematically subject to *ex post* evaluations. A threshold with objective and transparent criteria for determining the depth and scope of the evaluation could help better calibrate resources and enhance transparency of what is being evaluated. The Commission adopted on 19 May 2015 a package of better regulation measures, which includes new commitments on many of these issues.

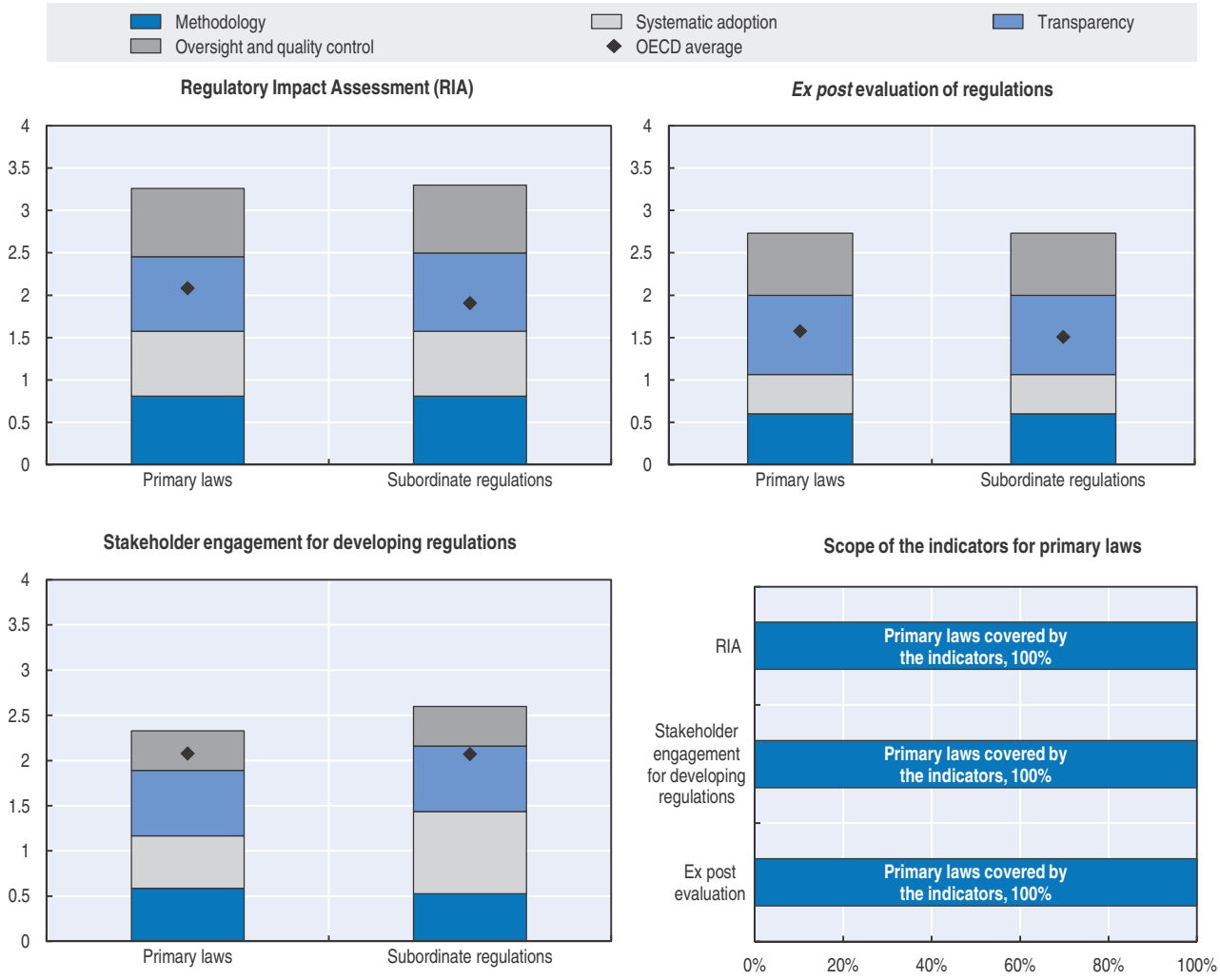
Spotlight: *Ex post* evaluation of legislation and regulatory policy

In 2010, the Commission introduced Fitness Checks to evaluate regulatory areas and identify gaps, overlaps, inconsistencies, administrative burden and cumulative impacts. Fitness checks have been scaled up following the launch of a REFIT programme in 2012, which is aimed at assessing administrative burden in the EU. The Commission, with the help of Member States, has measured administrative burdens related to Community legislation and national transposition.

Regulatory policy has also been evaluated. In 2010, the European Court of Auditors completed an audit of the RIA, analysing RIA procedures, use and content.

The Commission also reports on the performance of key aspects of the application of EU law to the other European institutions and on its application of the subsidiarity and proportionality principles, which determine to what extent the EU can exercise the competences conferred upon it by the Treaties.

Indicators of regulatory policy and governance, European Commission



1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.
2. Results presented apply to all legislation (regulations, directives and implementing and delegated acts) initiated by the European Commission, who is the sole initiator of legislation in the EU system.

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

StatLink http://dx.doi.org/10.1787/888933263124

Finland

Overview

Finland's policies for Better Regulation have been continuously developed over the last 40 years. The basis for the current system is the 2006 Better Regulation Strategy which laid out key policy measures for improving the quality of legislation including: measures to improve transparency, stakeholder engagement and analysis of impacts. This strategy was adopted as part of the 2007 Government Programme and commitment to the programme was reiterated as part of the 2011 Government Platform.

In Finland, Regulatory Impact Analysis is formally required and conducted in practice for all primary laws, and must include the assessment of alternative regulatory and non-regulatory options. According to guidelines, RIA for subordinate regulations is only required "when applicable" and takes place in practice for some regulations. Due to the fact that subordinate regulations originate from delegated powers written in primary legislation their impacts are, however, often assessed alongside those of primary legislation.

Stakeholder engagement is required for all primary and subordinate regulation. The use of interactive websites and social media are well established, as well as public meetings and formal consultation with social partners, business, consumers, human rights organisations and other authorities. Comments from consultations are made available on-line and regulators are formally obliged to consider them when developing the final regulation.

Finland would benefit from introducing some form of oversight body and quality control mechanism to ensure the requirements for RIA and consultation are consistently fulfilled.

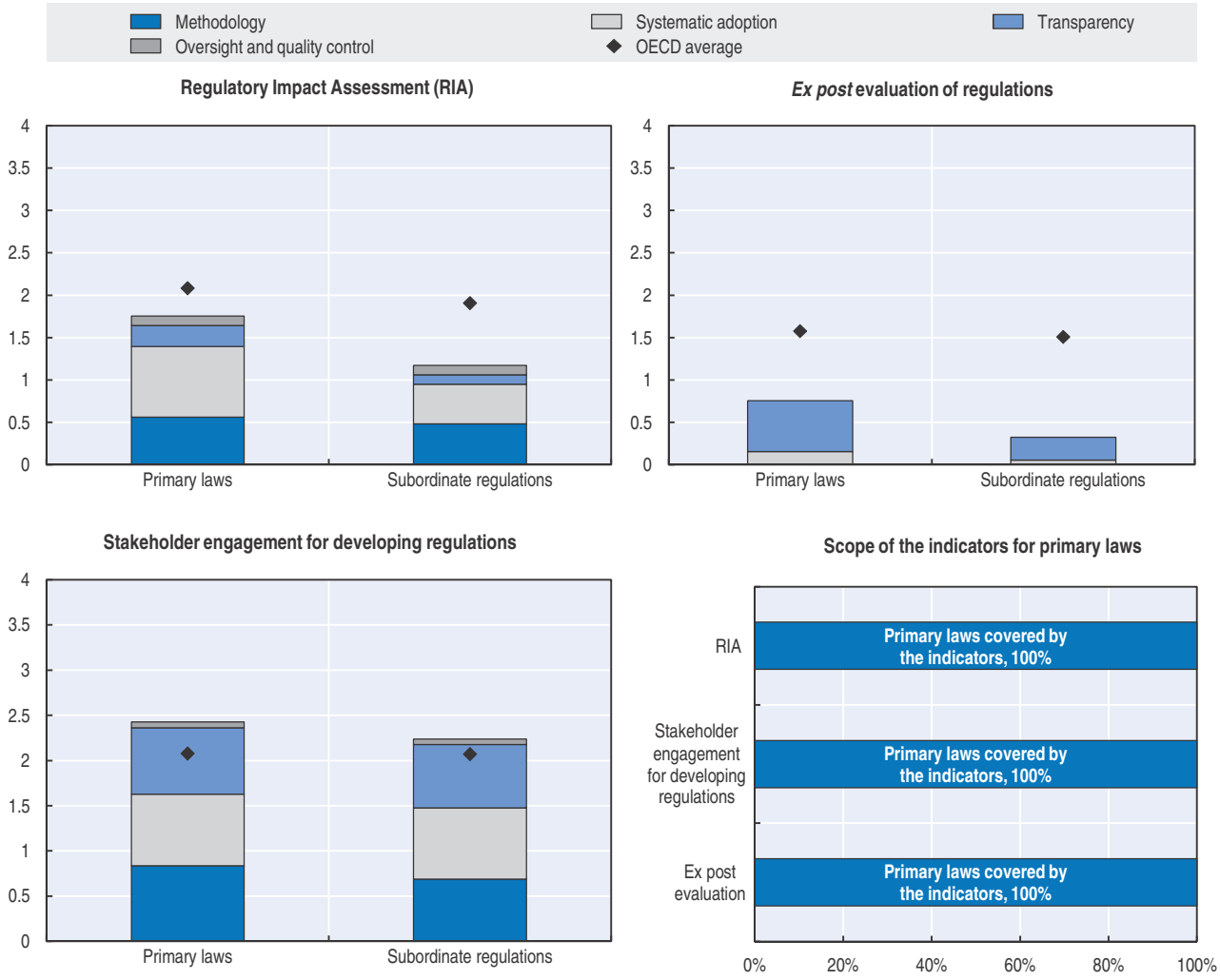
Finland has conducted ad hoc reviews of existing regulation in particular sectors and has recently introduced sunsetting clauses for some primary laws. A possible area of further regulatory development could be to introduce a process of systematic evaluation of existing regulations, including an assessment of whether the underlying policy goal has been achieved, in order to help judge if regulations are being effective in practice.

Spotlight: Stakeholder engagement platforms

The *otakantaa.fi* "Speak your mind" website is an online civic forum which allows members of the public to comment on legislative reforms and the administration of new and existing government projects. It collects information for opinion polls, asks open questions on a wide range of different initiatives and projects and also provides a platform for conversation. The forum allows for interactive stakeholder engagement to take place during the early stages of the project or legislative development.

In addition, a pilot project is underway for an online "opinions service": *lausuntopalvelu.fi*. This project aims to improve the formal consultation process, allowing representatives of ministries, agencies and organisations as well as citizens to browse and issue opinions, including commenting on the statements made by other users and allows for open discussions during a consultation. In addition the project aims to enable regulators to collate and analyse information received from stakeholders more efficiently.

Indicators of regulatory policy and governance, Finland



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

StatLink http://dx.doi.org/10.1787/888933263133

France

Overview

France has made significant efforts to place the quality of its regulatory policy system at the forefront of its priorities. Since 2009, impact assessment has been a constitutional requirement for all draft laws prepared by the executive. In 2013, the government introduced a "simplification movement" that involved the creation of a Business Simplification Council (January 2014) and the appointment of a Minister of State for State Reform and Simplification attached to the Prime Minister (June 2014). A first package of 124 business simplification measures was announced in July 2013 and 50 new business simplification measures have been announced every six months since April 2014. Measures include the "Tell us once" programme designed to reduce the provision of redundant information requested from businesses and the "silence means consent" principle for first 1 200 procedures.

However, much remains to be done to stem the regulatory inflation that is regularly denounced by business and citizens. Efforts in this area remain patchy. The government has just adopted a moratorium on new regulations (the "one-in, one-out" approach) and has announced the creation of an independent body to evaluate impact assessment studies and oversee the implementation of the moratorium on new legislation for business. However, the decision to establish this body has stalled.

In the area of environment, public consultation is a constitutional requirement. However, France could make consultation a more cross-sectoral and systematic practice including on SME's. *Ex post* evaluation of specific regulations is the exception. The launch of a major evaluation programme in 2012 provides an important foundation for systematising evaluation. In addition to programme evaluations, authorities could assess more systematically whether the goals of regulation have been achieved and systematise the approach through the development of a specific methodology.

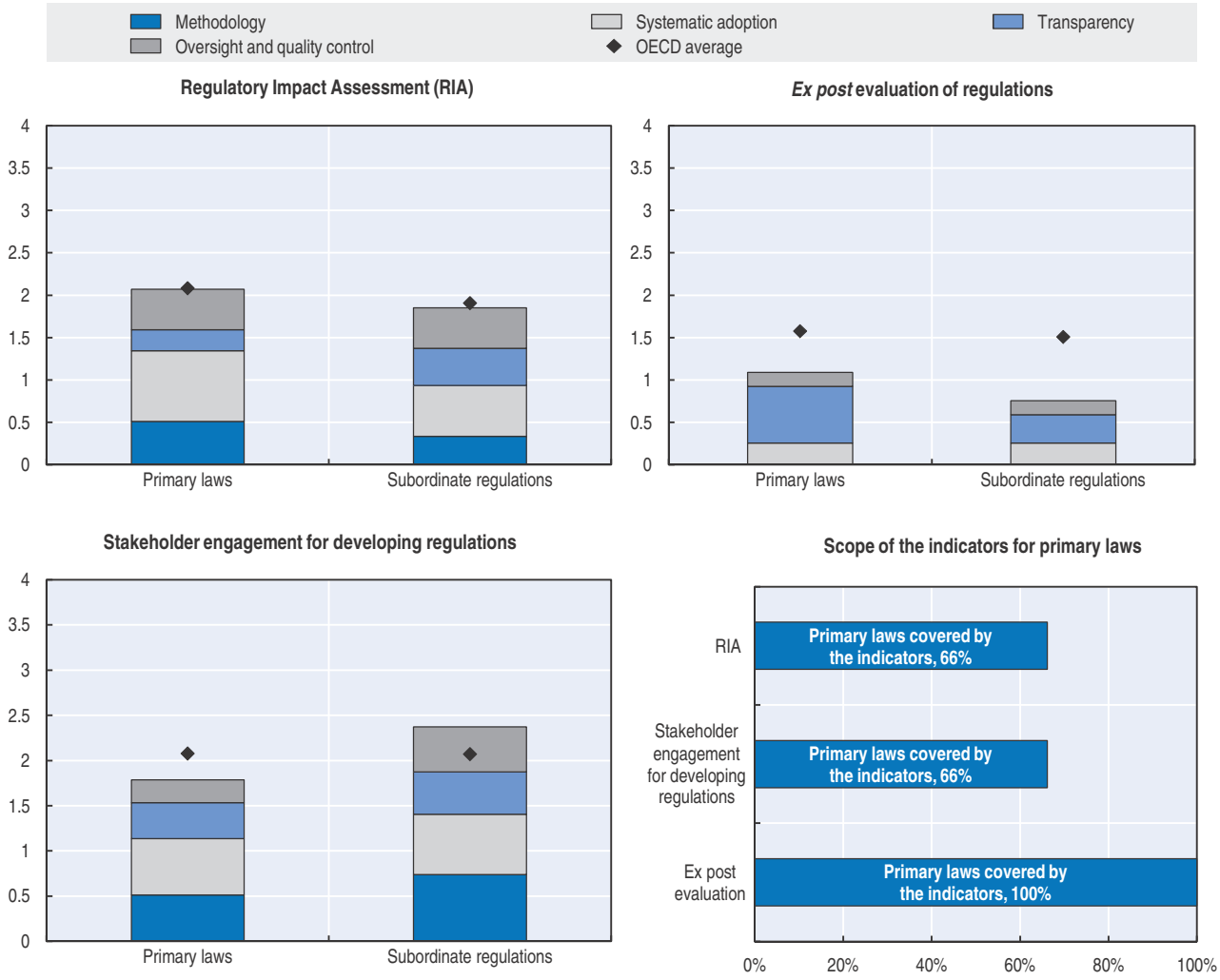
Spotlight: The Business Simplification Council

The "Business Simplification Council" (*Conseil de la simplification pour les entreprises*) is co-chaired by a parliamentarian and an entrepreneur. It brings together 14 independent members, including business representatives, elected officials, experts and senior civil servants. Collaborative workshops with business and public administration officials help define priorities, assess challenges and identify simplification measures, *www.simplifier-entreprise.fr*.

In 2012, the French government launched a major evaluation programme to simplify, improve coherence, effectiveness and efficiency of public policies.

www.modernisation.gouv.fr/laction-publique-se-transforme/en-evaluant-ses-politiques-publiques/evaluer-les-politiques-publiques#sthash.gBj3DciP.dpuf.

Indicators of regulatory policy and governance, France



1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.
2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in France approx. 66% of primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement approx. cover 66% of primary laws. There is no formal requirement in France for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. The percentage of primary laws initiated by parliament is an average between the years 2011 to 2013.

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

StatLink *http://dx.doi.org/10.1787/888933263147*

Germany

Overview

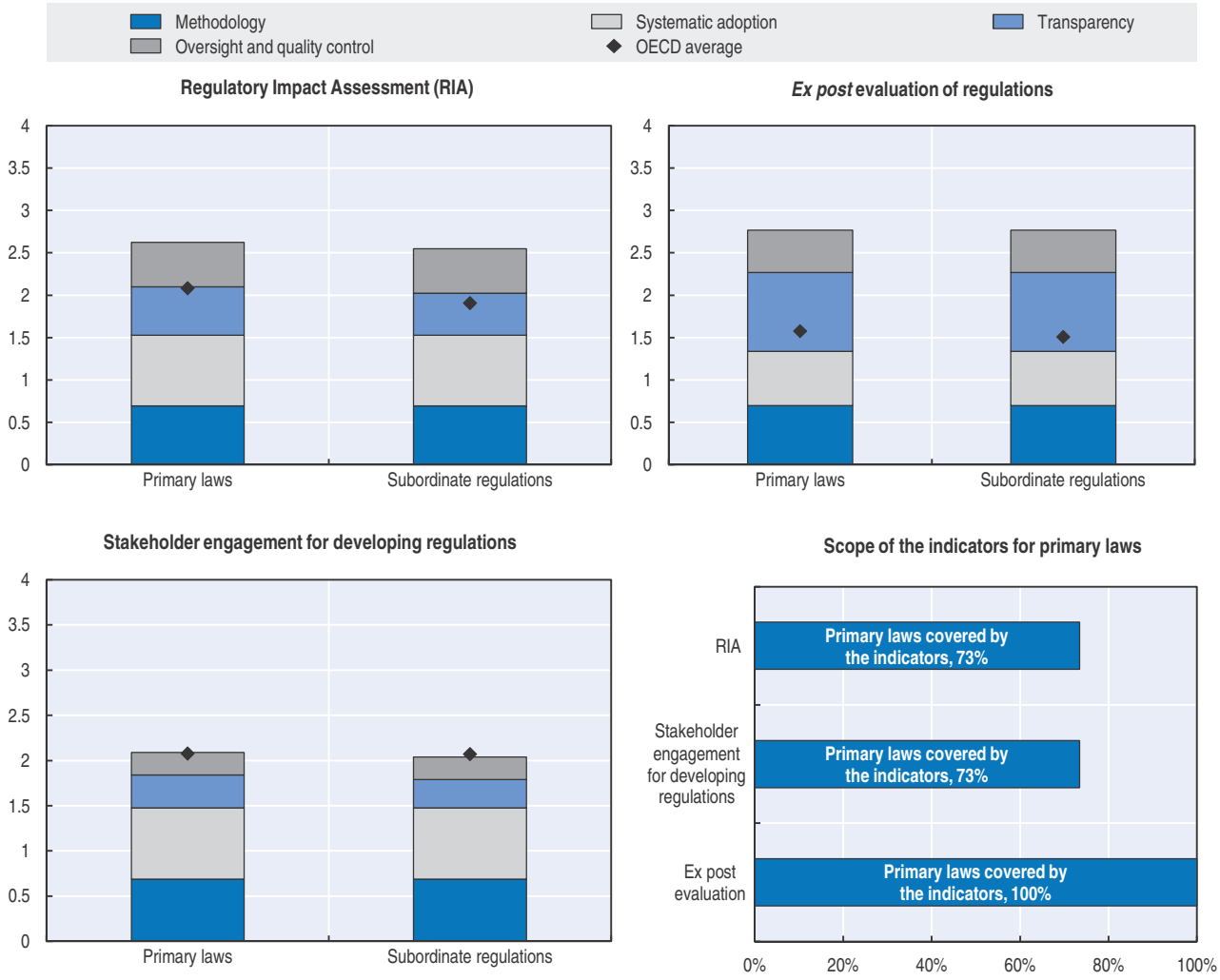
Germany has made significant improvements to its regulatory policy system over the last years. In 2013, the government introduced systematic *ex post* evaluation of regulations that create over EUR 1 million compliance costs p.a.; and in 2011, it improved its cost assessments for *ex ante* impact assessments which are conducted for all regulations and are subject to quality control by the independent National Regulatory Control Council with the involvement of the National Statistical Office. The Minister of State to the Federal Chancellor for Better Regulation is responsible for promoting government-wide progress on better regulation and a dedicated unit in the Chancellery co-ordinates and monitors the programme on the reduction of bureaucracy and better regulations. The Ministries of the Interior and of Justice and Consumer Protection examine whether the envisaged regulation is consistent with the existing legal system and other regulations.

The government has put a strong emphasis on the reduction of costs of regulation, recently introducing one-in one out rules, and has not yet fully exploited the potential of regulatory policy beyond administrative simplification. Germany may benefit from an independent standing capacity to regularly undertake comprehensive in-depth reviews of sectors or policy areas to inform large scale regulatory reforms. To put the data on costs of regulations into context, a requirement to assess the benefits of regulation could be introduced. Furthermore, while Germany has a well-established system to consult with social partners, experts and other representatives of affected parties, Germany could open consultations more systematically to the general public, release impact assessments for public consultation and systematically publish responses to consultation comments on-line.

Spotlight: Role of the Statistical Office in regulatory policy evaluation

The Federal Statistical Office in Germany currently runs representative surveys on how citizens and businesses perceive the quality of public administration and law regarding 30 real life events such as having a child, opening a business, paying taxes or employing staff. The surveys will be repeated regularly. Citizens and business can access information on users' journey through the life events on the dedicated website *www.amtlich-einfach.de* and provide feedback on their experience with each life event. The Federal Statistical Office also monitors compliance with government set goals to reduce compliance costs and administrative burdens and checks *ex post* for each law and regulation whether *ex ante* estimates of costs were accurate, updating its database on compliance costs where necessary. Furthermore, the Federal Statistical Office supports ministries in evaluating whether the goals of regulations have been met upon request.

