OECD Regulatory Policy Outlook 2018

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OECD Regulatory Policy Outlook 2018

BETTER POLICIES FOR BETTER LIVES

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Foreword

It has been three years since the launch of the inaugural edition of the Regulatory Policy Outlook. Since then, much progress has been made in continuing to put the world economy back on track; but a sense of malaise remains. Its causes and drivers are diffuse and not all economic in nature, but they are very much tangible. They have to do, to a certain degree, with the relentless and overwhelming pace of technological change that is transforming every facet of our lives. They are also rooted in the irremediable intricacies of our economies, connected via continuous flows that go beyond goods to affect people, services, capital, and data.

This has many consequences, in particular on the way countries develop and apply their traditional tools of policy making and regulation. Changing business models, quicker innovation cycles, relocation and even "delocation" of activities and more demanding citizens and consumers put pressure on policy makers and their institutions. They require of them to be quicker but attentive, protective but not restrictive, transparent and accountable, efficient in the use of resources, data and time of their constituents and coherent with what their peers in other countries do.

This second edition of the Regulatory Policy Outlook is published in challenging times. It reflects the dynamism of countries in improving and adapting the quality of their regulatory systems. It is also a timely reminder of the steps that governments can take to be more transparent, agile and evidence-based to respond to the needs of their different constituents. There is room for more meaningful engagement with various stakeholders and for more systematic evaluation to improve the quality of the laws and regulations that govern the everyday life of business and citizens. This, however, means that regulators need to adapt to modern times; it also means, inter alia, co-operating more systematically with their peers within and beyond borders to achieve their policy objectives and piloting new tools of engagement based on a greater understanding of behaviours.

As highlighted in the first edition of the Regulatory Policy Outlook, laws and regulations – together with taxes and spending – are essential instruments in attaining policy objectives. The job of ministries, regulatory agencies and oversight bodies in defining the rules of the game for all is becoming more daunting. If anything, the series of Regulatory Policy Outlooks should be on their table to help them find the better way going forward.

Angel Gurría
OECD Secretary-General

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The main authors included Christiane Arndt-Bascle (Chapter 2), Paul Davidson (Chapter 2), Mercy de Menno (Chapter 5), James Drummond (Chapter 6), Céline Kauffmann (Chapters 1, 3 and 5), Anna Pietikainen (Chapter 4), Rebecca Schultz (Chapter 3) and Daniel Trnka (Chapter 4). The Outlook relies heavily on data collected through the Regulatory Indicators Survey, which was designed, implemented, verified and prepared for publication (including the country profiles and methodological guide) by the Measuring Regulatory Performance team, involving Christiane Arndt-Bascle, Benjamin Gerloff, Tobias Querbach, Rebecca Schultz, Eric Thomson and Yola Thuerer. Significant inputs to chapters, country profiles and data collection were provided by Nick Malyshev, Winona Rei Bolislis, Lorenzo Casullo, Filippo Cavassini, Manuel Flores, Shelly Hsieh, Marianna Karttunen, Guillermo Morales, Faisal Naru, Eun Kyung Park, and Camila Saffirio.

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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 Directorate. The directorate's mission is to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitments to citizens.

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Acronyms and abbreviations

ANEEL	Brazilian Electricity Regulatory Agency
ARERA	Italian energy, water and waste regulator
ASEA	Agency for Safety, Energy and Environment (*Agencia de Seguridad, Energía y Ambiente*)
BEIS	Business, Energy & Industry Strategy
BETA	Behavioural Economics Team of the Australian Government
BI	behavioural insights
BIG	Behavioural Insights Group
BIT	Behavioural Insights Team
BTU	British Termal Unit
CNH	National Commission for Hydrocarbons (*Comisión Nacional de Hidrocarburos*)
COAG	Council of Australian Governments
COFEMER	Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*)
CRC	Colombian Communications Regulatory Commission (*Comisión de Regulación de Comunicaciones*)
CRE	Commission for Energy Regulation (*Comisión Reguladora de Energía*)
DAGL	Department of Legal and Legislative Affairs at the centre of government
DGN	General Bureau of Standards (*Dirección General de Normas*)
DGRCI	Directorate on International Trade Rules (*Direccion General de Reglas de Comercio Internacional*)
ESRI	Economic and Social Research Institute
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GRP	Good Regulatory Practices
ICT	Information, Communications and Technology