Indicators of regulatory policy and governance, Germany



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2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in Germany approx. 73% of primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement cover approx. 73% of primary laws. There is no formal requirement in Germany for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. The percentage of primary laws initiated by parliament is an average between the years 2011 to 2013.

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

StatLink *http://dx.doi.org/10.1787/888933263158*

Greece

Overview

The law on Better Regulation, "Regulatory Governance: Principles, Procedures and Tools of Better Law Making" adopted in 2012 sets an obligation for all ministries to apply the principles of Better Regulation to all legislative developments. Major challenges, however, still persist with its implementation.

Fragmentation of responsibilities regarding regulatory policy is an issue. Responsibility for various elements rests with the Ministry of Interior and Administrative Reconstruction, the General Secretariat to the Government through the Better Regulation Office (BRO), the Ministry of Finance or with individual ministries. The BRO which should co-ordinate regulatory policy across all administrations is under-resourced and does not have sufficient competences. In times of economic crisis, regulatory quality does not seem to be the major priority for the government.

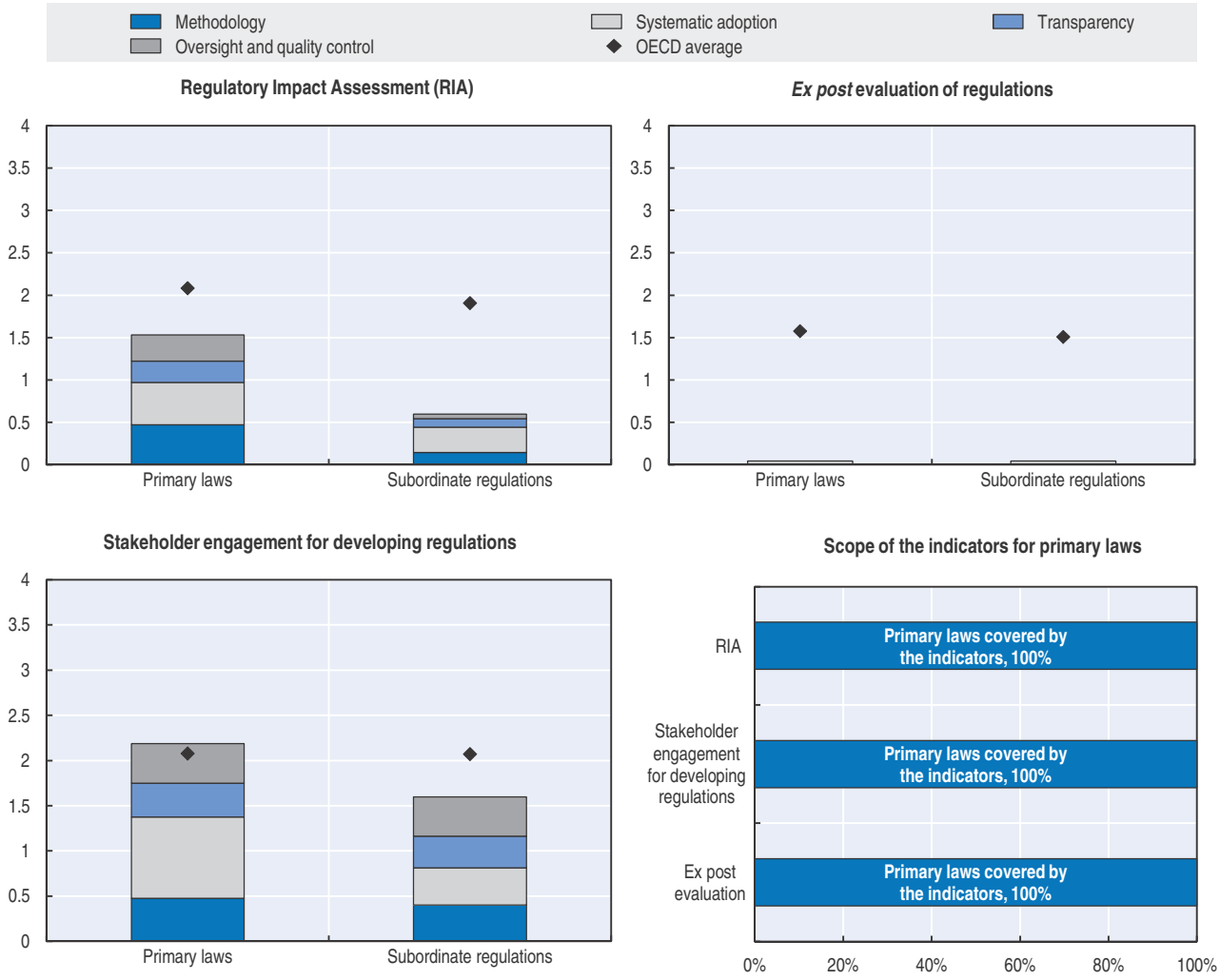
Regulatory Impact Assessment is obligatory for all primary laws, however the quality is poor due to the short period of time during which new drafts are developed. The BRO is responsible for overseeing the quality of RIA but it has no power to decline draft proposals that are accompanied by poorly developed RIA. Public consultations usually take place informally without formally set rules. Draft regulations are published on a consultation portal (*www.opengov.gr*). However, it is not clear to what extent comments received are taken into account.

Greece is lagging behind in *ex post* reviews of existing regulations. Evaluating or repealing old laws which are no longer necessary is not common practice. Reducing administrative burdens is not as widespread as in other OECD countries.

Spotlight: Law on Better Regulation

The law on Better Regulation adopted in February 2012 states the principles of Better Regulation including: necessity; proportionality; effectiveness and efficiency of the regulation; transparency; accessibility and the avoidance of controversial regulations, and mandates the regulator to comply with these principles. In addition to *ex ante* RIA for every legislative draft or amendment to existing regulations, it requires an *ex post* impact assessment of the regulation's cost, benefit and impacts. This must take place after three years and no later than five years after implementation. It also defines steps and deadlines of public consultation procedures for new legislation, describes procedures for the transposition of the EU law and reinforces the institutional framework for regulatory policy through the establishment of the Office for the Support of Better Regulation in the General Secretariat of the government.

Indicators of regulatory policy and governance, Greece



1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.
2. Although members of parliament can initiate primary laws in theory in Greece, in practice all primary laws are initiated by the executive. Hence, the information presented in the indicators for primary laws on RIA, stakeholder engagement and *ex post* evaluation covers processes in place for all national primary laws in Greece.

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

StatLink *http://dx.doi.org/10.1787/888933263162*

Hungary

Overview

Hungary has taken action to strengthen regulatory policy. A RIA decree was introduced in 2011, and RIA is mandatory for all primary and subordinate legislation, assessing alternative options and identifying impacts on the national budget, competition, the environment, social goals and sustainable development. Some RIAs also identify a timeline for *ex post* reviews, helping establish a feedback loop between *ex ante* and *ex post* assessment. This approach is expected to help meet a requirement introduced in 2011 for a periodic *ex post* evaluation of all primary and subordinate legislation.

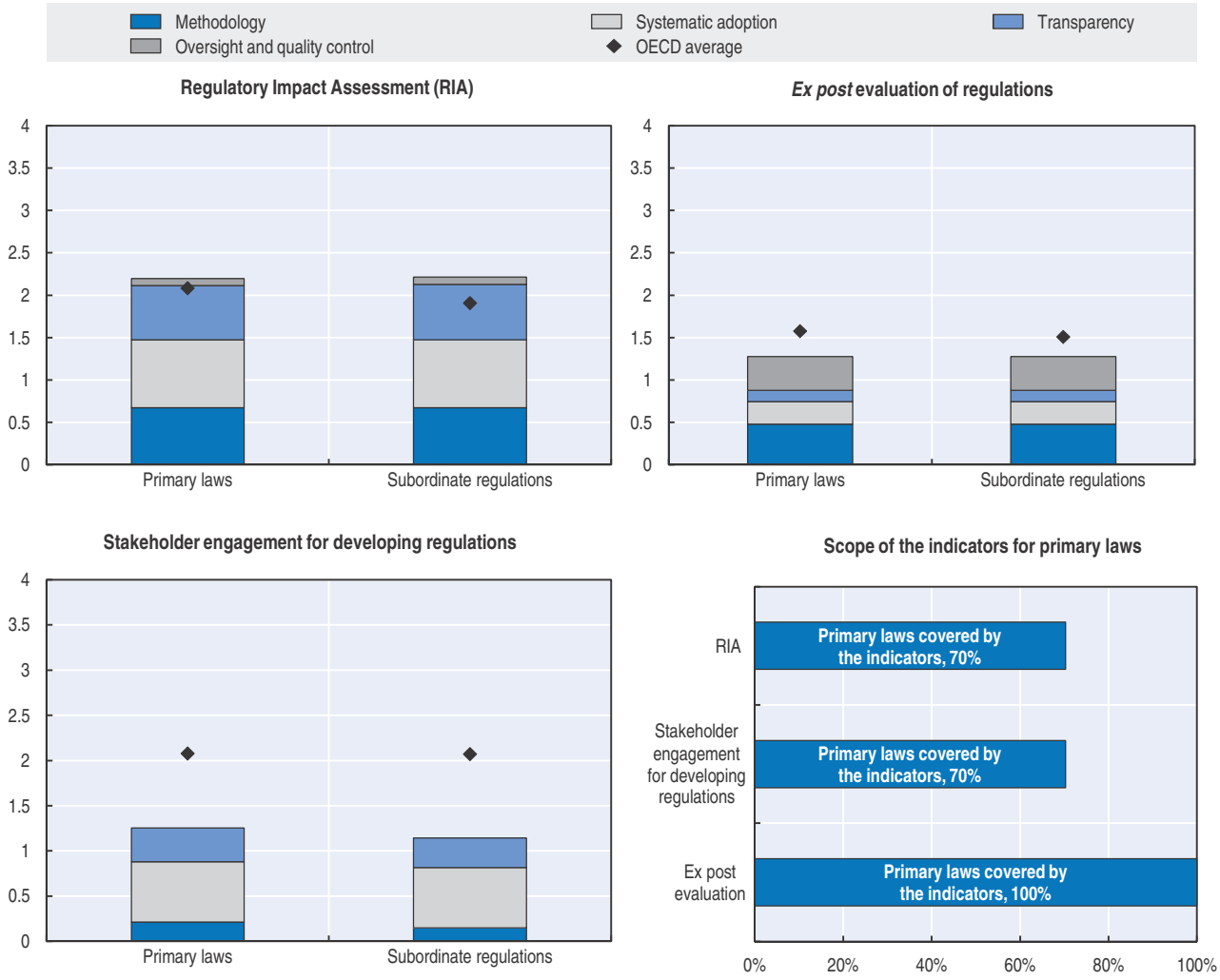
Some of the institutions that can support the systematic use of these tools are, however, not yet fully in place. There is no government body outside the ministry sponsoring the regulation which is responsible for reviewing the quality of RIA. The Prime Minister's Office exercises some quality controls over *ex ante* and *ex post* evaluations. There is little quality control on the depth and scope of public consultation.

The absence of a RIA and *ex post* evaluation threshold test for more in-depth RIAs and *ex post* evaluation makes it also hard to take full advantage of these tools. The scope and depth of RIA and *ex post* reviews risk of not being proportional to the potential impacts of legislation. In addition, consultation tends to take place mostly through government websites or ad hoc meetings, with limited use of interactive technologies.

Spotlight: Regulatory policy and efficient public administration

Improving regulatory policy is part of a comprehensive public administration reform strategy aimed at strengthening the efficiency and the effectiveness of the state. A key priority of this strategy is the reduction of administrative burdens for businesses and citizens. The reduction of administrative burdens for businesses has included approximately 114 measures in 10 intervention areas. Special attention has also been paid to the reduction of administrative burdens for citizens, with the simplification of 228 procedures covering key procedures involving people's daily life, including birth, employment, social services, education, real estate, personal documents, pensions, death and inheritance. Simplification has been accompanied by a reform of the territorial structures of the central government, with the opening of more than 100 one-stop shops across the country and plans to bring the total number of one-stop shops to approximately 300.

Indicators of regulatory policy and governance, Hungary



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2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in Hungary approx. 70% of primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement cover approx. 70% of primary laws. There is no formal requirement in Hungary for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. The percentage of primary laws initiated by parliament is an average between the years 2011 to 2013.

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

StatLink *http://dx.doi.org/10.1787/888933263177*

Iceland

Overview

Regulatory policy in Iceland is a central government initiative. The Department of Legislative Affairs is situated within the Prime Minister's Office and the Prime Minister is responsible for the enforcement of rules and regulations regarding the preparation of government bills.

Iceland is still in the early stages of developing the tools for regulatory policy. RIA is well established regarding primary laws in respect of state budget and costs for local authorities but other aspects of primary law are not consistently assessed. RIA regarding primary laws is often very brief, only highlighting possible impacts, without any quantification. Benefits are hardly ever quantified unless they consist of direct financial benefits. The government reports that common sense is used when it is possible to justify that benefits outweigh costs but there is no formal methodology. RIA is only formally required for some subordinate regulations. Performance is however improving; other types of impacts and costs and benefits are now assessed for some regulations in accordance with the 2013 "Action plan for administrative simplification and more efficient regulations for the business sector" and a revised handbook on draft bills is planned to be released in the summer 2015.

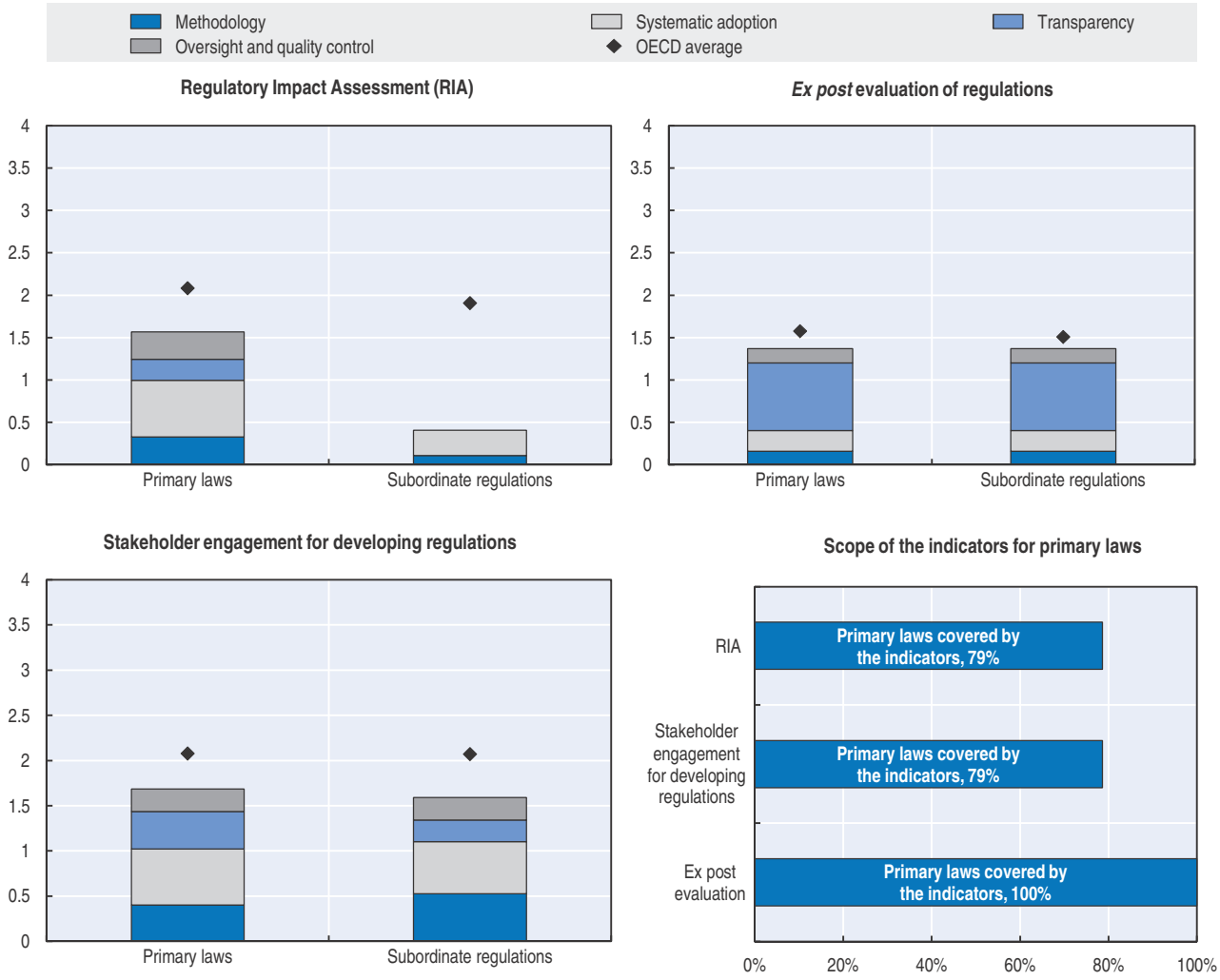
The practice of conducting systematic consultations has not yet been adopted on a widespread basis. Iceland only has a formal requirement for consultation to be conducted for some primary laws, and never for subordinate regulation. There are plans for a central government website for consultation which will improve accessibility. Parliamentary committees carry out extensive consultation on all parliamentary bills, with meetings and via the internet.

Periodic *ex post* evaluation of existing regulation is not mandatory in Iceland, but it is conducted in practice for some primary laws and subordinate regulations. In addition some regulations include "sunsetting clauses" where there will be an automatic repeal after a certain number of years.

Spotlight: Prime Minister's Office

Since 2010, all government primary law bills are scrutinised by the Prime Minister's Office before submission to the cabinet. Comments on the quality of the bill (with particular emphasis on impact assessments) are sent to the relevant ministry by email. Often an informal dialogue takes place which leads to an agreement on how to improve the bill. The PMO then issues a formal opinion on the conformity of the bill with formal requirements (cabinet rules of procedure and a handbook on legal drafting). Those requirements are very much inspired by OECD´s work. The PMO has gradually stepped up its requirements, taking into account the capacities of the ministries. Increasingly this dialogue takes place at an earlier point in time, for example when the annual list of government bills is being prepared. In this "soft" manner the PMO has managed to raise the quality of the work of the ministries and gain acceptance for a central quality control of this kind which did not exist before. Iceland´s participation in preparing the OECD Regulatory Policy Outlook has also led to a decision to publish an annual report with key features on the quality control system (number of bills with satisfactory impact assessments, percentage of bills where consultation with the public has taken place etc.).

Indicators of regulatory policy and governance, Iceland



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

StatLink *http://dx.doi.org/10.1787/888933263189*

Ireland

Overview

Over the past decade Ireland has introduced new directives and guidelines for improving the regulatory process. This includes the 2004 "Regulating Better" paper which lays out an action plan for the widespread implementation of updated practices for RIA, consultation, reviewing pre-1922 legislation to identify and repeal moribund legislation, and capacity building for evidence-based policy making.

RIA is conducted in practice for all primary laws and all major subordinate regulations. Regulators must provide a written statement that each of the required impacts have been considered, including when they have been identified as zero or very low, but there is currently no independent oversight body.

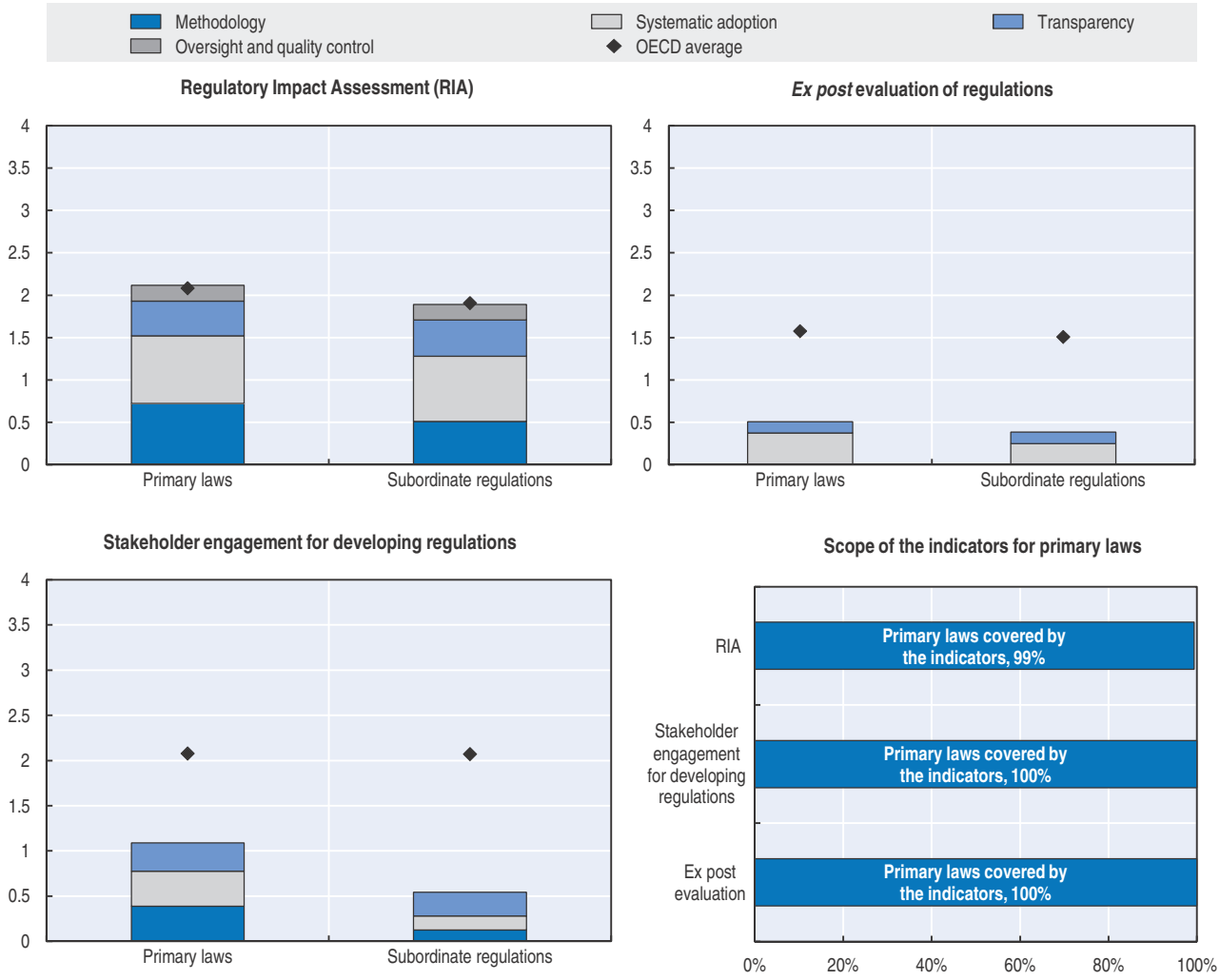
Stakeholder engagement is only formally required in the development for some primary laws and subordinate regulations; and there is no requirement that consultations are made open to the general public. In practice, later stage consultation is conducted for all primary laws, usually a formal consultation with selected groups, but neither early nor later stage consultation is conducted for subordinate regulations. Pre-legislative scrutiny by the relevant Committee of Parliament is now a general requirement for non-emergency, non-budget primary legislation. Committees can and do consult with experts and civic society groups.

Ex post evaluations are only conducted for some primary laws; there are no automatic evaluation requirements, though the government has indicated an intention to introduce post-legislative review for recent primary legislation. There are no requirements regarding the types of impacts such evaluations should assess, or specific guidelines on how to conduct *ex post* evaluations. Developing a transparent, systematic process for conducting *ex post* evaluations, including a clear methodology and guidance could help strengthen the regulatory process.

Spotlight: Review of effectiveness of Regulatory Impact Analysis

In 2011 the Department of the Taoiseach published a report on the operational review of Regulatory Impact Analysis. Interviews were carried out with the people who worked on the RIA, and with other employees from the sponsoring department. Additionally, interviews were carried out with some members of the RIA network, with organisations consulted as part of the RIA process and other business representative's organisations which were not necessarily consulted but would be affected by a wide range of regulatory proposals. The report makes recommendations for the improvement of the system itself and its operation including improving the visibility of RIAs and allowing opportunities for consultation on the assumptions used in the analysis. Staff were reported to be committed to the process and recognised the benefits of applying a rigorous analytical framework to the development of all types of legislation. It was also noted that the timing of RIAs is important and that RIAs should be seen as a fundamental part of the regulatory process, and not as an "add-on".

Indicators of regulatory policy and governance, Ireland



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

StatLink *http://dx.doi.org/10.1787/888933263191*

Israel

Overview

Israel has made progress in improving its regulatory policy since it joined the OECD in 2010. No comprehensive whole-of-government regulatory policy exists; however, Government Resolution No. 2118 of 22 October 2014 provides a solid basis for such policy. Its focus is still mostly on reducing regulatory burdens, both *ex ante* through more rigorous Regulatory Impact Assessment and *ex post* through multi-year programmes on reviewing existing regulations. In general, the Prime Minister's Office is responsible for co-ordinating regulatory policy but there is no dedicated body or a unit.

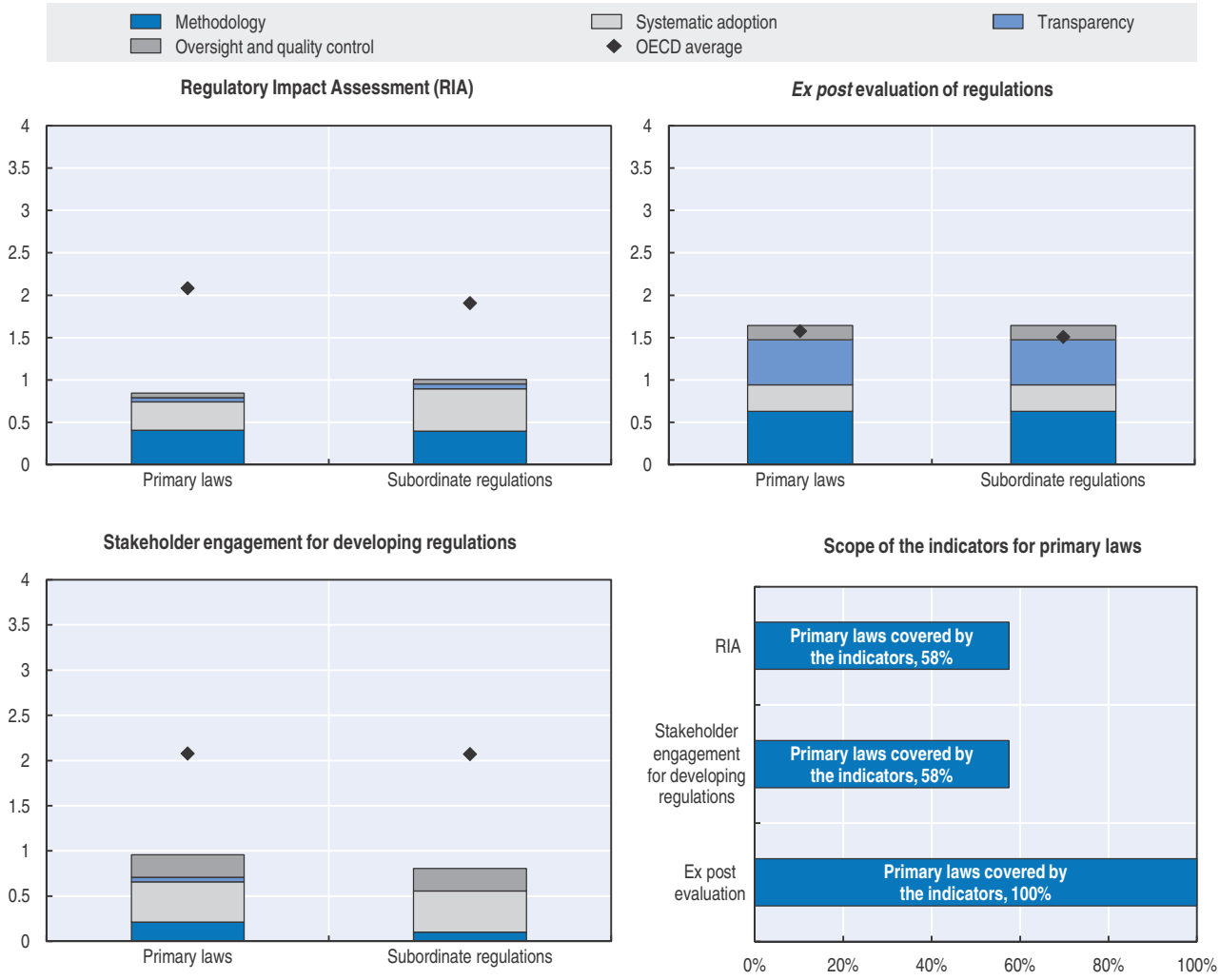
Israel lags significantly behind other OECD countries in stakeholder engagement. The obligation to consult on legislative drafts exists only regarding the last draft of a law or by-law, but does not apply to preliminary stages of the process. Regulatory Impact Assessment has not been widely used so far but the 2014 Government Resolution introduced an obligation to conduct RIA for each legislative draft. Drafts should also be consulted with stakeholders. The new process will be tested in 2015 and should be fully implemented afterwards. Establishing effective and strong oversight over RIA, close to the centre of government and independent of political influence, is necessary to ensure RIA requirements are actually implemented in all ministries. RIA requirements in the Government Resolution apply only to laws initiated by the executive and not to the laws initiated by members of the Knesset which account for over 40% of all primary laws.

The *ex post* reviews of existing regulations have taken place mostly ad hoc in selected specific areas. The 2014 Government Resolution sets an obligation for each ministry to formulate a five-year plan to reduce regulatory burdens in its area of competence. This should lead to a 25% reduction in total regulatory burdens, according to the government plan.

Spotlight: RIA Handbook

The RIA Handbook of the government aims to help regulators make regulatory decisions based on an analysis of the impacts of several alternatives of how to solve a given problem including non-regulatory ones. According to the Handbook and when developing or amending regulations, regulators should describe the problem and define policy goals of a given regulation, conduct risk management, organise consultations with external stakeholders, and assess costs- benefits stemming from various alternative solutions. Regulators should also develop an implementation plan, including measures for inspections to ensure "balance between providing an effective solution to the risk and the burden of a regulatory intervention". In addition, indicators of performance for a given regulation should also be identified.

Indicators of regulatory policy and governance, Israel



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3. Information on data for Israel: *http://dx.doi.org/10.1787/888932315602*.

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

StatLink *http://dx.doi.org/10.1787/888933263205*

Italy

Overview

A number of reforms have been introduced since 2008 to improve regulation. For example, RIA is required for all legislation initiated by the executive, with the legislative department of the Prime Minister's Office (DAGL) providing oversight and guidance. *Ex ante* and *ex post* assessment are linked through a requirement to identify *ex ante* progress indicators to be assessed two years after the entry into force. An extensive measurement of administrative burdens and the repeal of redundant laws were undertaken between 2008 and 2012 by the public administration department of the Prime Minister's Office (DFP), and in 2014 a new burden reduction programme was adopted. Consultation is required for all primary and subordinate legislation initiated by the executive, and some consultations have taken place through the use of new media. A reform of the existing legislation on regulatory policy tools, including RIAs, *ex post* evaluation and stakeholder consultation, is planned for 2015.

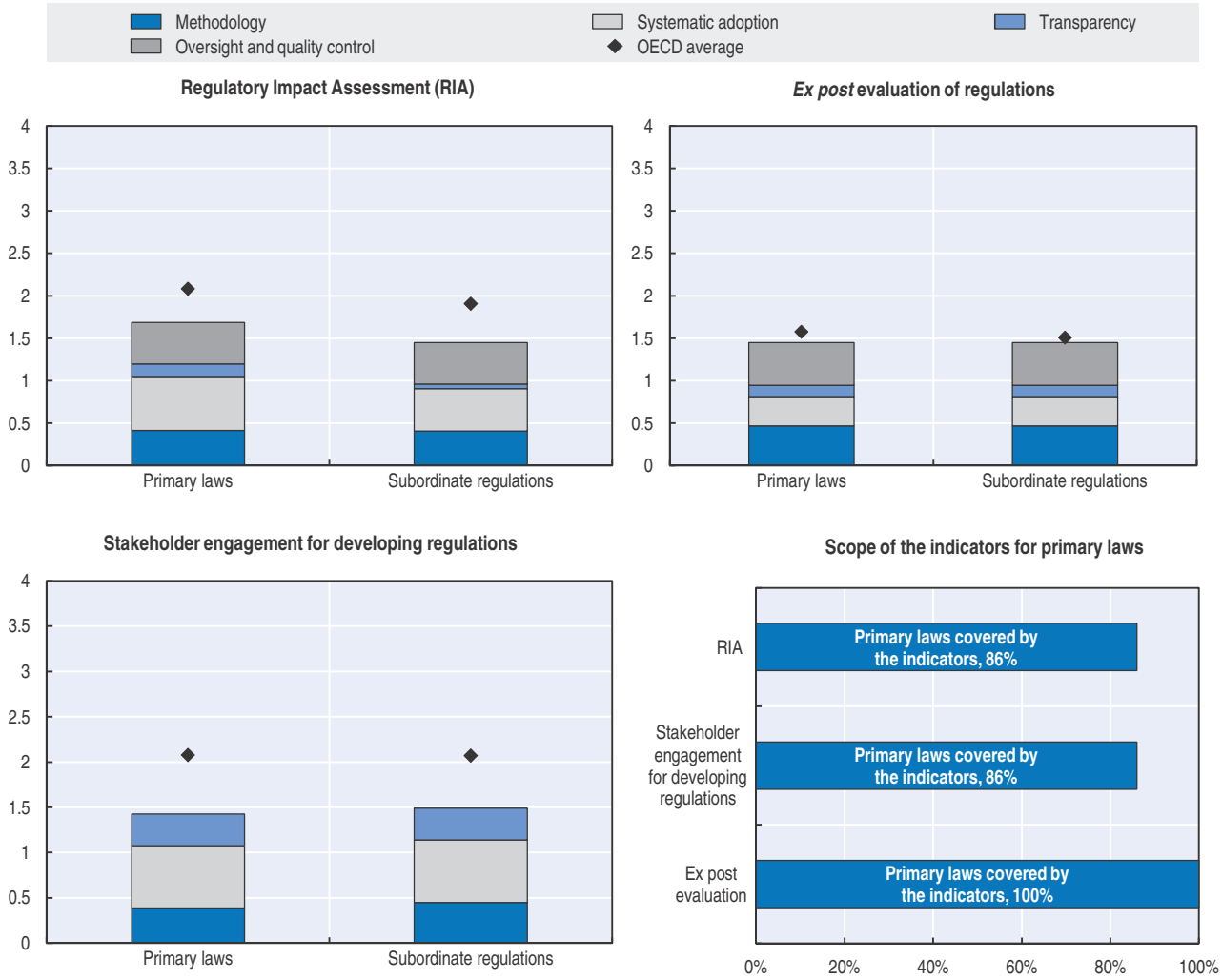
The challenge is to deepen these reforms to ensure better policy making and address the sources of administrative burden. Transparency would need particular attention. For example, making RIA public and the basis for consultation could strengthen the quality of the proposed legislation. Making *ex post* evaluations publicly available could equally contribute to meaningful contributions from stakeholders (and make evaluations a stronger basis for preparing new legislation). While some open consultations have been conducted on major reforms such as education, justice and public administration/simplification since 2014, informal consultations are the most common ways to engage with stakeholders, which are usually selected by individual ministries. A single list of laws under preparation or to be amended could inform stakeholders in advance and facilitate feedback from a wider audience. Moreover, the upcoming reform of regulatory policy tools could introduce a threshold test with some selection criteria, to help focus analytical capacity on legislative proposals with significant impacts on the economy and/or society. A stronger *ex ante* assessment would also improve the effectiveness of the important effort that is being made to assess legislation *ex post*.

Spotlight: Multi-level regulatory coherence

Italy has developed an articulated system to facilitate multi-level regulatory coherence. A State-Regions Commission issues opinions on national draft legislation affecting policy areas of concurrent legislative power before adoption by the central government. The Commission also provides non-binding advice on the government's regulatory proposals that could impact on regional regulation. A "working group" defines and enforces together with regions and municipalities burden reduction activities and simplification measures. Transparency of regulatory policy is being strengthened through a new web portal for central and regional authorities to help improve the whole regulatory cycle. At the regional level, a network of professionals working in the legislative offices of the regional administrations (OLI) promotes the use of best practices in regulatory policies.

www.statoregioni.it/; *www.funzionepubblica.gov.it/si/semplifica-italia/la-cooperazione-interistituzionale.aspx*; *http://qualitanormazione.gov.it* ; *http://oli.consiglio.regione.toscana.it/*

Indicators of regulatory policy and governance, Italy



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

StatLink *http://dx.doi.org/10.1787/888933263219*

Japan

Overview

In January 2013, Japan established the Council for Regulatory Reform within the Cabinet Office to discuss regulatory reforms that can support economic and social structural reform. In June 2013 Japan, based on input from the Council, launched the Implementation Plan for Regulatory Reform to contribute to the revitalisation of the Japanese economy. The Council monitors progress through an annual Report on Regulatory Reform.

The Ministry of Internal Affairs and Communications (MIC) has responsibility for the Government Policy Evaluation Act and has developed Implementation Guidelines for RIA. The Policy Evaluation Council, established in April 2015 and consisting of members from outside the government, is currently discussing ways to improve the quality of RIA, including possible revision of the RIA guidelines. To improve the quality of RIA in Japan, the evaluation capacities of the ministries and the unit in charge of RIA quality control in the MIC need to be improved. This has been identified as a priority by the government and the Policy Evaluation Council has begun a discussion on ways to improve evaluation capacities.

Strong oversight of RIA is essential to ensure that regulation serves whole-of-government policy. The body in charge of RIA oversight needs to have the authority and strong leadership to ensure that recommendations to improve the quality of RIA are actually taken on board by ministries. The OECD recommends the oversight body to be situated close to the centre of government and to be independent from political influence.

The Regulatory Reform Council provides a forum for consultation of regulatory reforms. It often invites stakeholders to examine issues on regulatory reform needed for structural reform of the economy and the society, as a basis for submitting recommendations to the Prime Minister.

The Administrative Procedure Act requires regulators to implement public comment during the development of new subordinate regulations. The MIC regularly conducts surveys on the implementation of the Administrative Procedure Act and requests relevant ministries and agencies to improve the implementation of the public comment procedure.

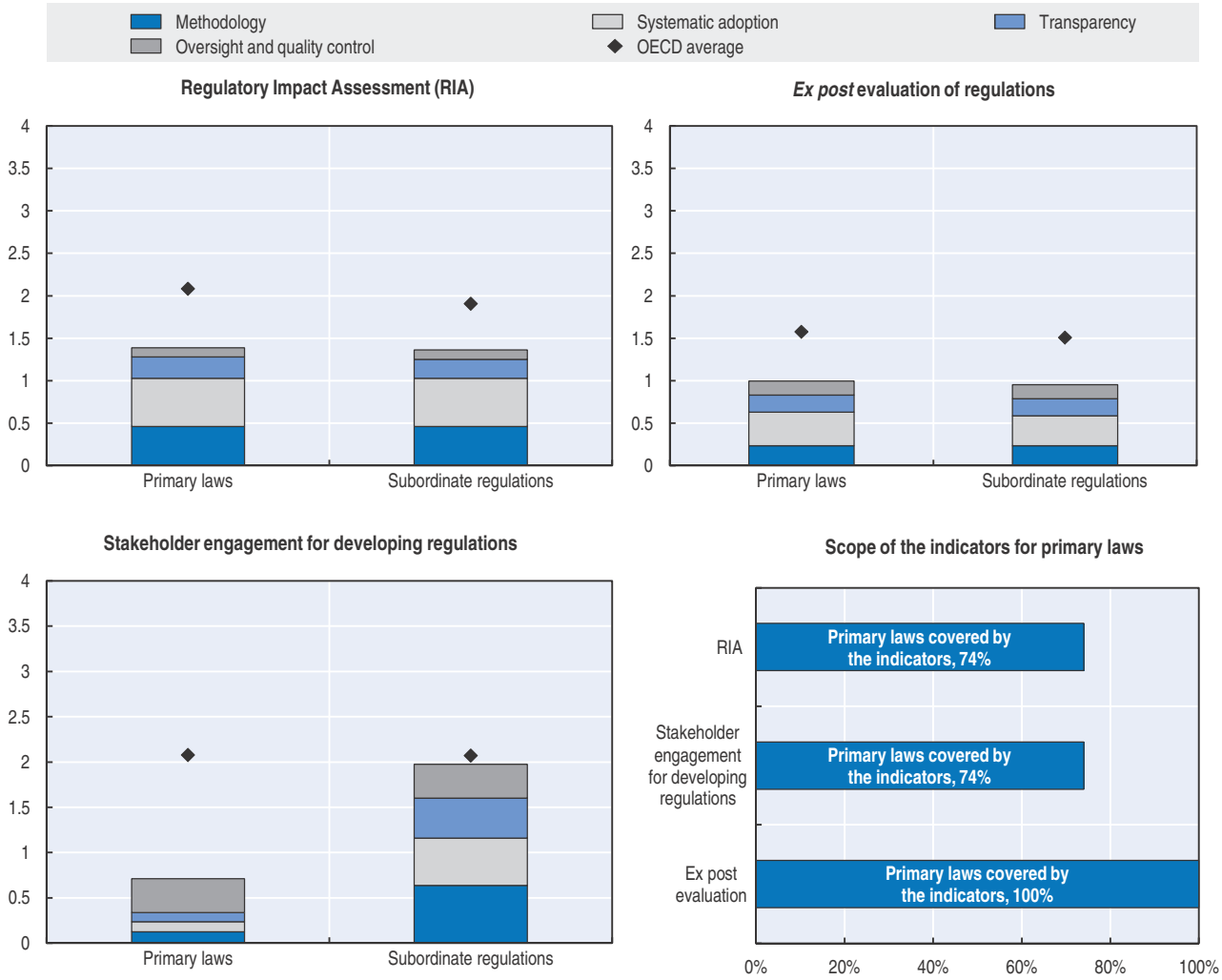
Spotlight: Hotline on Regulatory Reform

The "Hotline on Regulatory Reform" (*https://form.cao.go.jp/kokumin_koe/opinion-0009.html*) was established in March 2013 to receive requests about regulatory reform including simplification of a large variety of procedures from stakeholders such as citizens, enterprises, and civil society. A wide range of requests for simplification and regulatory reform, such as the repeal of existing regulations and changes in legal requirements, have been submitted to the hotline. The major policy areas for submissions are the following: health and medical care, employment, agriculture, investment promotion, and regional revitalisation.

The Cabinet Office requires relevant ministries and agencies to respond to the requests on a timely basis and summarises the responses, which are then published to the citizens on *http://www8.cao.go.jp/kisei-kaikaku/kaigi/hotline/h_index.html*, and reported to the Council for Regulatory Reform.

The Council for Regulatory Reform then examines the requests that require further investigation. The results of these examinations are contained in an annual Report on Regulatory Reform.

Indicators of regulatory policy and governance, Japan



1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.
2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in Japan approx. 74% of primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement cover approx. 74% of primary laws. There is no formal requirement in Japan for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. The percentage of primary laws initiated by parliament is an average between the years 2011 to 2013.

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

StatLink *http://dx.doi.org/10.1787/888933263229*

Korea

Overview

In 1998 Korea established the Regulatory Reform Committee which is composed of members from the private sector and government ministers including the Prime Minister of Korea. The Regulatory Reform Committee is the highest decision maker on regulatory reform within the executive branch. The Regulatory Reform Committee is responsible for setting regulatory policy, evaluating new and existing regulations and monitoring the actual regulatory reform progress at each administrative level. It is important that sufficient resources are made available to support improvements in regulatory quality.

Korea has recently introduced several new institutions and programmes to help establish the system required to produce quality regulation. In 2014, the government launched a pilot "cost-in cost-out" system in some ministries to reduce the costs of regulation on business and citizens. To support the implementation of this system, two independent Regulatory Impact Analysis centres have been established under the Korea Development Institute (KDI) and the Korea Institute of Public Administration (KIPA). The revised system aims to address the challenge of RIA being viewed as a routine formality rather than an instrument of policy decision making, and help ensure all the formal requirements regarding RIA are fully conducted in practice.

Korea conducts later-stage stakeholder engagement on all primary laws and subordinate regulations as well as early-stage consultation for some regulations. Greater use of online consultation could help ensure accessibility by the general public.