IGOs	inter-governmental organisations
IO	international organisations
IRC	international regulatory co-operation
iREG	Indicators of Regulatory Policy and Governance
KDI	Korea Development Institute
KIPA	Korea Institute of Public Administration
LDAC	Legislation Design and Advisory Committee
MOM	Ministry of Manpower
NER	Network of Economic Regulators
ODAC	Coordinated Assistance Office of the Energy Sector (*Oficina de Asistencia Coordinada del Sector Energético*)
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OMG	Outputs Monitoring Group
OMGWG	OMG working group
PAFER	Performance Assessment Framework of Economic Regulators
RCT	Randomised Controlled Trial
RIA	regulatory impact assessment
RPC	Regulatory Policy Committee
SBRC	Swedish Better Regulation Council
SGD	Singapore Dollar
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
WTO	World Trade Organization

Reader's guide

Most of the data presented in this Outlook, including the composite indicators, are the results of the 2014 and 2017 Regulatory Indicators Surveys. This Reader's guide aims to help readers understand the scope of the data collected through these surveys and some of the limitations related to the use of indicators. Please note that this edition of the Outlook also features results of new survey questions on the institutional setup of regulatory policy and oversight. These questions serve a 'mapping exercise' to help illustrate the breadth and diversity of regulatory oversight across all jurisdictions covered. These questions have not been used to develop composite indicators and have a different scope than the other questions in the Regulatory Indicators Survey. Details on these survey questions are described in Chapter 3.

The Regulatory Indicators Surveys gathered information at two points in time: as of 31 December 2014 and 31 December 2017. Data for 2014 are from 34 OECD member countries and the European Union. Data from the 2017 survey are from the 38 OECD member and accession countries (at the time of data collection) and the European Union.[1] The surveys focus on countries' regulatory policy practices as described in the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012[1]).

The surveys investigate in detail three principles of the 2012 Recommendation: stakeholder engagement, regulatory impact assessment (RIA) and *ex post* evaluation. For each of these areas, the surveys have collected information on formal requirements and have gathered evidence on their implementation. The methodology of the survey and the composite indicators are described in detail in Annex A.

While RIA, *ex post* evaluation and stakeholder engagement are all very important elements of regulatory policy, they do not constitute the whole better regulation framework. Beyond new survey questions on the institutional setup of regulatory policy and oversight, the 2017 Regulatory Indicators Survey also includes a range of questions relating to international regulatory co-operation in line with Principle 12 of the 2012 Recommendation, which are presented in Chapter 4. Information might be collected in the future on the implementation of other principles in the Recommendation.

Scope of the Regulatory Indicators 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 (34% over the period 2014-16 in Mexico and 13% in Korea over the same period).

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 Regulatory Indicators 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[2]). 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 validate their answers, 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/EU/JRC, 2008[3]). 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, has been made available publicly on the OECD website.

Note

[1] On 3 May 2018, the OECD Council invited Lithuania to become a member. At the time of preparation, the deposit of Lithuania's instrument of accession to the OECD Convention was pending and therefore Lithuania does not appear in the list of OECD members and is not included in the calculation of the OECD average.

References

Freudenberg, M. (2003), "Composite Indicators of Country Performance: A Critical Assessment", *OECD Science, Technology and Industry Working Papers*, No. 2003/16, OECD Publishing, Paris, http://dx.doi.org/10.1787/405566708255. [2]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en. [1]

OECD/EU/JRC (2008), *Handbook on Constructing Composite Indicators: Methodology and User Guide*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264043466-en. [3]

Executive summary

Laws and regulations affect all areas of business and life. They determine the contours of our safety and lifestyle, the ease of doing business and the achievement of societal and environmental goals. While good regulation is conducive to economic growth and well-being, inadequate regulation endangers both. But "regulating" is an increasingly daunting task. The overwhelming pace of technological change and the unprecedented interconnectedness of economies confront governments with uncertainty and complexity in terms of what and how to regulate. The validity of existing regulatory frameworks and, indeed, the capacity of governments to adapt to change are being questioned. This requires an increasingly agile public sector, able to exploit the many opportunities offered by technological change to improve rule-making and adapt to new realities and risks.