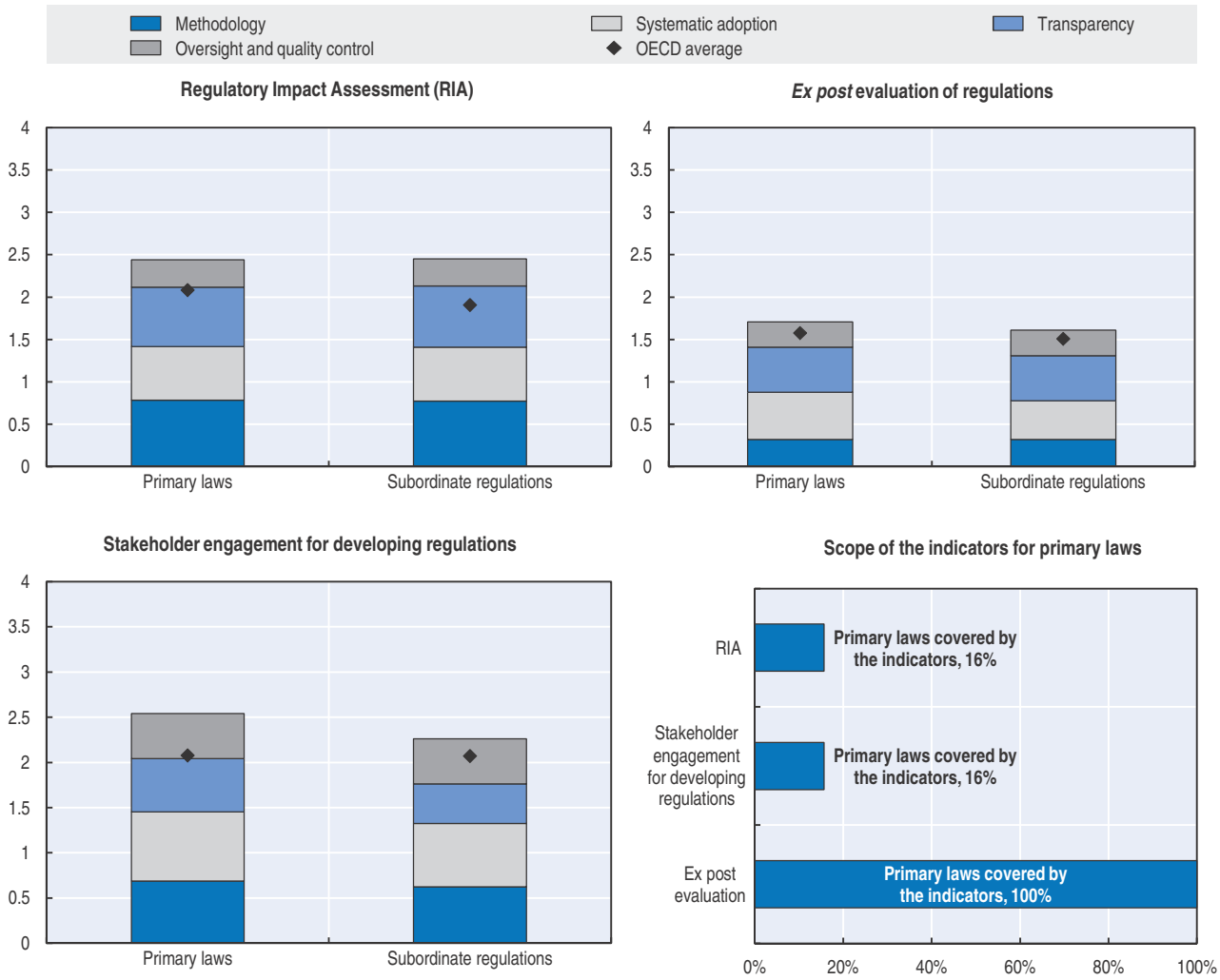
Periodic *ex post* evaluation is now formally required for all major primary laws and subordinate regulations, which are to be prepared by Regulatory Reform Committee or the department responsible for developing the regulation. There is no standardised evaluation technique; however these evaluations do contain by default an assessment of whether the underlying policy goals of regulations have been achieved and also whether there are areas of overlap or inconsistency amongst regulations.

Spotlight: Regulatory petition system "Sin-Moon-Go"

The Korean government introduced a new regulatory petition system in 2014 on the dedicated regulatory portal *www.better.go.kr*, called "Sin-Moon-Go" in Korean. This petition procedure consists of three steps: First, if a petitioner requests the improvement of regulations, the relevant ministry has to provide an answer within 14 days. Second, if the petition is rejected, the ministry has to provide a detailed answer as to why within 3 months. Finally, the Regulatory Reform Committee can recommend changes to the ministry if their explanation is not sufficiently justified. The introduction of the Regulatory Petition System has shown striking results. In 2014, approximately 6 500 regulatory petitions were received, and the acceptance rate was 36.6%. Compared with 2013, the number of cases is 22 times greater, and the acceptance rate by 4.6 times greater.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approx. 16% of primary laws in Korea. There is a requirement in Korea to conduct public consultation for major primary laws initiated by parliament, but there is no requirement to conduct RIA for primary laws initiated by parliament.

Indicators of regulatory policy and governance, Korea



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

StatLink http://dx.doi.org/10.1787/888933263232

Luxembourg

Overview

Luxembourg's 2009-2014 government programme stresses the government's commitment to improving regulatory quality. The Minister for Civil Service and Administrative Reform is accountable for promoting regulatory reform, and his ministry is in charge of co-ordinating RIA and administrative simplification. Luxembourg's regulatory reform strategy, as summarised in the 2013 guidelines "Transparency and administration simplification of State procedures and formalities" focuses mainly on administrative burden reduction and simplification.

Impact assessment forms are required to inform the development of all regulations. These take the form of a checklist mainly focussing on administrative burdens and enforcement costs and do not contain further analytical evidence. The Ministry for the Civil Service and Administrative Reform, which is in charge of reviewing RIAs, currently lacks the formal authority to ask for a revision of a RIA to ensure its quality. In order to enhance the usefulness of RIA, the analysis included in the impact assessments could be deepened and extended to other types of impacts and benefits of regulation. Transparency could be strengthened by making RIAs publicly available on a systematic basis.

Consultation with stakeholders informs the development of all regulations. However, input is mostly sought at the later stage on draft proposals. Making more systematic use of consultation at the early stage would help policy makers better understand the policy problem and possible solutions. Consultation with the general public is only required for some primary laws and thus remains very limited in practice. Increased use of ICT, e.g. through a single government consultation portal, would be helpful in extending openness to the public.

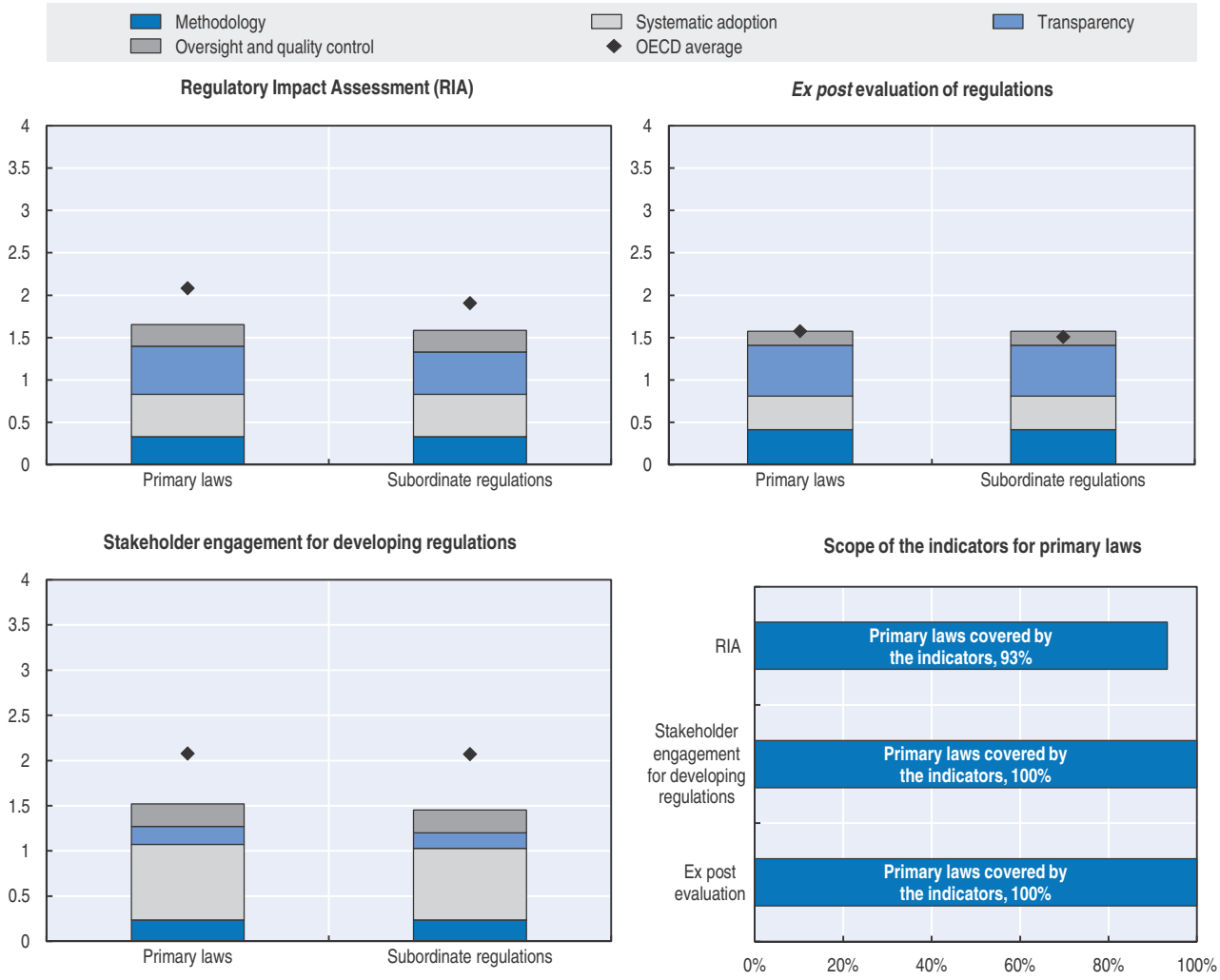
Between 2009 and 2012, 260 administrative simplification measures were implemented and some *ex post* evaluations of specific regulations have been carried out. A more systematic approach, for instance by making *ex post* evaluations mandatory and including sunsetting clauses and automatic evaluation requirements in regulations, could help ensure that regulations serve their purpose.

Spotlight: Interministerial platform for administrative reform and simplification

Under the authority of the Ministry for Civil Service and Administrative Reform, this interministerial platform is responsible for co-ordinating the work of the government on administrative simplification. The main functions of the platform are the development of an inventory of administrative procedures and screening administrative processes for potential improvements for citizens. Citizens, business and civil society associations can submit their ideas for improving administrative services on the interactive website vosidees.lu. Suggestions are reviewed by the platform, and the most relevant ones are translated into action proposals for reform.

The platform is led by a committee of representatives of the ministry and the State Centre for Information Technology (CFIE). It regularly engages with professional organisations and the Association of Towns and Municipalities (SYVICOL).

Indicators of regulatory policy and governance, Luxembourg



1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.
2. The information presented in the indicator for primary laws on RIA only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in Luxembourg approx. 93% of primary laws are initiated by the executive, the indicator on RIA covers approx. 93% of primary laws. There is no formal requirement in Luxembourg for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by parliament. The information presented in the indicators for primary laws on stakeholder engagement and *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive. The percentage of primary laws initiated by parliament is an average between the years 2012 and 2013.

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

StatLink *http://dx.doi.org/10.1787/888933263243*

Mexico

Overview

Mexico's regulatory policy is formally established in the Federal Law of Administrative Procedure (LFPA). Mexico's efforts on regulatory policy date from the mid 80's. In 2000, reforms to LFPA were introduced to give birth to the main current institutional arrangements of regulatory policy in Mexico. The LFPA defines the main elements of this policy which include the establishment of the Federal Commission for Regulatory Improvement (COFEMER) as the oversight body, the responsibilities of line ministries and regulators as part of the better regulation policy, as well as the establishment of tools for regulatory improvement, such as Regulatory Impact Assessment (RIA), administrative simplification, and consultation. COFEMER is also in charge of co-ordinating the forward planning regulatory agenda; it provides advice to sub-national governments, reviews the stock of regulation, and can suggest reforms to the President.

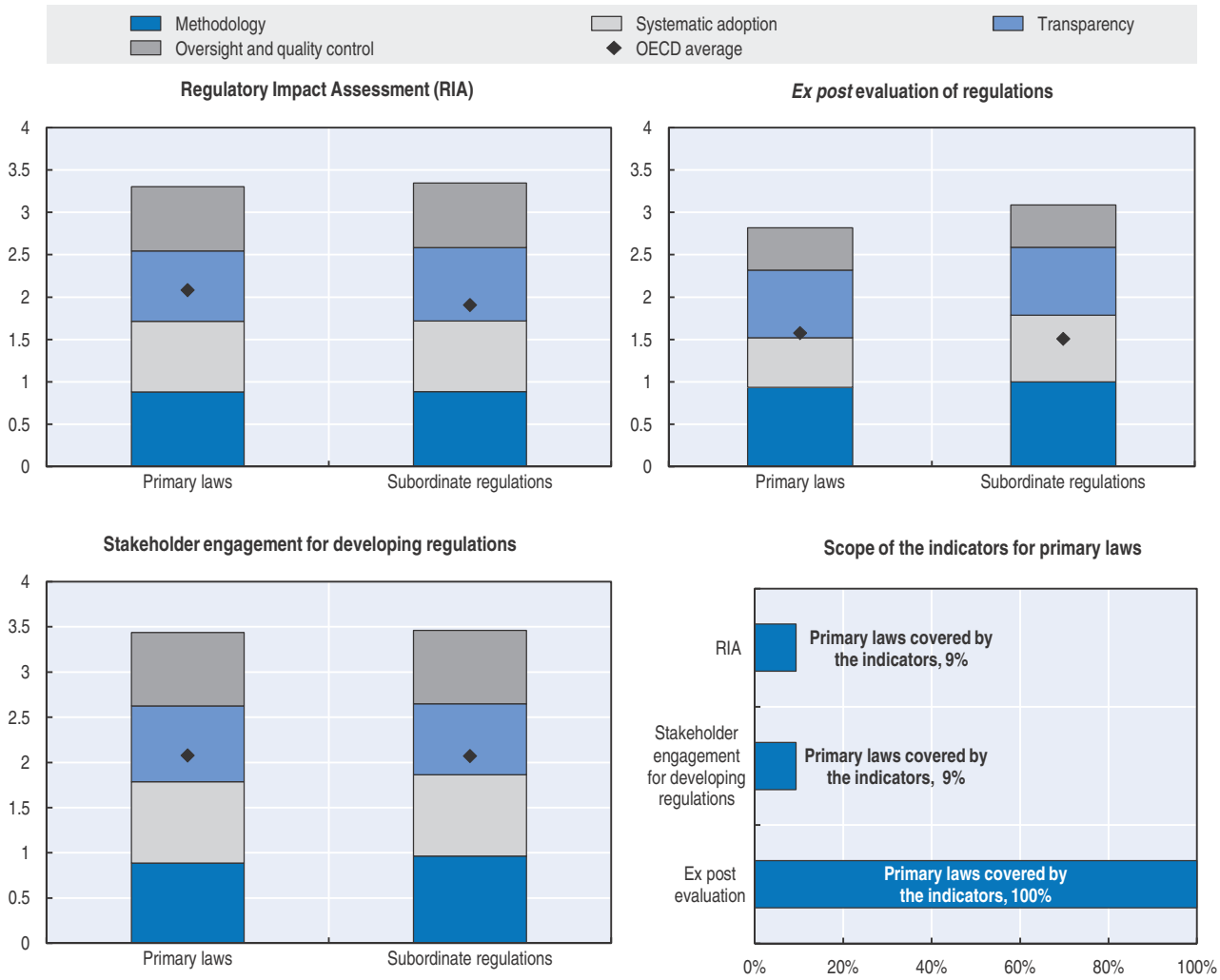
Substantial reforms to the Mexican RIA process were adopted between 2010 and 2012. This included the distinction between regulations that are expected to have moderate impacts and those expected to have high impact. An online tool – the Regulatory Impact Calculator – was developed to enable regulators to assess their proposed regulation at an early stage of the process. The RIA Manual was further modified to introduce additional types of RIAs, to focus on competition impact analysis, risk analysis, or a combination of both. Mexico also issued an agreement that allows COFEMER to request an *ex post* RIA to ministries and decentralised bodies that issued technical standards accompanied by high-risk RIAs. The *ex post* RIA assesses the accomplishment of regulatory objectives, their efficiency, effectiveness, impact and permanence. The culture of regulatory improvement at federal level in Mexico should also permeate to other areas of government. Next steps could include processes for RIA and consultation for federal states, municipalities and for constitutional autonomous bodies, and RIA, *ex post* evaluation and consultation for Congress.

Spotlight: Consultation in Mexico

COFEMER publishes all draft regulations and RIAs on *www.cofemersimir.gob.mx*, including regulations that are exempted of RIA, upon reception, as well as their comments and all inputs received from stakeholders. COFEMER's response to the draft regulation and RIA provides stakeholders with additional information that can potentially allow them to participate more effectively in the process. The draft regulation and its RIA are required to be open to consultation for at least 30 working days but, in practice, longer consultation periods appear to be the norm. COFEMER also supports effective engagement in consultation by actively providing the draft regulation and the RIA to key stakeholders and soliciting their inputs in many cases. Social media, e-mail alerts, website, and an ongoing engagement with formal media (newspapers, and occasionally TV and radio) are also employed heavily by COFEMER to promote public consultation.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approx. 9% of primary laws in Mexico. There is no formal requirement in Mexico for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by parliament.

Indicators of regulatory policy and governance, Mexico



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

StatLink http://dx.doi.org/10.1787/888933263256

Netherlands

Overview

The Netherlands was one of Europe's early starters in the development of Better Regulation policies, with a strong momentum in the 1990s to improve the regulatory and structural environment for more open markets and, starting in the late 1990s, a strong focus on reducing administrative burdens for business which was subsequently extended to citizens. In 2000 ACTAL, the Dutch Advisory Board on Regulatory Burden, was established as an independent advisory body that advises government and parliament on how to minimise regulatory burdens for business, citizens, and professional workers in healthcare, education, safety and welfare. The Netherlands has also created regulatory burden units in the Ministry of Economic Affairs for business and in the Ministry of the Interior for citizens to lead programmes for reducing burdens across the government. The 2011 Integraal Afwegingskader (IAK) directive brings together the available guidance and instructions for impact assessment tools in an integrated fashion. The Unit for the Quality of Regulatory Policy located at the Ministry of Justice provides independent oversight on the quality of impact assessments.

In accordance with the IAK all primary laws are accompanied by an explanatory memorandum (Memorie van Toelichting) which describes the problem under consideration and justifies government intervention as well as its effects and consequences. Improving the assessment of benefits and costs including the distribution of impacts and introducing systematic consultation on RIA early in the process would help improve the quality and transparency of the system.

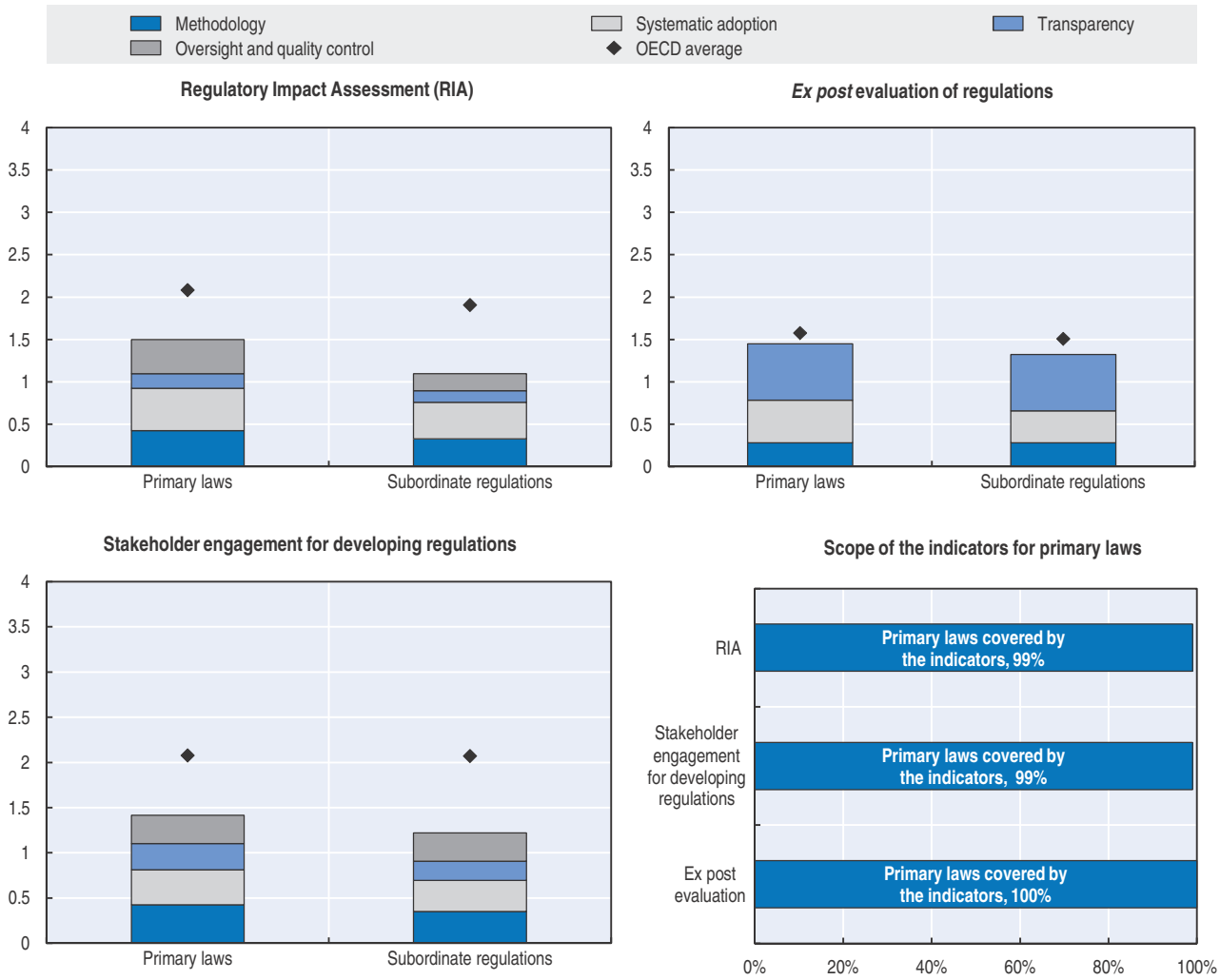
Later-stage consultation only occurs in practice for some primary laws and subordinate regulations. There is now an interactive website for consultations which displays the views of participants. Introducing systematic consultation earlier in the process could help gather information about the nature of the problem and possible solutions, e.g. through the use of green papers.