The *OECD Regulatory Policy Outlook 2018*, second in a series launched in 2015, maps country efforts to improve regulatory quality against the principles set out in the 2012 Recommendation. Based on an analysis of the extensive 2017 OECD Regulatory Indicators Survey (iREG), the *Outlook* stresses the importance of sound laws and regulations and highlights OECD countries' good regulatory practices. Critically, it also identifies areas where these countries can improve.

OECD countries are committed to regulatory quality. By the end of 2017, all OECD and accession countries had a whole-of-government regulatory policy and entrusted a body with promoting and co-ordinating regulatory quality across government. They had also made progress in adopting "traditional" regulatory management tools, in particular stakeholder engagement and regulatory impact assessment (RIA). They increasingly seek feedback from citizens and businesses on forthcoming laws and regulations, and allow more time for consultations. RIA has become an important step in the rule-making process of most countries.

Nevertheless, there is room for improvement. Consultation outcomes could be better taken into account in regulatory design. More meaningful engagement, greater transparency and better communication are needed to ensure that citizens and businesses feel included in the policy-making process, accept regulatory decisions and, ultimately, trust their government. In some jurisdictions, RIA has become over-procedural and is not targeted to the most significant laws and regulations, either because there is no triage system or because regulatory proposals with significant impacts are exempted. Where assessments are undertaken, they often focus on narrowly defined economic impacts, such as regulatory burdens for business, ignoring other significant effects.

Most strikingly, the "lifecycle" of regulations remains largely incomplete. Countries are more adept at the early stages, i.e. designing laws and regulations, than they are at the later stages of enforcing and reviewing them. Furthermore, there is still no systematic approach to evaluating whether laws and regulations do achieve their objectives in practice. Although some of them might be obsolete, imposing unnecessary costs on businesses and regulators, and potentially putting citizens at risk, countries fail to systematically collect evidence, monitor implementation and evaluate results. This

hampers countries' ability to improve regulatory quality and to demonstrate the results of better regulatory design.

Government-wide policies to promote better governance structures and processes, and to bridge the gap between the development and the implementation of regulations, are missing. Regulatory authorities and inspection agencies often lack explicit policy frameworks for strengthening their performance. To deliver results, they need sufficient autonomy, appropriate powers and resources, and transparent and predictable accountability mechanisms, as well as the capacity to manage and analyse data and effectively target their activities.

The importance of international regulatory co-operation (IRC) is increasingly recognised across OECD countries as a means to ensure that laws and regulations keep pace with globalisation. In practice, while iREG uncovers some evidence of IRC policy, only a few countries have a cross-governmental vision of IRC, and its governance remains highly fragmented. Ministries and regulators could more systematically consider the international context and international norms and standards to achieve their policy objectives. They could also provide more meaningful opportunities for engaging foreign stakeholders and assess the international impacts of their actions as part of *ex ante* and *ex post* evaluation.

The gaps in regulatory policy may stem from limited quality control and oversight – still the "missing piece of the puzzle". Oversight is a critical link in the regulatory governance framework, one that helps bridge the gap between formal requirements and implementation. There are signs that some OECD countries have established regulatory oversight capacities and functions. However, in many countries, responsibility for regulatory oversight is split among several institutions, making effective co-ordination crucial. Quality control of regulatory management tools occurs late in the rule-making cycle, and mainly focuses on the procedural quality of RIA, rather than broader policy goals.

Currently, there is much enthusiasm for behavioural insights (BI) as a tool for designing and delivering better policies. By fostering a culture of experimentation and relying on a better understanding of actual behaviour, BI is an effective tool for learning, adapting, and innovating. Applied to regulatory policy, there is scope for further embedding BI as part of RIA and *ex post* evaluation, using BI for promoting informed stakeholder engagement and applying BI to change the behaviour of institutions, regulators and regulated entities.

More than ever, there is need for rules that are transparent, based on evidence and take into account the risks as well as the realities on the ground. These rules need to be developed and maintained by sound and responsive democratic institutions. Stakeholder engagement and the systematic evaluation of impacts before and after the adoption of rules thus provide crucial inputs to the rule-making process. Regulatory authorities, inspections, and enforcement play a critical role in determining the effectiveness of regulation. Regulatory oversight is needed to guide and promote regulatory quality across government. Finally, there is an irreversible need for IRC and innovative approaches to engage countries' expertise and co-ordination on complex issues that increasingly cut across administrative boundaries.

Chapter 1. Overview: Why does the quality of domestic rule-making matter?

Laws and regulations are essential tools in the hand of governments to promote well-being and economic growth. Over the past 30 years, governments have progressively developed the disciplines and tools of regulatory policy to ensure their quality. However, as governments have continuously improved their understanding of regulatory quality, regulating itself has become increasingly difficult. The growing pace of technological changes and the deepening of globalisation are raising substantial challenges for domestic regulators. This chapter highlights the high-level trends in regulatory policy and governance and points to some of the challenges and opportunities faced. In doing so, it lays the grounds for the following chapters of the Regulatory Policy Outlook that investigates in more depth country practices in the systematic application of selected regulatory policy approaches.

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.

Laws and regulations are a critical tool for policy making that supports well-being and economic performance

Regulation affects all areas of business and, indeed, of life. We see proof of this every day: when we eat our breakfast without questioning the quality of the food, when we take our kids to school using public transport or driving, when we feel safe at work, when we consult doctors and undertake medical exams. The rules that determine our safety and lifestyle are usually taken for granted and yet are so important.

Laws and regulations are issued by governments and legislators to protect consumers, workers, the environment and the like. However, it is an area where too little or too much can be similarly harmful. When too limited, poorly conceived, redundant or incoherent, these rules can make it difficult to start up a new business, trade abroad or comply with basic administrative procedures, such as getting married, renewing a passport or registering a new birth. Overcomplicated regulatory frameworks, lack of transparency in rule-making, and inefficient or improper enforcement can become irritating or worse. Unbalanced or disproportionate regulations can lead to losses in organisational performance, too much administrative discretionary power to make decisions or enforce rules and even to corrupt behaviour.

Worse, inadequate rules may not achieve their objectives and thus fail to protect us, leading us to lose trust in our institutions and even in government itself. We notice the importance of rules typically when they do not work, either because they are patchy, badly designed or poorly enforced. That is also when they tend to make headlines (Box 1.1).

Box 1.1. Regulatory failures in the news

2008 Financial crisis: Regulators asleep at the wheel (The Economist, 7 September 2013) – "Failures in finance were at the heart of the crash. But bankers were not the only people to blame. Central bankers and other regulators bear responsibility too, for mishandling the crisis, for failing to keep economic imbalances in check and for failing to exercise proper oversight of financial institutions (…)".

Source: www.economist.com/news/schoolsbrief/21584534-effects-financial-crisis-are-still-being-felt-five-years-article

A Timeline of the Water Crisis in Flint, Michigan: "It's been more than three years since Flint, Michigan, switched its water source in an effort to save money, which led to a man-made public health crisis embroiling Michigan Gov. Rick Snyder's administration in scrutiny and criminal charges against a number of public officials. The most serious counts have been levied against Michigan's top health official and four others, who were charged Wednesday with involuntary manslaughter".

Source : www.usnews.com/news/best-states/michigan/articles/2017-06-14/a-timeline-of-the-water-crisis-in-flint-michigan

Dieselgate in Europe: How Officials Ignored Years of Emissions Evidence: "When American authorities revealed that Volkswagen used software to trick pollution tests, it spurred widespread outrage. Documents obtained by SPIEGEL show that European officials knew about the deception for years – but didn't act on it."

Source: www.spiegel.de/international/business/volkswagen-how-officials-ignored-years-of-emissions-evidence-a-1108325.html

Facebook Scandal: a "Game Changer" in Data Privacy Regulation (Bloomberg, 8 April 2018) – "Revelations that data belonging to as many as 87 million Facebook Inc. users and their friends may have been misused became a game changer in the world of data protection as regulators seek to raise awareness about how to secure information".