Periodic *ex post* evaluation has been mandatory for all primary laws since 2001. The government may wish to consider whether comprehensive in-depth reviews in particular sectors would also be useful for identifying areas of reform.

Spotlight: Reviews of online consultation and *ex ante* evaluation

The use of evaluations and reviews has helped set the direction for improvements in the Dutch regulatory framework. In 2011, the government published an *evaluation report* (*http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2011/06/17/kabinetsstandpunt-internetconsultatie-wetgeving.html*) on the government-wide online consultation pilot, (*www.internetconsultatie.nl*). The report stated that, while creating additional costs, internet consultation improves public participation and contributes to the quality of the proposed legislation. Therefore, the use of the portal should be extended with a focus on those laws with high impacts on citizens and business. In 2012 an *in-depth review* discussing the theory and practice of *ex ante* evaluation was produced by an independent evaluator. The review concluded that the application of *ex ante* evaluation should be intensified.

Indicators of regulatory policy and governance, Netherlands



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

StatLink *http://dx.doi.org/10.1787/888933263271*

New Zealand

Overview

RIA and public consultation are embedded within New Zealand's policy-making processes and provides information for Cabinet discussions. This is supported by Treasury guidance and templates for RIA, with the Treasury also providing quality assurance of significant regulatory proposals. Cabinet and committee papers that contain policy proposals must contain a section entitled RIA. This includes a statement explaining whether RIA has been conducted and is attached to the Cabinet paper. In addition, it includes an opinion on the quality of the analysis in the RIA.

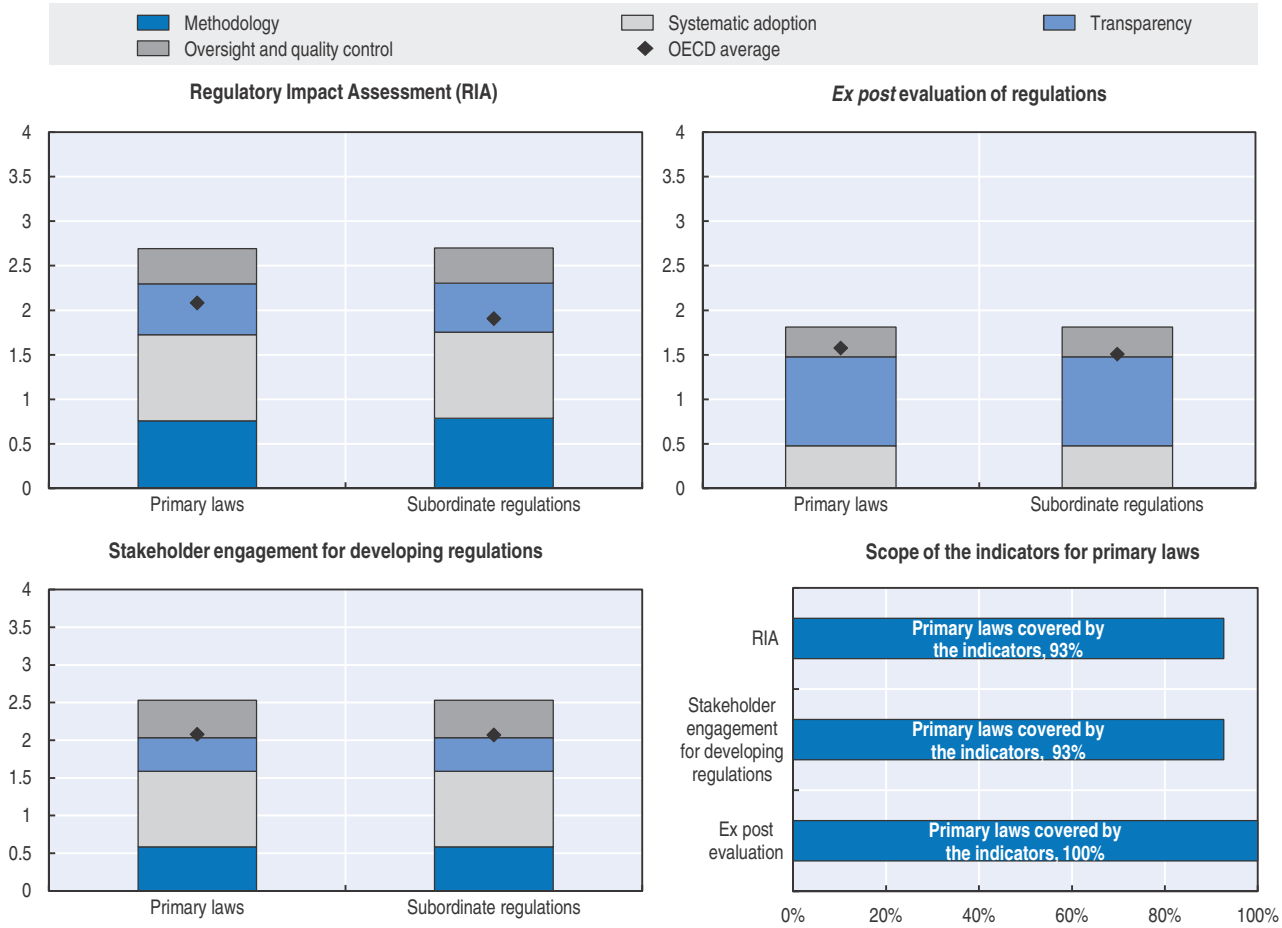
There is no general legal requirement for consultation in the regulatory process, but consultation is an explicit policy of the government and one of the key quality assurance criteria. RIA must subsequently explain who has been consulted and what form the consultation took, outline key feedback received, with particular emphasis on any significant concerns that were raised about the preferred option, how the proposal has been altered to address these concerns (and if not, why not). If there no consultation undertaken, it must include the reasons why.

The New Zealand Productivity Commission conducts inquiries and productivity research which can help identify areas for reform in particular sectors. *Ex post* evaluation however is not mandatory and there is no established methodology for conducting *ex post* evaluations. Introducing systematic reviews of regulation could potentially help strengthen the policy-making process.

Spotlight: Independent review of regulatory impact statements

The New Zealand Treasury periodically commissions independent reviews of the quality of RIA. Reviews were conducted in 2008, 2009, 2011, 2012, 2013 and 2014, drawing upon a sample of regulatory impact statements (RIS) from the previous calendar year. In 2008-13 the Reviews sought to evaluate whether government agencies are meeting the expectations set for preparing high-quality RISs; to comment on the Regulatory Impact Analysis carried out by government agencies to help improve their ability to prepare high-quality RISs; to compare differences in the agencies' view of RIS quality and the independent assessment of RIS quality; and to help the Treasury provide effective guidance to government agencies when preparing RISs. The 2014 evaluation took a different approach than previous reviews and focused on the options analysis section of the RIS, a particularly challenging section of the RIS.

Indicators of regulatory policy and governance, New Zealand



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StatLink http://dx.doi.org/10.1787/888933263261

Norway

Overview

Norway has a well-developed standard procedure for developing regulations based on the 2005 Instructions for Official Studies and Reports. This procedure includes preliminary assessments of the consequences of the proposed new regulation and internal consultations with affected ministries on the mandate of the RIA prior to a full impact assessment being drafted. The Ministry of Local Government and Modernisation is responsible for the interpretation of the 2005 Instructions and is in the process of revising them in co-operation with the Ministry of Finance. Full impact assessments are however only conducted for some primary laws and subordinate regulations. These completed RIAs are circulated for general review to the general public and private institutions and organisations affected. The process of developing RIAs could potentially be made more transparent by publishing all RIAs on-line and, in the cases where a full impact assessment is not conducted, making this decision and reasoning behind it open to the public.

Public online consultation is conducted for all primary laws. Norway also places great emphasis on consultation and co-ordination between national and sub-national levels. An agreement was established in 2000 to conduct regular consultative meetings between the central government and the local authorities. These consultations improve local autonomy and provide a better foundation for central government decision making, and framing of rules and regulations aimed at municipalities and counties.

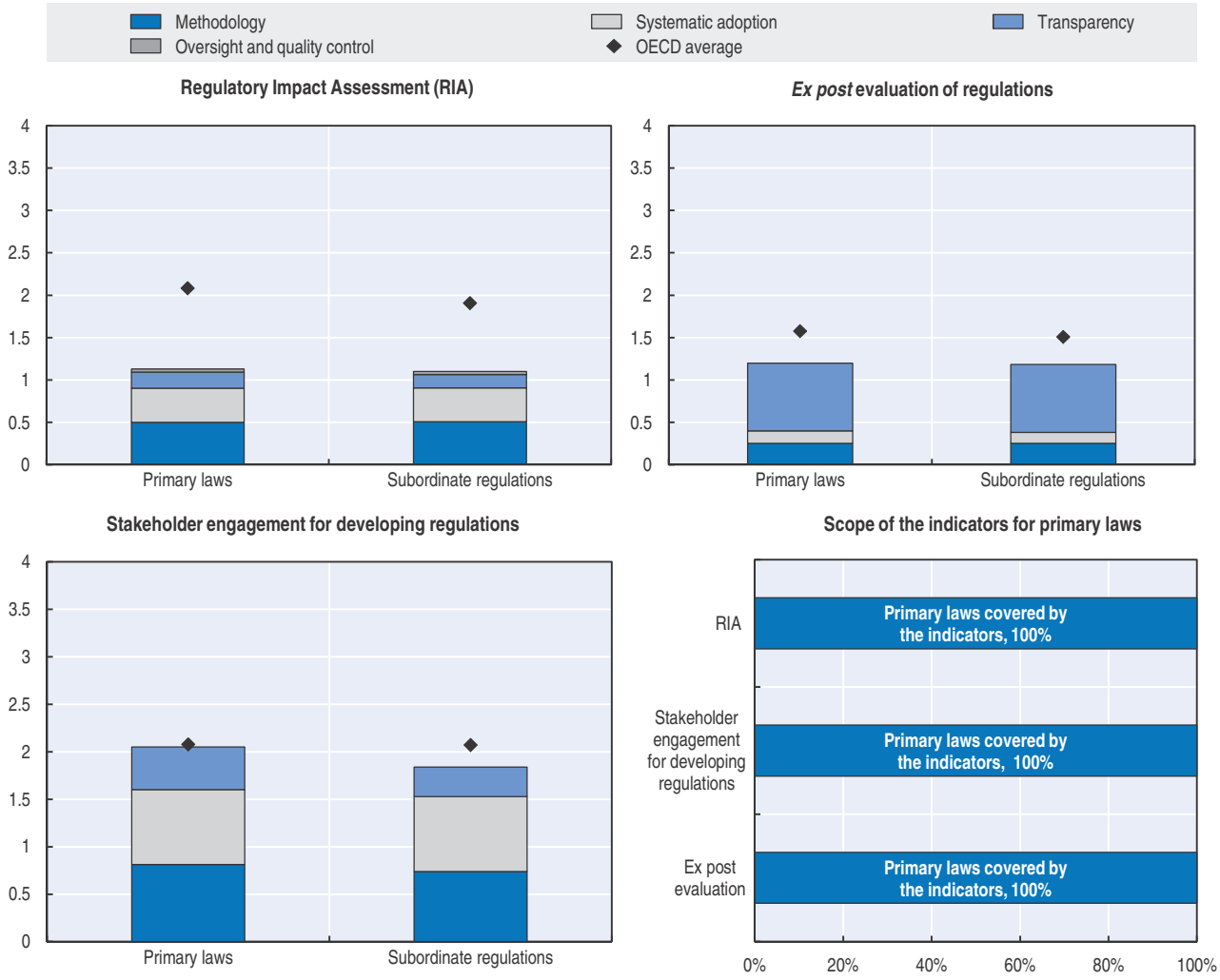
Ex post evaluation is not mandatory for all laws, but has been carried out for certain regulations in recent years in response to requests from parliament, external groups or as part of a government programme. Norway is currently conducting a review of existing regulations as part of the Simplification for Business programme which aims to reduce the cost of administrative burdens by 25% from the 2011 level before the end of 2017. Almost 60 actions have already been taken including bringing in new regulation, changes to existing regulation and adopting new ICT solutions.

Norway does not currently have any regulatory oversight bodies. Introducing methods of systematic quality control should be considered as part of any future regulatory reform programmes.

Spotlight: Consultations between central government and the Sami Parliament

In Norway, the indigenous peoples' right to participate in decision-making processes was formalised in 2005 by an agreement on procedures for consultations between the state authorities and the Sami Parliament. The numerous consultations (30-40 a year) have strengthened Sámediggi as a representative voice for the Sami people, and enhanced the awareness and knowledge of Sami issues in government ministries and agencies. The state authorities must inform Sámediggi as early as possible about the commencement of relevant matters that may directly affect the Sami, and identify those Sami interests and conditions that may be affected. The initiative may also come from Sámediggi or other Sami representatives. The scope of the consultation procedures is extensive; the procedures apply to all ministries and state agencies and cover a wide array of governmental acts, including legislation, regulations, measures and specific or individual administrative decisions.

Indicators of regulatory policy and governance, Norway



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2. The information presented in the indicators for primary laws on RIA, stakeholder engagement and *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive, hence all national primary laws in Norway.

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

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Poland

Overview

Poland has substantially improved its regulatory policy system over the last years. The government introduced a central online system to provide access to the general public to RIA and other documents sent for consultation to selected groups such as trade unions and business. Public consultation is conducted for some proposals over the internet in a pilot project allowing users to comment on draft legislation and RIAs and to view comments provided by others. New guidelines for RIA, consultation and *ex post* evaluation have been prepared for adoption in 2015, providing more detailed guidance and stronger emphasis on public consultation.

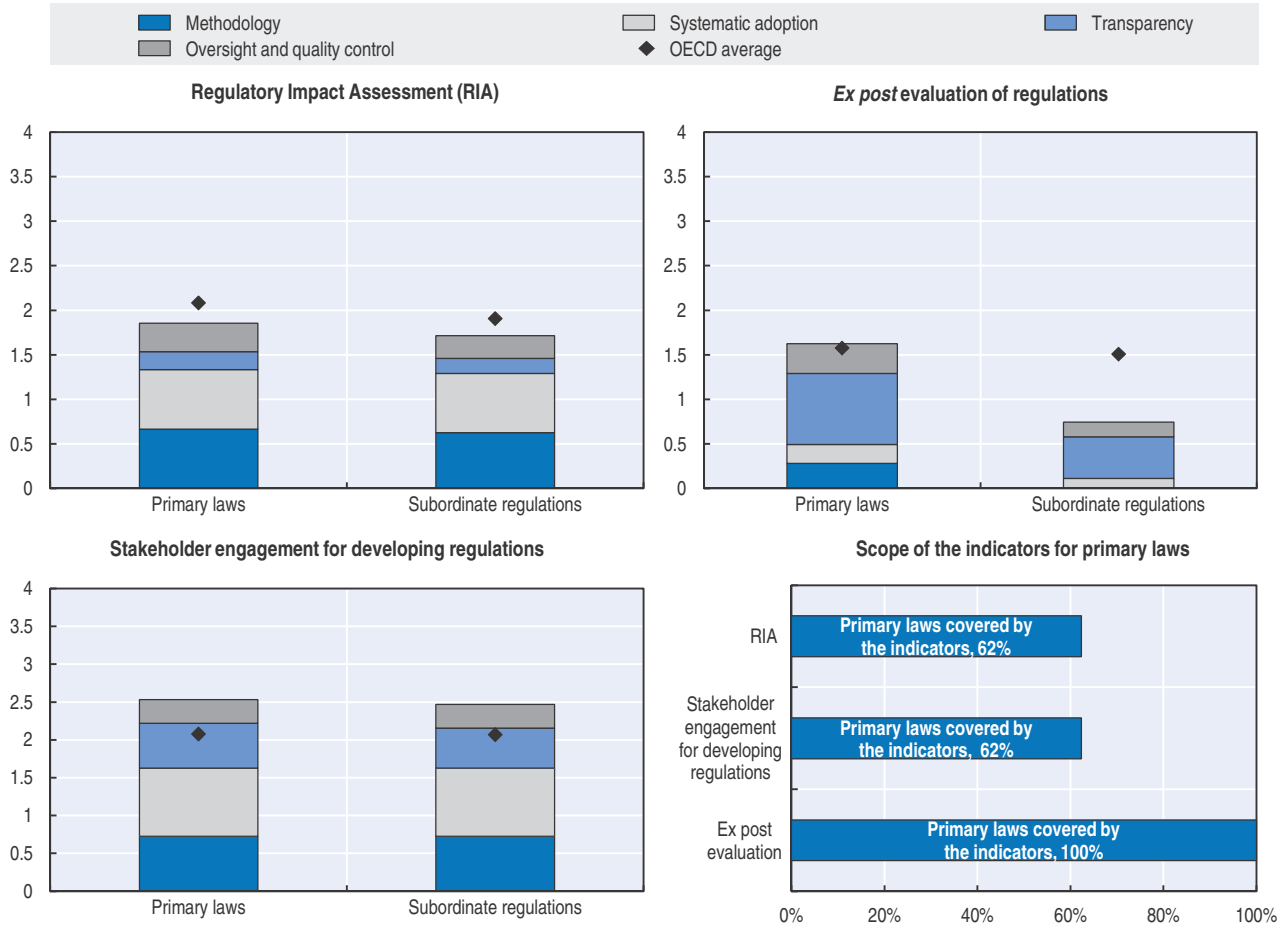
The Ministry of Economy co-ordinates the implementation of the Better Regulation Programme 2015 and reports to the Council of Ministers. The Programme has been prepared in co-operation with the Chancellery of the Prime Minister, which oversees the quality of RIA, and the Government Legislation Centre, in charge of ensuring legal quality.

Like many countries Poland faces challenges to fully implement its regulatory policy requirements and to ensure that RIA and consultation comments are actually used to improve decision making. For example, minimum periods for consultation with stakeholders are not always respected. Poland may also extend its online public consultation system and consider using instruments such as green papers more systematically for early-stage consultation to identify options for addressing a policy problem and to avoid "regulating by default". Steps taken in 2014 to introduce *ex post* evaluation of regulations are encouraging. Poland would further benefit from establishing an independent standing capacity to regularly undertake comprehensive in-depth reviews of regulations in specific areas in order to inform structural reforms.

Spotlight: Pilot system for public online consultation

Following its "Better Regulations Programme 2015" launched in 2013, Poland implemented a pilot public online consultation system (*www.konsultacje.gov.pl*). For selected legislative projects, any member of the public can comment on the draft legislation and its accompanying RIA by posting remarks on-line on paragraphs or articles, or by supporting remarks posted earlier by other users. So far, about 90 legislative proposals have been published and about 280 comments were received, which is a lower rate compared to the number of comments submitted in paper form. Increasing responsiveness to the website, ensuring support of the public for consultation processes, and enhancing the public's trust in the usefulness of online consultation remain challenges for the near future, as experience shows that many stakeholders still do not believe that their voice will be considered by the authorities in the legislative process.

Indicators of regulatory policy and governance, Poland



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StatLink *http://dx.doi.org/10.1787/888933263293*

Portugal

Overview

The development of Better Regulation policies in Portugal is relatively recent compared with other OECD countries. Portugal has made significant efforts to bring down administrative burdens and to modernise its public administration. More recently, the *Simplificar* programme further extends the modernisation and simplification efforts (see box below) and also aims at promoting more systematic and comprehensive *ex ante* and *ex post* evaluation of regulations. Political responsibility for administrative modernisation is vested with the State Secretary for Administrative Modernisation located within the Presidency of the Council of Ministers at the centre of government. The State Secretary oversees the Agency for Administrative Modernisation which is in charge of the execution of the simplification programmes.

RIA is conducted for all primary laws and subordinate regulations. The main focus of RIAs is on cost assessment, in particular administrative burdens. Widening the scope of the analysis could encourage a more encompassing approach to rule making. While the Minister for the Presidency currently has responsibility for ensuring the completion of the RIA questionnaire, it would be essential to set up a body with oversight functions in order to check the quality of the RIA. Transparency could be strengthened by introducing a sign-off on RIAs and making them publicly available.

While consultation is a common practice for major laws and subordinate regulations, it only takes place once a preferred regulatory option has been identified. Seeking additional input at an early stage would help inform policy makers about the nature of the problem and potential solutions. In addition, transparency could be strengthened by making consultations systematically open to the general public and by making increased use of ICT.

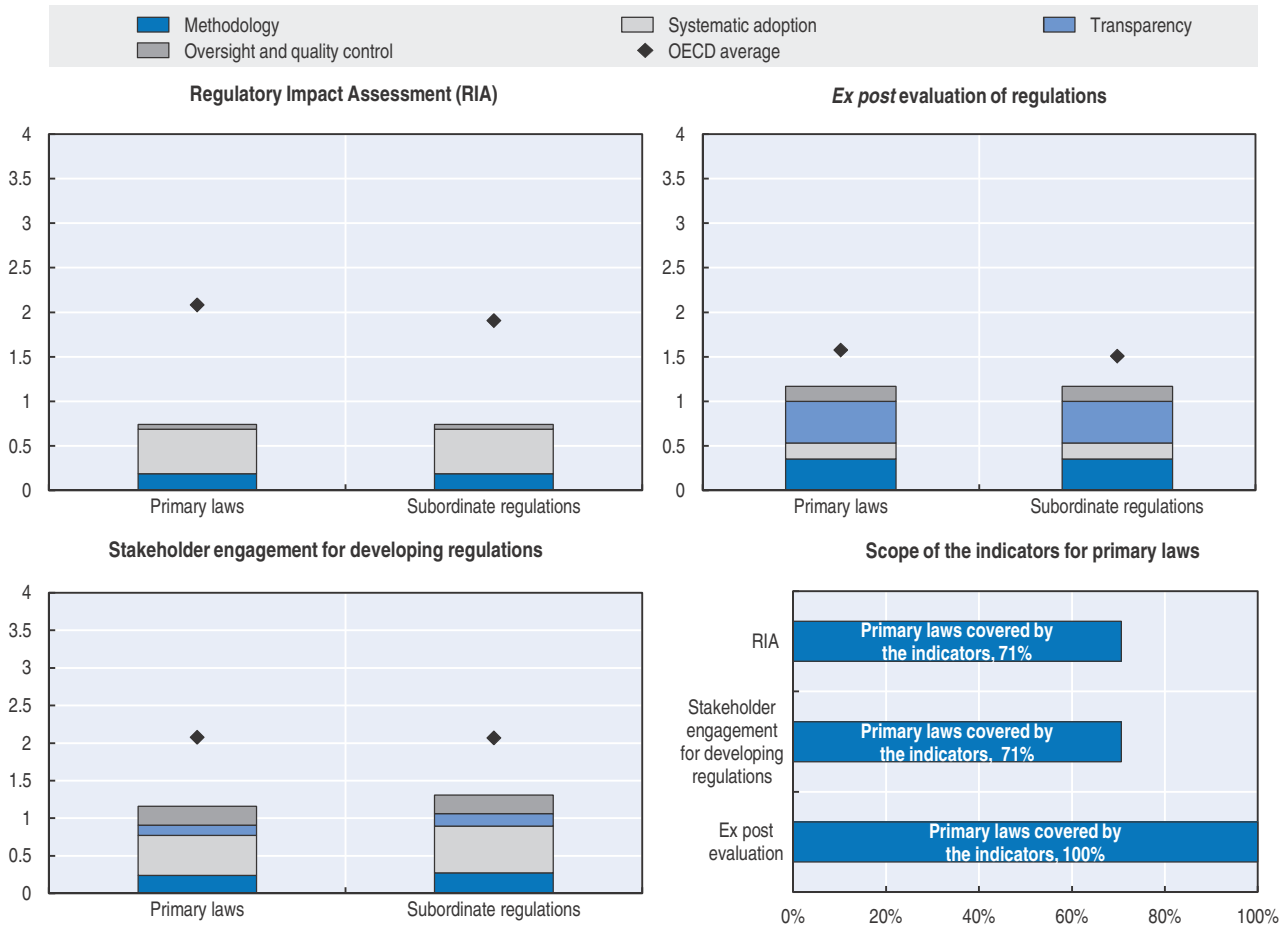
Portugal has taken important initiatives to curb red tape by reviewing administrative procedures and by simplifying the legal system. There is however room for improvement for reviewing laws and regulations. In particular, assessing whether the underlying policy goals have been achieved would be necessary to ensure regulations enacted actually address the issue at hand.