Source: www.bloomberg.com/news/articles/2018-04-07/facebook-scandal-a-game-changer-in-data-privacy-regulation

Laws and regulations may be perceived as burdensome and inadequate

Despite their importance, laws and regulations come at a price. Along with the benefits they are expected to generate and the objectives they are supposed to achieve, laws and regulations impose constraints on behaviour and therefore imply a range of costs. These regulatory costs include those attributable to the adoption of a regulatory requirement, including the costs of designing and enforcing borne by the authorities, as well as the costs of complying, which can be borne by business, consumers, government authorities or other groups (OECD, 2014[1]). Many (in particular businesses) increasingly lament the burdens of laws and regulations. A variety of institutions have started scrutinising and calculating the administrative costs involved in complying with laws and regulation.[1]

Against the growing perception that regulatory and legislative inflation stifles economic activity, attempts to control the overall amount of regulatory costs have developed in most OECD countries. In the 1990s, the Netherlands pioneered the Standard Cost Model, a method to quantify administrative burdens in monetary terms, and initiated a government commitment to reduce administrative burdens by 25% within five years. Most European governments, starting with Denmark, the United Kingdom and the Czech Republic, adopted the approach. Other countries took slightly different approaches and introduced a cap on administrative burdens, zero-growth policy regarding administrative/regulatory costs, or moratoria on regulatory costs. In the last five years, the offsetting of new regulations by reducing the existing ones (or variation of the "One-In, One-Out" policy initially adopted in the United Kingdom in 2011) started gaining ground across countries, including Canada, Germany, Korea, the United States, Mexico and France (OECD, Forthcoming[2]). Governments have identified some achievements and positive impacts of these strategies (Box 1.2).

Box 1.2. Examples of results of burden reduction strategies

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

Source: www.simplification.be.

In Germany, regulatory reform achieved various reductions in compliance costs for business, citizens and the administration. A 2014 amendment of the Social Code decreased annual compliance costs by EUR 126.8 million. By simplifying electronic invoicing, the administrative burden for business was reduced by circa EUR 3.3 billion per year in 2011 compared to 2006 (measured as of 1 January 2012). Additional key elements of the regulatory reform initiatives included benefits for the economy of some EUR 1.45 billion a year, through a shortening of retention periods under commercial, tax and social legislation (EUR 600 million); e-government activities (EUR 350 million); harmonisation of requirements for financial and payroll accounting (EUR 300 million); and advanced electronic signature for businesses (EUR 100 million).

Source: (The Federal Government, 2015[3]), "Better Regulation 2014: Official – simple – tangible", https://m.bundesregierung.de/content/en/artikel/buerokratieabbau_en/anlagen_en/2015-07-20-jahresbericht-2014_en.pdf?__blob=publicationfile&v=5; (The Federal Government, 2012[4]), "A foundation for better law: five years of bureaucracy reduction and better regulation", https://m.bundesregierung.de/content/infomaterial/bpa/beauftrbuerokratieabbau/jahresbericht_2011_grundstein_fuer_besseres_recht_englisch.pdf;jsessionid=1fb39c329465b664792b56a4e7177913.s1t1?__blob=publicationfile&v=2.

In February 2014, the **Greek government**, working with the OECD, identified administrative costs totalling EUR 4.08 billion in 13 policy areas. Over three-quarters of the burdens identified were in three priority areas: VAT administration, company law and annual accounts, and public procurement. Reductions were achieved by i) cleaning the VAT register and removing VAT filing requirements on businesses with zero turnover (EUR 226 million); ii) introducing a clear minimum turnover threshold for micro businesses of EUR 10 000, so that the smallest businesses can choose whether the administrative burdens of VAT administration outweigh the business advantage for them (EUR 136 million); and iii) removing duplicate and expensive publicity arrangements for company annual accounts and event-driven notifications, and putting the arrangements online (EUR 60 million).

Source: (OECD, 2014[1]), *OECD Regulatory Compliance Cost Assessment Guidance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209657-en.

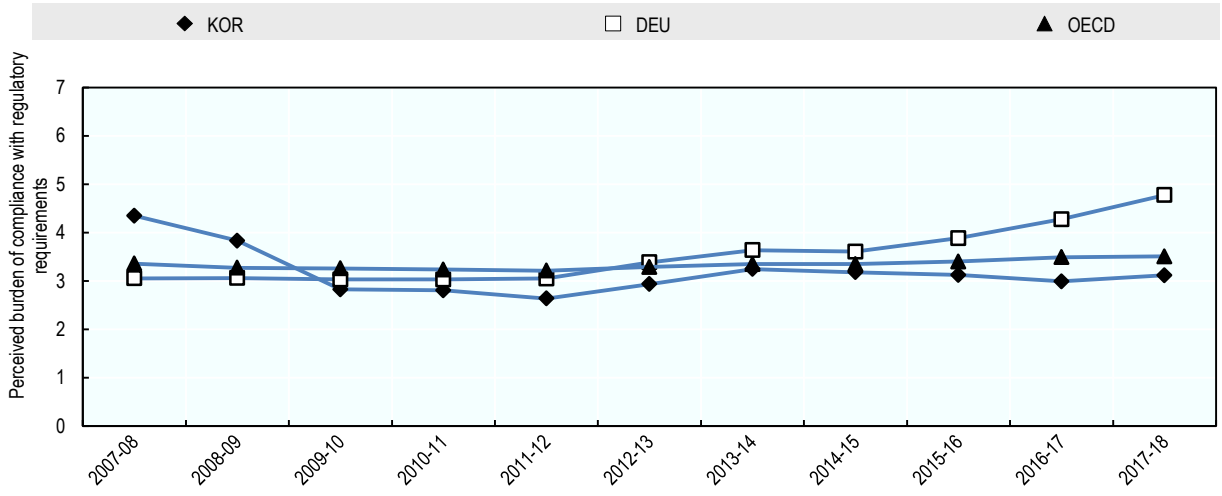
In the United Kingdom, the "war on red tape" has saved business an estimated GBP 10 billion over 2010-15 by abolishing unnecessary regulations, for example:

- Pubs and village halls can now host live music events between 8 am and 11 pm without applying for a licence
- It is no longer a legal offence to fail to report a grey squirrel on your land
- Child minders who feed children in their care no longer have to register separately as a food business
- The age at which people can legally buy Christmas crackers was lowered from 16 to 12 years old
- Bus companies no longer have to hold on to property, including decaying food left behind by passengers, for at least 48 hours and can instead decide themselves which items will be re-claimed
- Cattle movements no longer have to be recorded on a lengthy paper based system and now are tracked online, freeing up farmers

Source: (GOV.UK, 2014[5]), "Hancock: red tape drive saves business a record £10 billion", www.gov.uk/government/news/hancock-red-tape-drive-saves-business-a-record-10-billion.

However, despite government efforts, perceptions of regulatory burdens have not changed drastically. For example, results from the World Economic Forum's Executive Opinion Survey show that business perception of the burden of government regulation has stagnated over the last ten years, with some differences across countries (Figure 1.1). Business perceptions have improved most in Germany (by 1.7 points), and deteriorated most in Korea (by 1.2 points). In the United Kingdom, despite the Red Tape Challenge, the proportion of business that feel compliance with regulation is their greatest challenge and that expect regulatory burden to increase within the next year has increased since 2014 (GOV.UK, 2016[6]).

Figure 1.1. Trends in the perceived burden of compliance with regulatory requirements



Notes: Results are based on the question: "In your country, how burdensome is it for businesses to comply with governmental administrative requirements (e.g., permits, regulations, reporting)? [1 = extremely burdensome; 7 = not burdensome at all]".
Source: (Browne et al., 2016[7]), "The Executive Opinion Survey: The Voice of the Business Community", The Global Competitiveness Report 2016–2017, World Economic Forum, Geneva, http://reports.weforum.org/global-competitiveness-index-2017-2018/appendix-c-the-executive-opinion-survey-the-voice-of-the-business-community/.

StatLink https://doi.org/10.1787/888933813932

Systematic surveys of citizens' opinions on regulatory quality and burdens are less developed. Generally speaking, in line with business, citizens prefer more simplified procedures and formalities. At the same time, the regulated community often lacks awareness of the benefits of regulation, as these are often diffuse while costs are borne by specific groups more directly (OECD, 2012[8]). Citizens have benefited in most countries from simplification measures. Digitalisation, in particular, has simplified citizens' lives in diverse areas, including taxation, marriage, visas, passports and voting. Initiatives such as the critical life event surveys carried out in France and Germany (OECD, 2016[9]) have helped identify bottlenecks that were generating costs for citizens and focus public action to alleviate them.