Spotlight: Simplificar Programme

Adopted by a large majority in March 2014, Parliament Resolution 31/2014 promotes the implementation of *Simplificar*, a comprehensive programme of administrative modernisation and simplification. It includes the "only once" principle, by which citizens can no longer be required by the administration to provide information more than once, regardless of the department involved. *Simplificar* also introduced a "one-in, one-out" principle as part of the system for administrative burden control and the "digital by default" principle, which aims at the digitisation of all public services by 2020.

Building on the successful *Simplex* programme, the implementation of *Simplificar* relies on co-ordination through the Inter-ministerial Network for Administrative Modernisation (RIMA). In addition, the *Simplificar* website (*www.simplificar.gov.pt*) serves as a crowdsourcing platform for collecting input from external stakeholders to help detect and propose possible solutions for regulatory and administrative burdens.

Indicators of regulatory policy and governance, Portugal



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

StatLink *http://dx.doi.org/10.1787/888933263302*

Slovak Republic

Overview

The Slovak Republic lacks an actual overarching, whole-of-government regulatory policy. The institutional responsibility for regulatory quality is not clearly set, with a very limited role of the Centre of Government. Four ministries (Ministry of Economy as a co-ordinator, Ministry of Finance, Ministry of Labour and Social Affairs and Ministry of Environment) share competencies for overseeing the quality of Regulatory Impact Assessments which makes the integrated approach to RIA difficult.

Even though the obligation to conduct Regulatory Impact Assessments according to the "Unified Methodology for the Assessment of Selected Impacts" has been in place since 2008, so far, Slovak ministries have been focusing mostly on budgetary impacts as part of the Regulatory Impact Assessment. The recent amendments to the "Unified Methodology for the Assessment of Selected Impacts" are an important step forward, providing strong methodology for assessing economic, social and environmental impacts and strengthening the quality of oversight through establishing a new Permanent Working Committee of the Legislative Council of the Slovak Republic and introducing early consultations with businesses.

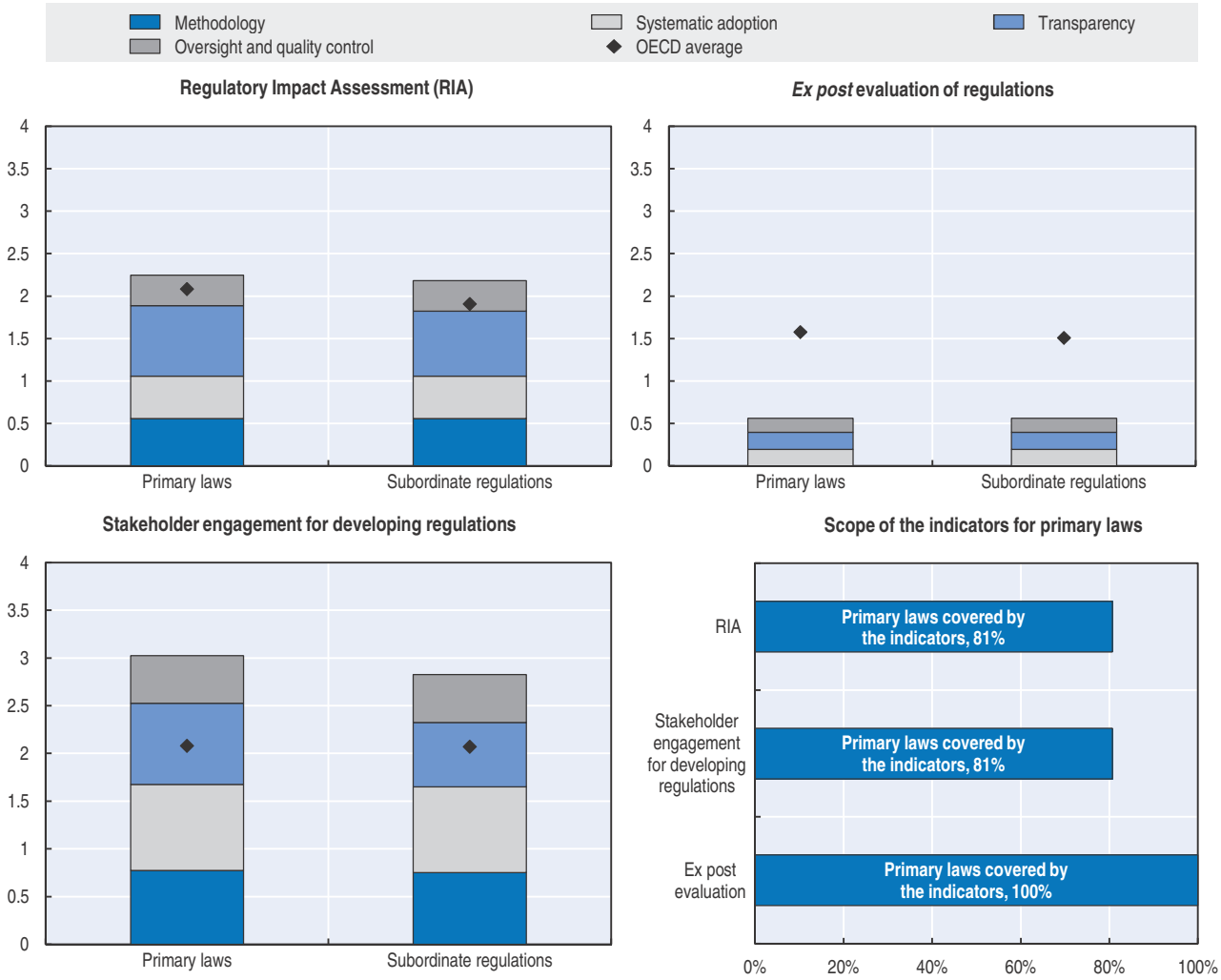
Procedures for public consultations in the later stage of the regulation-making process are well developed (see the spotlight box). Before amending the RIA guidance, there was no systemic policy on conducting early consultations, however, these sometimes took place through informal consultations with non-governmental stakeholders, the creation of ad hoc working groups and advisory committees, ongoing or ad hoc co-operation with academics, think tanks, NGOs, etc. The new Unified Methodology should provide a stronger incentive for early consultations, especially with businesses.

Ex post reviews of existing regulations have so far focused mostly on administrative burdens. More systemic use of targeted, in-depth reviews would be advisable. Some improvements in this area are expected following the establishment of the Centre for Better Regulation within the Slovak Business Agency which will be responsible also for the SME test.

Spotlight: The notice and comment procedure

Public consultations are required for every legislative proposal submitted to the government including legislative intents. All legislative drafts are automatically published on the government portal at the same time as they are sent for the inter-ministerial comment procedure. The deadline for comments is usually 15 working days. Whenever a comment receives support from 500 individuals or organisations, ministries are obliged to provide written feedback on the comment that is then part of the dossier submitted to the government for discussion.

Indicators of regulatory policy and governance, Slovak Republic



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

StatLink http://dx.doi.org/10.1787/888933263313

Slovenia

Overview

Slovenia adopted a comprehensive, whole-of-government regulatory policy as part of the *Single framework to enable better regulation and business environment and increase competitiveness* in 2013, which focuses, in the form of action plans and prioritisation, on the systematic implementation of measures aimed at raising the quality of the regulatory environment. The issue of regulatory quality is also included in other strategic documents of the government such as *Slovenia's Development Strategy 2015-2020*. Better Regulation, Administrative Processes and the Quality Service Department of the Ministry of Public Administration serves as a co-ordinating body promoting regulatory policy.

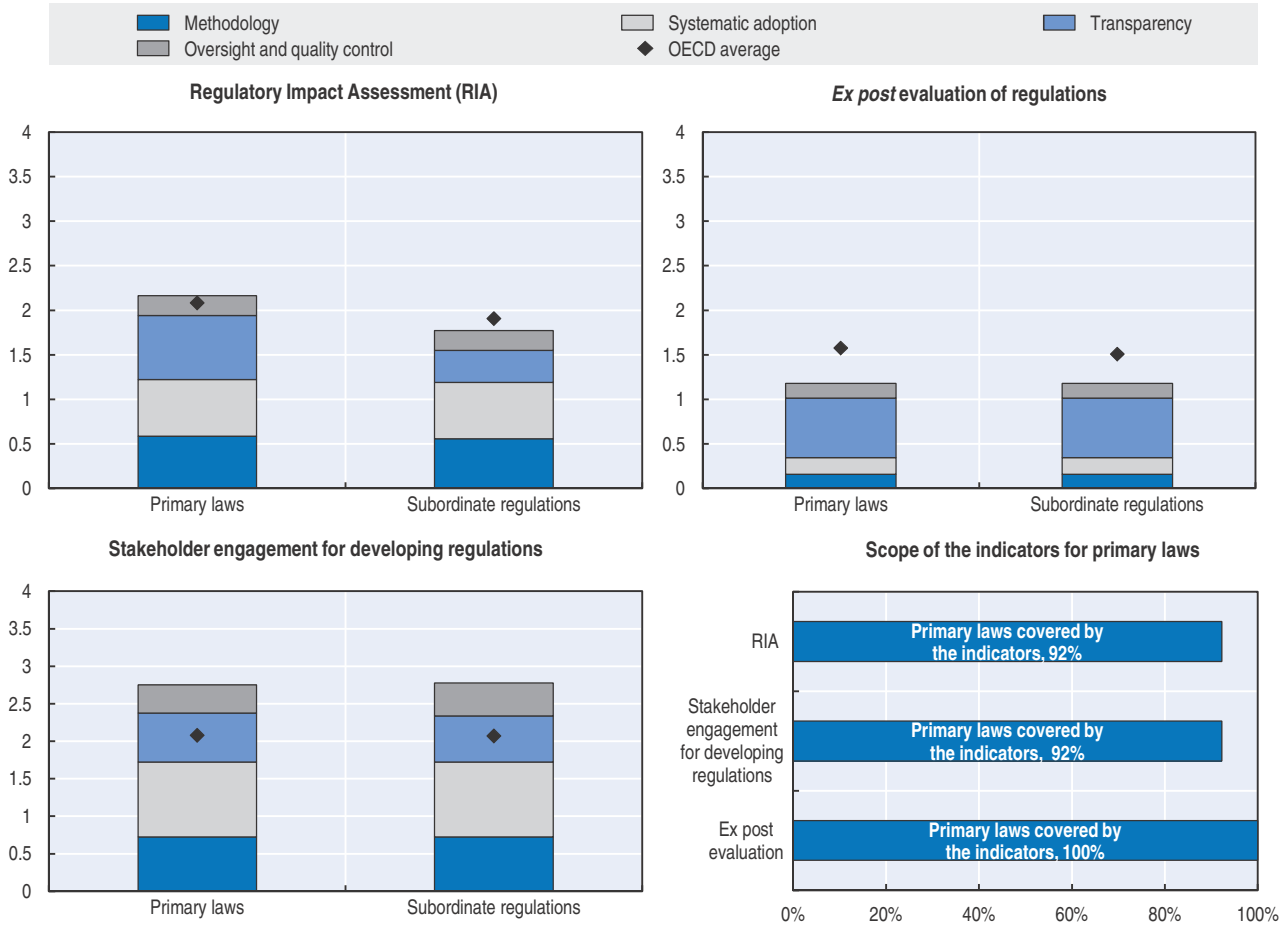
Regulatory Impact Assessment is obligatory for all primary legislation. However, the quality of impact assessments varies and the analysis is often only qualitative and/or incomplete. There is an insufficient quality control where no body independent from the drafting ministry carries out quality controls and therefore, in practice, legislative drafts are not returned for revision because of low quality RIAs. Consultations with outside stakeholders are compulsory for all primary and subordinate regulations and often take place early in the process with the use of green papers, consultation documents, etc. In early 2015, an extensive project for training regulatory drafters, external stakeholders as well as decision makers was carried out and aimed at increasing transparency and involvement of civil society in the preparation of regulations in the whole policy cycle.

Slovenia was among the early adopters of the Standard Cost Model to measure and reduce administrative burdens. The well-established programme that is still ongoing has led to significant reductions of the burdens on business. The system of physical one-stop shops for business received the United Nations' Public Service Award. E-government plays an important role in simplifying administrative procedures. There is, however, a lack of more comprehensive, in-depth *ex post* reviews of regulations going beyond administrative burdens.

Spotlight: "Ask only once" principle

The Law on Administrative Procedure forbids that public administration agencies in Slovenia request information from citizens and business that is already recorded elsewhere in public registers. If the responsible body does not have the necessary data, it is obliged to request them immediately or no later than three working days after the submission of the application. The requested authority is obliged to provide this information for free immediately or within 15 days. The positive effects of changes in regulation can be seen in particular for citizens, since the exchange of records available in public registries consequently leads to savings in time. In the public sector, the implementation of provisions is ongoing as access to public registries gradually expands in legal and technical terms, i.e. developing an electronic system for exchanging the data across the administration, shared inspections reporting and creating interoperable electronic registers.

Indicators of regulatory policy and governance, Slovenia



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

StatLink *http://dx.doi.org/10.1787/888933263326*

Spain

Overview

Spain is a relatively late comer to the Better Regulation agenda, starting in the late 1990s with programmes for administrative simplification. Since then, momentum has grown and a broader range of issues has gradually been tackled, including that of impact assessment. The different levels of government are now aware of the principles for Better Regulation and have started to integrate a broader agenda.

On 26 October 2012, the Council of Ministers published the Agreement to Create the Commission to Reform the Public Administrations (CORA) whose mandate was to produce proposals to make public administrations more efficient, useful and effective. The CORA report proposes a series of reforms to simplify the normative framework for business and facilitate interactions with public administrations. Many of these initiatives follow good practices of OECD countries. In some cases, the initiatives require some horizontality, while others are ministry-specific. Initiatives in the CORA include, inter alia:

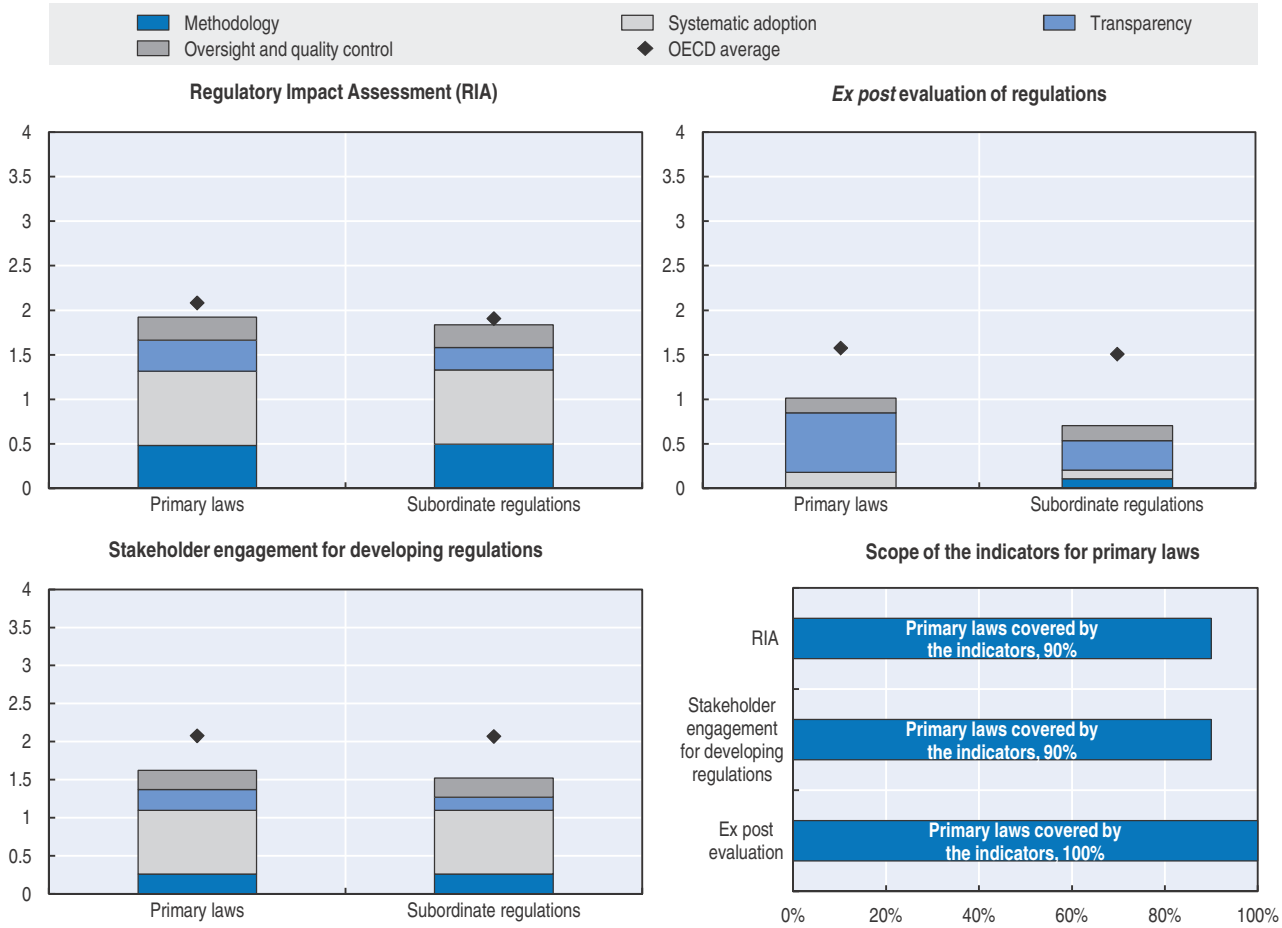
- Burden reduction manual.
- Common commencement dates.
- One-in one-out.
- Simplification of start-ups, tax, and environmental procedures.
- Normative review and codification of laws.
- RIA improvement.
- Law for a seamless market.

The RIA Guidelines stress the importance of assessing economic impacts and measuring administrative burdens. RIAs are conducted for all primary laws and subordinate regulations. However, the guidance could be further developed by providing advice on methods of data collection as well as providing clear assessment methodologies.

Spotlight: General Access Point for Public Administrations (PAG)

One of the most important initiatives foreseen by the CORA is the establishment of a General Access Point for Public Administrations (PAG), a single entry point to access public administrations and all horizontal information on activities, organisation, and functioning of the administration, as well as for handling transactions and most relevant services. It represents a further step in advancing the administrative simplification process initiated in the late 1990s. Legislation defines, regulates, and describes the basic features of the e-Access Point. The e-Access Point *http://administracion.gob.es* has replaced the former portal *www.060.es* and should be recognised as the trademark representing the general state administration to guide citizens and entrepreneurs in their dealings with public administrations. It is expected that the PAG will fill the gaps currently present in the mentioned portal, and it will be designed to respond to citizens' expectations.

Indicators of regulatory policy and governance, Spain



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

StatLink http://dx.doi.org/10.1787/888933263338

Sweden

Overview

Sweden has long placed regulatory simplification, and with it stakeholder engagement, at the centre of its Regulatory Reform agenda. Public consultation is a routine part of developing regulations. The principle of public access in Sweden entitles the general public to access official documents with a few exceptions, e.g. documents that are subject to secrecy. Draft regulations are often first analysed and evaluated by a committee of inquiry, whose final report is then referred to relevant stakeholders for consideration, before the joint draft procedure continues within the Government Offices. The Council on Legislation provides a check of conformity with existing legislation before a bill is submitted to the Parliament.