Overall it seems that citizens' satisfaction with government services, partly a result of regulatory quality, is on the rise in a number of countries. In France, perception of public service quality increased from 5.4 to 7.2 points on a scale from 0-10 between 2010 and 2016 (Le Portail de la modernisation de l'action public, 2016[10]). In Germany, citizens

rated their satisfaction with government services at 1.06 on a scale from +2 (very satisfied) to –2 (very unsatisfied) in 2015.[2]

However, perception of regulation depends on many different aspects, such as age and level of education. A 2017 Pew Centre study on attitudes towards (financial) regulation conducted in the United States shows that younger and more educated people do not think regulation goes far enough, whereas older people and the less educated (the ones to benefit the most from many protections) think there is too much regulation (Smith, 2017[11]). More generally, the Edelman Barometer 2016 finds a widening disparity between levels of trust in public institutions according to income, with high-income persons reporting a higher degree of trust in government (on average 10% higher).[3]

In effect, the demands for regulation are multiple and contradictory, combining better protection with lower costs and less intrusion, a fact well illustrated by Professor Malcolm Sparrow in 2000:

> *"Regulators, under unprecedented pressure, face a range of demands, often contradictory in nature: be less intrusive – but be more effective; be kinder and gentler – but don't let the bastards get away with anything; focus your efforts – but be consistent; process things quicker – and be more careful next time; deal with important issues – but do not stray outside your statutory authority; be more responsive to the regulated community – but do not get captured by industry" (Sparrow, 2000, p. 17[12]).*

Despite the expectations, regulation remains a largely under-scrutinised policy tool

Despite a strong rationale – the benefits of good regulation and the dire consequences of bad regulation – regulatory quality (Box 1.3) is still not receiving the attention it deserves from governments. Regulatory policy and governance is still seen as a largely technical and less politically rewarding domain of policy making and continues to attract less attention from politicians and the media than the budget process or tax policy.

The quality of rules receives much less scrutiny than budget processes, government spending patterns or tax policy. For example, professional parliamentary oversight of the budget is strongly institutionalised in most OECD countries. By contrast, only a handful of countries have established specific technical units within parliaments to oversee legislative quality. This gap is prompting the academic community to call for more "scientific rigour" in the design of government laws and regulation. See, for example (Coglianese and Rubin, 2018[13]).

Box 1.3. What is regulatory quality?

Pursuing "regulatory quality" is about enhancing the performance, cost-effectiveness, and legal quality of regulations and administrative formalities. First, the notion of regulatory quality covers processes, i.e. the way regulations are developed and enforced. These processes should be in line with the principles of consultation, transparency, accountability and evidence. Second, the notion of regulatory quality also covers outcomes, i.e. whether regulations are effective, efficient, coherent and simple. In practice, this means that laws and regulations should:

1. serve clearly identified policy goals, and are effective in achieving those goals;
2. be clear, simple, and practical for users;
3. have a sound legal and empirical basis,
4. be consistent with other regulations and policies;
5. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
6. be 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. be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Source: (OECD, 2015[14]), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, based on (OECD, 1995[15]), *OECD Recommendation on Improving the Quality of Government Regulation*, OECD, Paris, https://legalinstruments.oecd.org/en/instruments/128.

Given the stakes, promoting the quality of laws and regulations is essential

Regulatory policy and governance are not only crucial for improving the quality of laws and regulations; they are also instrumental to build confidence in their value and importance in the everyday life of businesses and citizens. For example, (Lind and Arndt, 2016[16]) show that careful design of procedures in the development and administration of laws and regulations can enhance the perceived fairness of regulations and procedures. In turn, attitudes toward laws and regulations as well as behavioural compliance with regulatory decisions are often as strongly affected by citizens' experiences with, and perceptions of, the process as they are by its outcome (Mazerolle et al., 2012[17]); (Van den Bos, Van der Velden and Lind, 2014[18]). The links among results, perceived process fairness, and the acceptance of rules and decisions is even more important in times of deepening mistrust in institutions.

There are many instances where countries have reported significant burden reductions for businesses and citizens thanks to regulatory policy tools. If businesses and citizens see tangible results, investing in better regulation is a worthwhile investment. For example:

- Between 2012 and 2017, the Dutch government reported a EUR 2.48 billion reduction in regulatory burdens for businesses, citizens and professionals (Government of the Netherlands, 2017[19]). Measures included simplified accounting and reporting rules for small and medium-sized enterprises, a new online tool that generates a tailor-made privacy statement for businesses, and the development of an app that trains employees how to follow companies' emergency response plans.