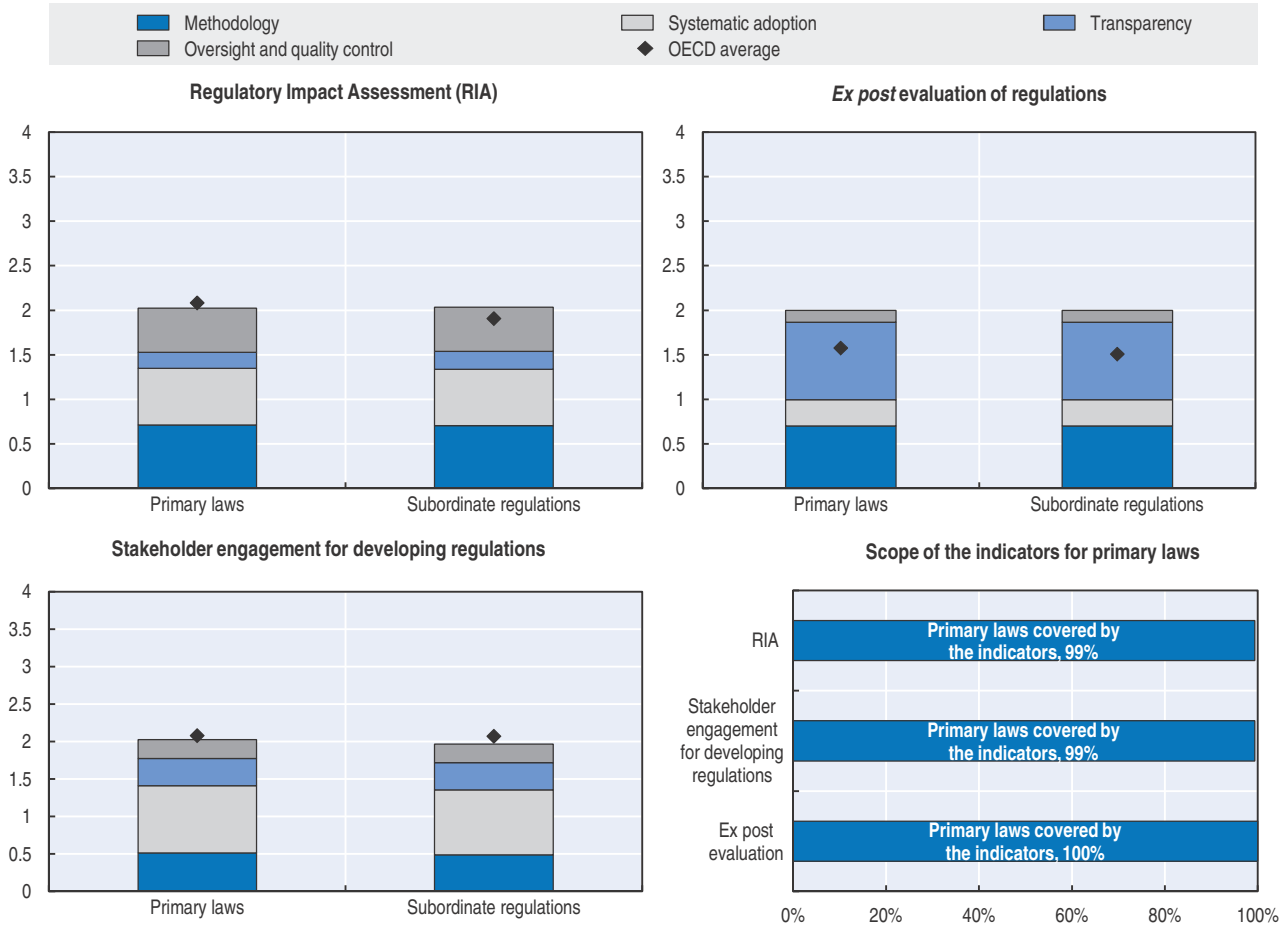
In 2012 the former Government announced five priority areas and seven targets for broadening the work on Better Regulation. The current Government is now reviewing the set Better Regulation targets and focus of its work. A Better Regulation Team at the Ministry of Enterprise and Innovation co-ordinates the work on Better Regulation across the Government Offices. Other key players include the Swedish Agency for Economic and Regional Growth, which carries out a broad range of projects, and the Better Regulation Council, an independent decision making body within the Agency that examines and issues opinions on the quality of RIAs. A key challenge regarding RIAs is to improve the articulation and calculation of regulatory proposal's economic impacts.

Ex post evaluation frequently occurs on an ad hoc basis in Sweden and is, as regards government agencies, regulated in the Ordinance on Impact Assessment (SFS 2007: 1244). The Swedish Government may wish to consider carrying out comprehensive in-depth reviews to evaluate the potential for regulatory reform in particular sectors.

Spotlight: "Regulations calculator"

In 2014, the Swedish Agency for Economic and Regional Growth improved the computational tool "*Regelräknaren*" ("Regulations calculator"; *www.enklareregler.se/verktyg/regelraknaren.html*) to support officials/rulemakers/legislators when estimating the costs for business when carrying out RIAs. The Government believes that this tool can contribute to improving the calculations used within RIAs for regulatory proposals and amendments to regulation.

Indicators of regulatory policy and governance, Sweden



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StatLink *http://dx.doi.org/10.1787/888933263341*

Switzerland

Overview

In Switzerland, RIA has to be conducted for all regulations. The requirements for public consultations on all primary laws and major subordinate regulations, and the evaluation of policies are enshrined in the Constitution. There is a strong evaluation culture in Switzerland. In recent years, various ad hoc reviews of the stock of regulation have been conducted. Among others, regulations have been screened for administrative burdens, compliance costs, and compliance with international standards, and public stocktakes of regulation have been conducted.

The State Secretariat for Economic Affairs (SECO) is the main point of contact and expertise for regulatory policy issues. It provides support to government departments in carrying out RIAs, and reviews existing regulations. The Parliamentary Control of the Administration and the evaluation unit of the Swiss Federal Audit Office undertake about 10-15 *ex post* evaluations of government policies, including regulations, per year.

Lists of ongoing and planned consultations are published on a central government website. While formal consultation at an early stage on the nature of the problem and possible solutions is rare, broad public consultations are always conducted on draft regulations. Comments received in the consultation process are published and have to be taken into account by regulators.

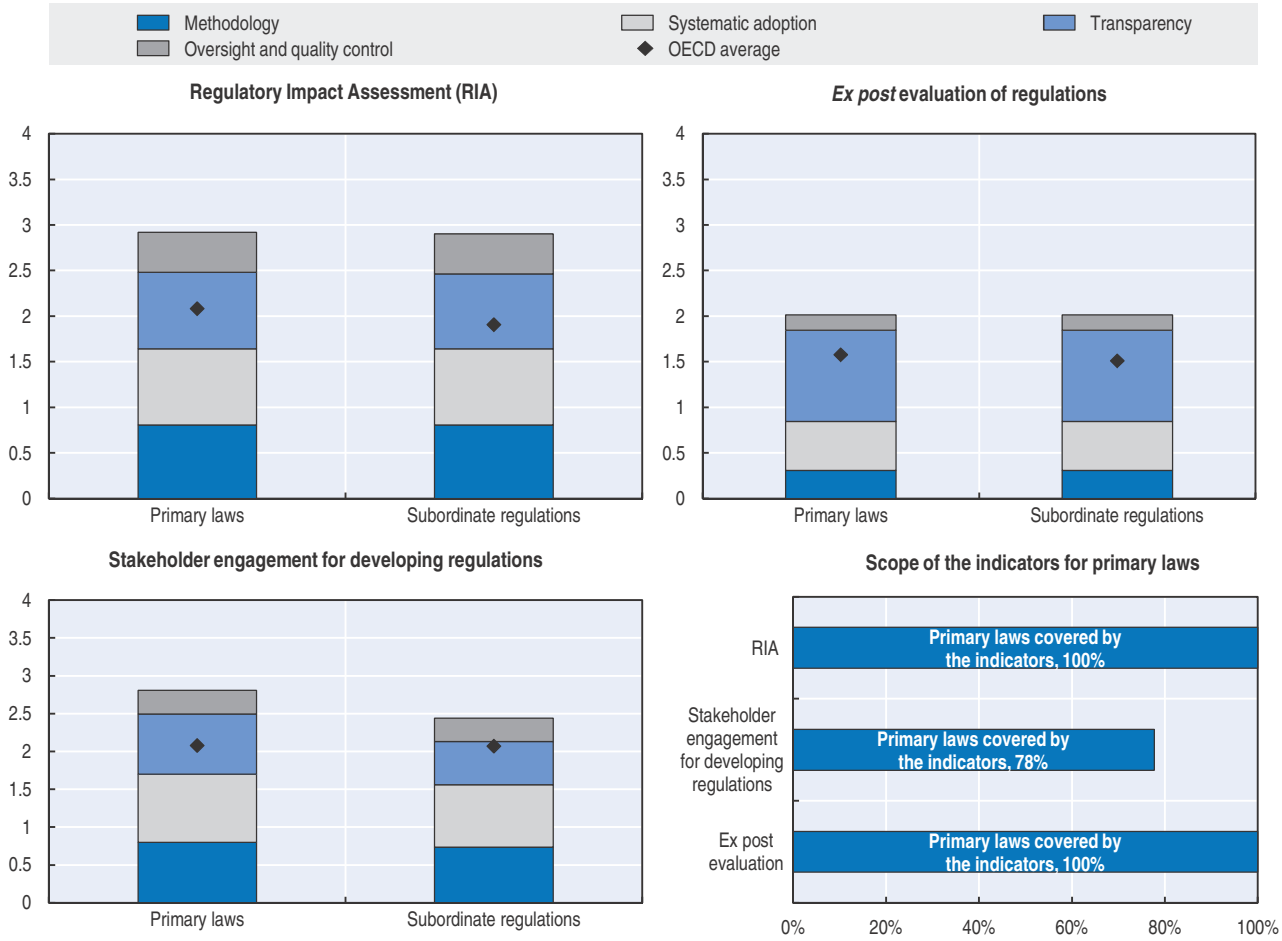
For most draft regulations, a simple RIA is conducted. It mainly focuses on qualitative analysis, and often the consideration of alternatives is not very thorough. For a few regulations that are particularly economically significant, in-depth RIAs are conducted that contain more thorough analysis and quantify impacts. Since their introduction in 2007, 15 in-depth RIAs have been carried out. All of them are published on-line, whereas simple RIAs are not systematically made available to the public.

Spotlight: Reviews of regulatory policy tools

Several reviews were conducted to evaluate the existing regulatory policy tools and develop recommendations to improve the regulatory framework in Switzerland. SECO mandated a *review of in-depth RIAs in 2011*, and *of simple RIAs in 2014*. While the studies conclude that in-depth RIAs prove to be a valuable tool for developing regulation, some significant shortcomings in the use of simple RIAs were identified. The Swiss Federal Audit Office is presently carrying out a broader review of the quality of impact assessment across selected bills.

The Parliamentary Control of the Administration carried out an *evaluation of the consultation and hearing system* in 2011. The report points to five main weaknesses of current practices, including too short time limits and insufficient information for the public on how consultation comments are taken into account by regulators. The law on consultation was subsequently revised in order to reflect the results of this evaluation, e.g. different forms of consultations were unified and steps were taken to increase the transparency of the results of consultations. The Swiss Federal Audit Office recently conducted a *review of the implementation of evaluation clauses in regulations*. It concludes that the use of these clauses is not implemented systematically across different parts of the administration, and that they are frequently formulated very vaguely.

Indicators of regulatory policy and governance, Switzerland



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Turkey

Overview

Turkey started its better regulation agenda in the early 2000s. The "By-Law on Principles and Procedures of Drafting Legislation" decree issued 17 February 2006 by the Council of Ministers (referred to as the *By-Law*), is the foundational framework for improving and maintaining legal and regulatory quality in Turkey.

The *By-Law* includes provisions for stakeholder engagement and Regulatory Impact Assessments (RIA). The requirements for RIA were further elaborated in the Prime Ministerial Circular on RIA, issued 3 April 2007 in the Official Gazette. This provided guidelines, roles and responsibilities including for the Better Regulation Group, which is the central oversight body at the Prime Ministry.

In addition, Turkey has conducted burden reduction initiatives through simplification programmes in 2005 and 2009. It reviewed over 14 000 laws, created one-stop shops, and used e-government tools to improve citizen and business experiences of regulation.

In order to build on the existing legal framework and to improve the regulatory environment, there should be greater enforcement and monitoring of the requirements that have been put in place. The Better Regulation Group could systematically monitor compliance with the *By-Law* and publish the results to incentivise ministries and regulatory agencies. Making better use of ICT in public consultations to make them "two-way" and document those who have been consulted would help enable more interactive stakeholder engagement and encourage the consultation process to be more transparent. The practice of *ex post* evaluation should be systemised to inform new policy design as well as assess the progress of existing interventions.

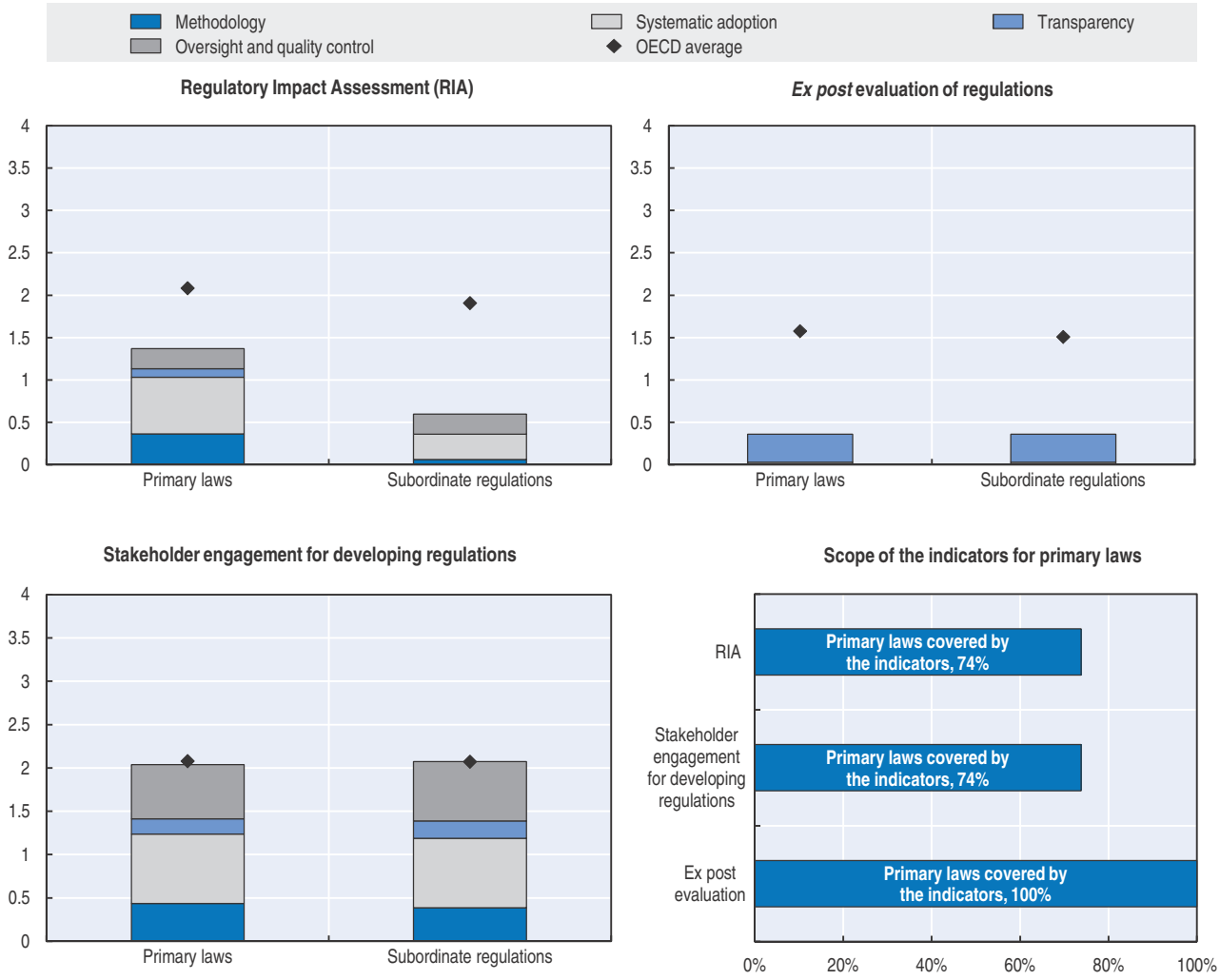
Spotlight: RIA threshold requirements in Turkey

According to the 2006 By-Law on Principles and Procedures of Drafting Legislation, full Regulatory Impact Assessments are required when:

- The effect of draft laws and decrees are estimated to exceed TRY 10 million (USD 8 million).
- The Prime Ministry has requested a RIA regardless of the estimated impact or type of legislation. This may be due to concerns from citizens or business.

However, draft legislation related to national security and national budget is excluded from RIA requirements. RIA is carried out by the proposing ministry or public agency proposing the legislation. For proposals with an estimated impact of under TRY 10 million, a partial RIA is required which does include a quantified impact analysis.

Indicators of regulatory policy and governance, Turkey



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StatLink *http://dx.doi.org/10.1787/888933263364*

United Kingdom

Overview

The United Kingdom places great emphasis on evidence-based policy making. Before introducing new regulations, a preliminary RIA is carried out that outlines the problem under consideration and evaluates possible regulatory and non-regulatory solutions. Stakeholders are invited to comment on the evidence and assumptions supporting the analysis. A final stage RIA is then developed providing detailed cost-benefit analysis for the preferred option(s). Deregulatory measures and low-cost measures are eligible for a Fast Track "Regulatory Triage Assessment", where an early stage RIA is not compulsory. The Private Members' Bills (initiated by parliament) which receive government support would normally go through the same processes as similar government bills initiated by the executive.

A number of policies have been introduced to address the stock of regulations. The government-wide strategy for reducing the stock of existing regulation, the "Red Tape Challenge", launched in 2011, was led jointly by Ministers from the Cabinet Office and the Department for Business, Innovation and Skills. The RTC is an example of open, collaborative policy making including the use of digital crowd sourcing which prompted 30 000 comments and over 1 500 detailed submissions. Since 2013, the United Kingdom has operated a "One-in, Two-out" regulatory management system. As of March 2015, these measures had together delivered savings to business of some GBP 10 billion.

The United Kingdom has also addressed implementation of regulatory proposals through a mandatory regulator's code that requires all regulators to give due consideration of the impact of their actions to economic growth. Since 2012, thirteen reviews of enforcement and inspection regimes and practices amongst regulators have been conducted under the "focus on enforcement" programme.

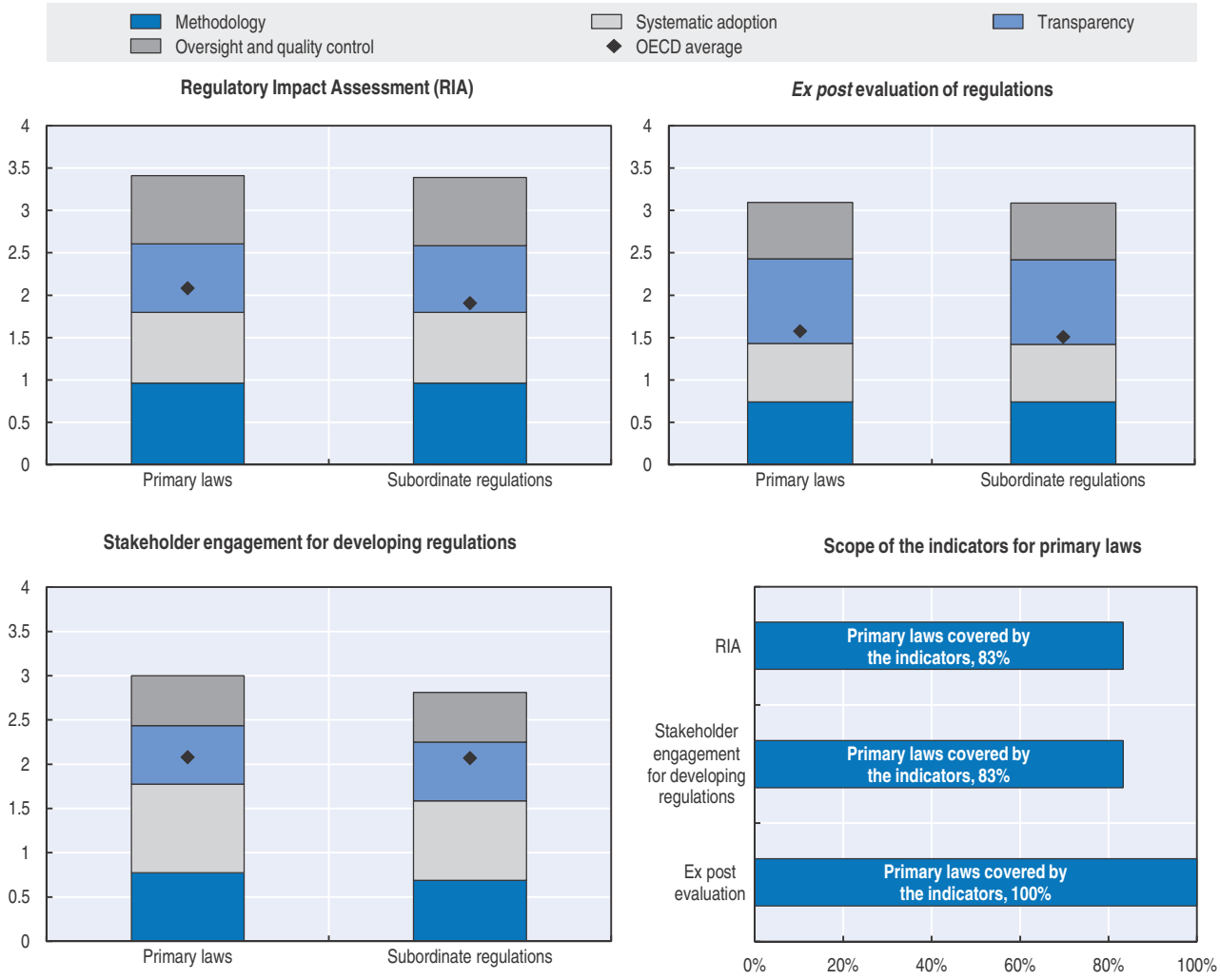
The United Kingdom's regulatory policy agenda mainly focusses on the impacts for business and civil society organisations. Although the RPC (see below) reviews all impacts assessed in a RIA (including on the public sector and consumers), a final stage RIA can only be rated as not fit for purpose if there are concerns regarding the evidence and analysis underpinning the estimates of the costs to business, but not if there are concerns with analysis in other areas, The United Kingdom may benefit from increasing attention on other elements for inclusive growth.

Spotlight: Regulatory Policy Committee

New regulatory proposals undergo independent scrutiny from the Regulatory Policy Committee, which was set up in 2009 and became an independent advisory non-departmental public body in 2012. Between 2010 and 2015, it has provided opinions to government on over 1 200 regulatory proposals affecting business and civil society organisations, of which 951 have become law. The opinions assess the quality of the evidence base supporting regulatory proposals and have confirmed net savings to business of GBP 2.2 billion per year from the quality checking and changes in law. The RPC also reviews all *ex post* evaluation. If there are significant concerns with the analysis and evidence, the expectation is that RIAs will be corrected before they can be published as part of the consultation process, or before final regulations are laid before the UK Parliament. The equivalent net cost to business of the preferred regulatory option is validated by the RPC as robust before the figure is published as part of the six-monthly "Statement of New Regulation".

On 3 December 2014, the UK government announced the expansion of the scope of proposals to be included in the "accountability for regulator impact" scheme requirement to assess costs for business, to include any government-sponsored voluntary scheme with an impact on business, such as voluntary codes of conduct. As such, business has the right to ask the Regulatory Policy Committee to independently review a scheme's impact if they disagree with the regulator's assessment.

Indicators of regulatory policy and governance, United Kingdom



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StatLink *http://dx.doi.org/10.1787/888933263377*

United States

Overview

The Administrative Procedure Act governs the rule-making process in the United States, requiring agencies to provide public notice and seek comment prior to issuing new regulations or revising existing ones. Specifically, agencies are required to publish a regulatory proposal that provides sufficient information – including the evidence on which the proposal is based and the regulatory text with which the public would need to comply – to apprise stakeholders of the issues involved so that they may present responsive data or arguments. Agencies must then explain how they addressed significant issues raised by commenters. Together with the proposal and supporting analyses, the comments form the public record that serves as the rational basis for each final regulation. The APA also allows for judicial review of the final rule to ensure compliance with this process.

Under Executive Orders 12866 (1993) and 13563 (2011), the Office of Management and Budget (OMB) within the Executive Office of the President conducts a centralised review of draft, significant regulations before they are proposed by agencies and again before they are finalised. OMB reviews draft regulations to determine that *i)* their expected costs and benefits are carefully considered, *ii)* they reflect the President's priorities, *iii)* agencies consider a range of reasonable alternatives, and *iv)* appropriate interagency co-ordination occurs. OMB can "return" draft regulations to agencies for their reconsideration.

The evaluation of regulatory costs and benefits is well developed in the United States. The extent of the evaluation is generally proportional to the impacts of the regulatory proposal. Agencies evaluate the costs and benefits of all significant regulatory proposals, with full-blown RIAs required for proposals with annual impacts over USD 100 million. The Regulatory Flexibility Act imposes additional analytic and consultation requirements if there is "a significant economic impact on a substantial number of small regulated entities."

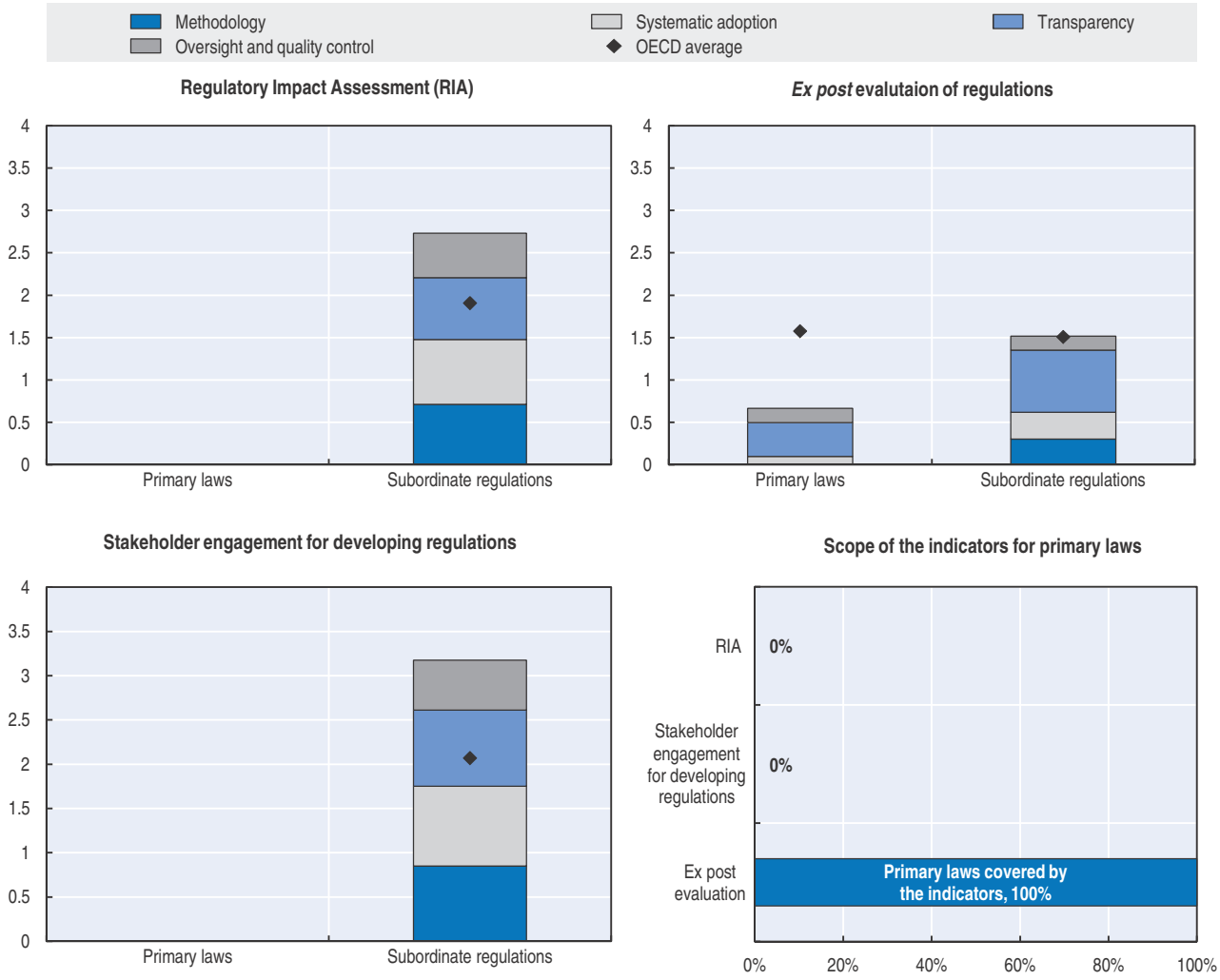
Executive Order 13610, "Identifying and Reducing Regulatory Burdens," institutionalises *ex post* evaluation in the United States. The new effort on *ex post* evaluation should assess the extent to which the policy outcome has been achieved, and given the advanced state of the RIA system, it could also validate the *ex ante* assessment.

Spotlight: Behavioural policy making

Executive Order 13563 introduced behavioural economics in the United States. Behaviourally informed initiatives have simplified or standardised consumer information to improve outcomes for citizens. For instance, the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 strengthened consumer protection following the financial crisis. Based on academic evidence of consumer behaviour toward credit, it banned certain types of "hidden" fees and mandated lenders to supply more helpful and timely information. It forced lenders to decline transactions that would exceed the credit limit rather than to charge a fee. The Act also required lenders to include on bills an explicit calculation of the time and cost of repaying the balance through minimum monthly repayments, and a similar calculation for the cost of repaying over 36 months.

Indicators presented on RIA and stakeholder engagement only cover processes that are carried out by the executive. As the executive does not initiate any primary laws in the United States, results for RIA and stakeholder engagement are only presented for subordinate regulations and do not apply to primary laws. There is no mandatory requirement in the United States for consultation with the general public and for conducting RIAs to inform the development of primary laws initiated by Congress.

Indicators of regulatory policy and governance, United States



1. The figures display the aggregated scores from all four categories giving the total composite score for each indicator. The maximum score for each category is one and the maximum score for each aggregated indicator is four.
2. The information presented in the indicators for primary laws on RIA and stakeholder engagement only covers processes of developing primary laws that are carried out by the executive branch of the national government. As in the United States no primary laws are initiated by the executive, the indicators on RIA and stakeholder engagement cover 0% of primary laws. The information presented in the indicators for primary laws on *ex post* evaluation covers processes in place for both primary laws initiated by parliament and by the executive.

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

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ANNEX A

Country information on shares of national laws

	Proportion of all national primary laws initiated by parliament (%)			Proportion of national primary laws (as a % of all primary laws including sub-national level laws)			Proportion of national subordinate regulations (as a % of all subordinate regulations including sub-national regulations)		
	2011	2012	2013	2011	2012	2013	2011	2012	2013
Australia	2.1	0.5	0.7	30	31	22	59	59	54
Austria	10-25	10-25	10-25	≈ 30	≈ 30	≈ 30	-	-	-
Belgium	50	40	23	34.9	32	33.5	49.3	50.6	54.2
Canada	14	28	27.5	-	-	-	-	-	-
Chile	34.5	30.6	33.3	-	-	-	-	-	-
Czech Rep.	16.5	38.8	34.1	-	-	-	-	-	-
Denmark	-	<1	<1	100	100	100	100	100	100
Estonia	31.3	33.3	-	-	-	-	-	-	-
Finland	≈ 1	≈ 1	≈ 1	100	100	100	100	100	100
France	33	37.5	31	-	-	-	-	-	-
Germany	12.4	14.1	17	12	11	12	16	14	24
Greece	0	0	0	-	-	-	-	-	-
Hungary	31.9	30.5	26.8	-	-	-	-	-	-
Iceland	21.3	22	20.8	100	100	100	95	95	95
Ireland	0	0	2	100	100	100	-	-	-
Israel	49.1	47.3	31	-	-	-	-	-	-
Italy	13	23	6	19	17	8	17	17	24
Japan	25	33	20	-	-	-	-	-	-
Korea	94	68	91	-	-	-	-	-	-
Luxembourg	-	2.7	10.7	100	100	100	100	100	100
Mexico	-	95.8	70	-	36.5	-	-	-	-
Netherlands	<1	<1	<1	100	100	100	-	-	-
New Zealand	0	14	8	-	-	-	-	-	-
Norway	4.4	1	2.2	100	100	100	67.7	70.2	73.6
Poland	40	28	45	-	-	-	-	-	-
Portugal	34	20	34	100	100	100	-	-	-
Spain	10	-	-	-	-	-	-	-	-
Slovak Rep.	2	32	24	-	-	-	-	-	-
Slovenia	8.3	6.4	-	-	-	-	-	-	-
Sweden	0.5	0.9	0.6	-	-	-	-	-	-
Switzerland	32.8	16.1	17.9	-	-	-	-	-	-
Turkey	6.6	45.6	26.3	-	-	-	-	-	-
UK	14.3	26.3	16.7	36	56	52	72	74	77
USA	100	100	100	0.9	1.7	-	-	-	-
EU	Not applicable			Not applicable			Not applicable		

Note: "-" stands for "no data provided". Information on data for Israel: *http://dx.doi.org/10.1787/888932315602*.
Source: 2014 Regulatory Indicators Survey results, *www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm*.

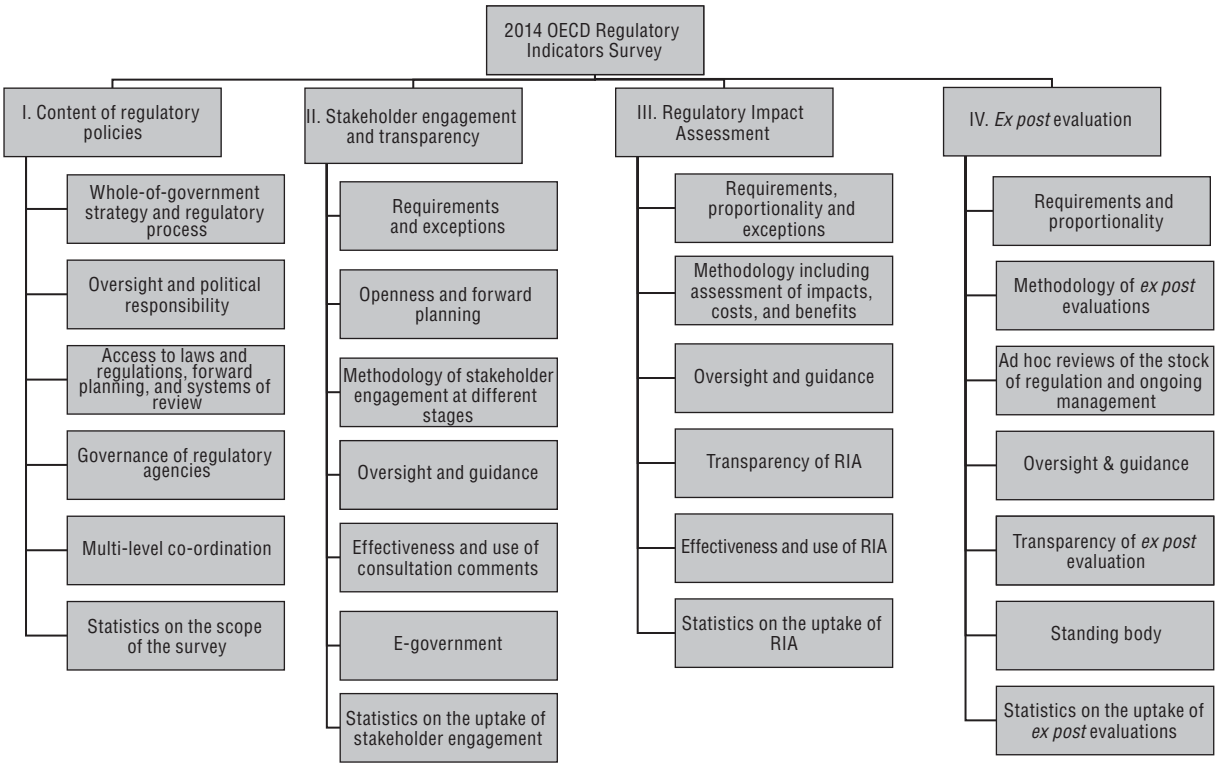
ANNEX B

The 2014 OECD Regulatory Indicators Survey and the composite indicators

The 2014 Regulatory Indicators Survey

The 2014 Regulatory Indicators Survey is structured around the areas of good practices described in the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012). It supported the collection of data on the content of regulatory policies, as well as on the requirements and practices of countries in the areas of: stakeholder engagement, Regulatory Impact Assessment and *ex post* evaluation (see details of the Survey structure in Figure B.1).

Figure B.1. **Structure of the 2014 OECD Regulatory Indicators Survey**



This survey follows up on previous Regulatory Management Surveys carried out in 1998, 2005, and 2008/09. Compared to previous editions, it 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. It is based on an ambitious and forward-looking regulatory policy agenda and is designed to track progress in regulatory policy over time. The survey captures progress in countries that already have advanced regulatory practices, while recognising the efforts of countries that are just starting to develop their regulatory policy. In addition to collecting information on formal requirements, the survey gathers evidence on the implementation of these formal requirements and the uptake of regulatory management practices. The survey mostly focuses on the processes of developing regulations that are carried out by the executive branch of the national government.

The information collected through the survey is valid as of 31 December 2014. It is envisaged that the survey be updated every three years, with the information from the initial survey establishing a clear baseline, to allow member countries to track their progress over the next 3-10 years. Additional questions may be added in the future to expand the scope of the survey. Whenever possible and to allow for comparisons over time, information from the new survey is analysed against time-series data from the previous Regulatory Management Surveys (2005 and 2008/09).

The composite indicators

Three composite indicators were developed based on information collected through the survey: one for RIA, one for stakeholder engagement and one for *ex post evaluation*. Each composite indicator is composed of four equally weighted categories (Figure B.2):

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

Each category is composed of several equally weighted sub-categories built around specific questions in the 2014 OECD Regulatory Indicators Survey. The separate sub-categories are listed in Table B.1.

Figure B.2. **Structure of composite indicators**

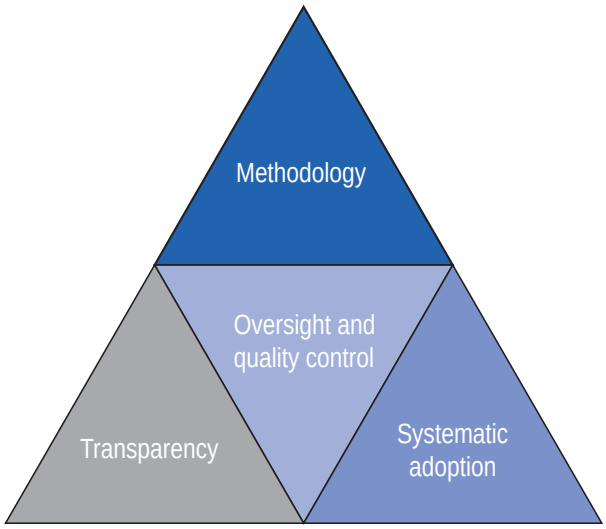


Table B.1. **Overview of categories and sub-categories of composite indicators**

	Stakeholder engagement	Regulatory Impact Analysis	*Ex post* analysis
Methodology	• Consultation open to the general public: during early stages of developing regulations • Consultation open to the general public: during later stages of developing regulations • Guidance • Methods of stakeholder engagement adopted in early stages of developing regulations • Methods of stakeholder engagement adopted in later-stages of developing regulations • Minimum periods • Use of interactive websites during early stages of developing regulations • Use of interactive websites during later stages of developing regulations	• Assessment of budget and public sector impacts • Assessment of competition impacts • Assessment of other economic impacts • Assessment of other impacts • Assessment of environmental impacts • Assessment of social impacts • Assessment of distributional effects • Assessment of wider cost (e.g. macroeconomic costs) • Benefits identified for specific groups • Consideration of issues of compliance and enforcement • Costs identified for specific groups • Guidance • Identify and assess regulatory options • Requirement to identify benefits • Requirement to identify costs • Requirement to identify process of assessing progress in achieving regulation's goals • Requirement to qualitatively assess benefits • Requirement to quantify benefits • Requirement to quantify costs • Risk assessment • Types of costs quantified	• Assessment of costs and benefits • Assessment of achievement of goals • Assessment of impacts • Assessment of consistency with other regulations • Established methodologies and guidance
Systematic adoption	• Formal requirements • Stakeholder engagement conducted in practice in early stages of developing regulations • Stakeholder engagement conducted in practice in later stages of developing regulations	• Formal requirements • RIA conducted in practice • Proportionality	• Use of mechanisms for review including ad hoc reviews • Formal requirements • *Ex post* evaluations conducted in practice • In-depth reviews • Presence of standing body • Proportionality

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Table B.1. **Overview of categories and sub-categories of composite indicators** *(cont.)*

	Stakeholder engagement	Regulatory Impact Analysis	*Ex post* analysis
Transparency	• Transparency of process • Consultations are made open to general public • Consideration and response to stakeholder comments • Availability of information	• Responsibility and transparency • Transparency of Process	• Ongoing stakeholder engagement • Stakeholder engagement • Transparency of process
Oversight and Quality Control	• Oversight and quality control function • Publically available evaluation of stakeholder engagement	• Oversight • Publically available evaluation of RIA • Quality control	• Oversight and quality control function • Publically available evaluation of *ex post* analysis

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Glossary

Administration and enforcement costs: Costs incurred by government in administering and enforcing the regulatory requirements. These costs include the costs of publicising the existence of the new regulations, developing and implementing new licensing or registration systems, assessing and approving applications and processing renewals. They will also include devising and implementing inspection and/or auditing systems and developing and implementing systems of regulatory sanctions to respond to non-compliance.

Administrative burdens: The costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but NOT including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations.

Advisory groups: Selected experts and/or interested parties (*e.g.* social partners, environmental groups) are brought together to form a consultative body, either on an *ad hoc* or a standing basis. This is a formalised group, i.e. there is a formal written statute, or members are appointed through a formal method.

Compliance costs: Costs that are incurred by businesses or other parties at whom regulation may be targeted in undertaking actions necessary to comply with the regulatory requirements, as well as the costs to government of regulatory administration and enforcement. This includes *substantive compliance costs*, *administrative burdens* and *Government administration and enforcement costs*.

Financial costs: The financial cost of regulations is the cost of capital deployed in meeting regulatory compliance obligations. That is, where investments must be undertaken (i.e. equipment purchased, etc.) in order to comply with regulations, the cost to the firm includes both the purchase price of these items and the cost of financing the purchase – whether from debt or equity.

Green paper: A consultation document designed to stimulate discussion on a particular topic. Green papers invite interested parties (bodies or individuals) to participate in a consultation process and debate a subject and provide feedback on possible solutions. Green papers are intended to provide information for discussion and do not imply any commitment to any specific action.

Macroeconomic costs: Cost impacts on key macroeconomic variables such as GDP and employment caused by regulatory requirements. Few specific regulatory measures will have discernible macroeconomic costs. However, they may constitute a highly significant cost item in some cases.

National government: The national, central, or federal government that exercises authority over the entire economic territory of a country, as opposed to local and regional governments.

Performance-based regulation: Regulations that impose obligations stated in terms of outcomes to be achieved or avoided, giving regulated entities flexibility to determine the means to achieve the mandated or prohibited outcomes. Also referred to as outcome-based regulation.

Post-implementation review: A review of a rule or regulation after it has come into being.

Primary legislation: Regulations which must be approved by the parliament or congress. Also referred to as "principal legislation" or "primary law".

Preparatory committee: A committee of interested parties/experts who are formally responsible for helping find solutions to the problem and draft the regulations. Also referred to as "preparatory commission".

Public consultation over the internet: Consultation open to any member of the public, inviting them to comment with a clear indication how comments can be provided. The public should be able to either submit comments on-line and/or send them to an e-mail address that is clearly indicated on the website. This excludes simply posting regulatory proposals on the internet without provision for comment.

Public meeting: A meeting where members of the general public are invited to attend and to provide comments. A physical public meeting is a public meeting where members of the public must attend in person. Please note that for the purposes of this questionnaire parliamentary debates should not be considered as public meetings even when members of the public are allowed to witness them.

Regulation: The diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation include all laws, formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

Regulators: Administrators in government departments and other agencies responsible for making and enforcing regulation.

Regulatory agency: A regulatory agency is an institution or body that is authorised by law to exercise regulatory powers over a sector/policy area or market.

Regulatory Impact Assessment (RIA): Systematic process of identification and quantification of benefits and costs likely to flow from regulatory or non-regulatory options for a policy under consideration. May be based on benefit-cost analysis, cost effectiveness analysis, business impact analysis etc. Regulatory Impact Assessment is also routinely referred to as Regulatory Impact Analysis, sometimes interchangeably (*Recommendation of the Council on Regulatory Policy and Governance*, OECD, 2012, p. 25).

Regulatory policy: The set of rules, procedures and institutions introduced by government for the express purpose of developing, administering and reviewing regulation.

Regulatory reform: Changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of regulation and formalities. "Deregulation" is a subset of regulatory reform.

Subordinate regulation: Regulations that can be approved by the head of government, by an individual minister or by the cabinet – that is, by an authority other than the parliament/congress. Please note that many subordinate regulations are subject to disallowance by the parliament/congress. Subordinate regulations are also referred to as "secondary legislation" or "subordinate legislation" or "delegated legislation".

Substantive compliance costs: The incremental costs to the target group of complying with a regulation, other than administrative costs. They include only the direct costs borne by those for whom the regulation imposes compliance obligations. Substantive compliance costs include the following broad categories: implementation costs, direct labour costs, overheads, equipment costs, materials costs and the costs of external services.

Sunsetting: The automatic repeal of regulations a certain number of years after they have come into force.

White paper: A government report which sets out a detailed policy or regulatory proposal. A white paper allows for the opportunity to gather feedback before the policy/regulation is formally presented.

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