- In March 2016, U.S. Federal agencies released their first reports estimating the impact of streamlining, revising and eliminating many existing rules undertaken in the framework of Executive Order 13563. In total, U.S. agencies estimated their savings for businesses and subnational governments at USD 28 billion over five years (Shelanski, 2016[20]).
- The European Commission's REFIT programme has resulted in a number of cost-saving initiatives, including more ambitious targets for waste prevention and recycling expected to bring savings of 1.3 billion per year; a one-stop shop allowing a business to declare VAT in the Member State in which it is established, thus reducing business compliance costs by EUR 2.3 billion a year; a Single Digital Gateway that could help companies save more than EUR 11 billion per year; and revised legislation on veterinary medicines that cuts costs by an estimated EUR 145 million (European Commission, 2017[21]).

Regulatory policy is a critical dimension of an enabling environment for investment and thus of economic growth and innovation. For example, rating agencies include the quality of regulatory frameworks as one of the key variables when making assessments and providing credit profiles for regulated utilities. See for example, (Moody's Investors Service, 2013[22]). In some countries, regulatory quality and stability can account for over one-third of the rating methodology: a good and stable framework directly translates into higher credit worthiness, a lower cost of finance and potentially higher investment.

The links made in the literature between regulatory governance and economic performance should nevertheless be updated and researched further (Box 1.4). New work is needed to link a detailed understanding of regulatory quality disciplines, their uptake in various sectors and countries and their impacts on sector outcomes, on economic performance and on well-being.

Box 1.4. Some early links between regulatory quality and economic performance

- (OECD, 2014[23]) presents a Framework for Regulatory Policy Evaluation including concrete concepts and performance indicators for the inputs, outputs and outcomes of regulatory policy. While it notes that demonstrating a causal link between regulatory policy and policy outcomes still remains the "holy grail" of performance evaluation, the application of the Framework could be a step towards measuring the application of regulatory policy in practice, and thus ultimately towards achieving regulatory objectives.
- (Parker and Kirkpatrick, 2012[24]) review the quantitative evidence on the impact of regulatory policy on economic outcomes. The result of the review seems to confirm that poorly designed regulation can stifle economic activities and ultimately reduce economic growth, and that regulatory governance and the institutional framework in a country may mitigate the damaging effects. The authors also point to considerable methodological problems and a lack of data for robust quantitative evidence on the economic impacts of regulatory policy, as well as a focus on costs of regulation in existing studies compared to few attempts to quantify the benefits of regulation.
- (Bouis and Murtin, 2011[25]) find that regulatory barriers to entrepreneurship, explicit barriers to trade and – especially – patent rights protection appear to be fairly robust determinants of long-run cross-country differences in technology. Some other policies and institutions such as trade liberalisation are found to

speed up technology convergence.

- (Jacobzone et al., 2010[26]) find that improvements in the quality of regulatory management systems yield significant economic benefits in terms of increased GDP and labour productivity in the business sector.
- Using measures of business regulations in 135 countries, (Djankov, McLiesh and Ramalho, 2006[27]) show that an improvement from the worst quartile of business regulation to the best results in a 2.3% increase in an annual growth.
- (Kaufmann et al., 2005[28]) focus more broadly on governance and compute an index of approximately 200 countries over six biannual time periods (1996 through 2004). They point to a strong observed correlation between income and governance, and argue against efforts to apply a discount to governance performance in low-income countries.
- (Hall and Jones, 1999[29]) find that across 127 countries, the difference in capital accumulation, productivity and output per worker are driven by differences in institutional and government policies.

Sources: (OECD, 2014[23]), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264214453-en; www.oecd.org/gov/regulatory-policy/publications-mrp.htm; (Bouis and Murtin, 2011[25]) "The Policy and Institutional Drivers of Economic Growth Across OECD and Non-OECD Economies: New Evidence from Growth Regressions", *OECD Economics Department Working Papers*, No. 843, OECD Publishing, http://dx.doi.org/10.1787/5kghwnhxwkhj-en; (Jacobzone et al., 2010[26]), "Assessing the Impact of Regulatory Management Systems: Preliminary Statistical and Econometric Estimates", *OECD Working Papers on Public Governance*, No. 17, http://dx.doi.org/10.1787/5kmfq1pch36h-en; (Djankov, McLiesh and Ramalho, 2006[27]), "Regulation and Growth", *SSRN Electronic Journal*, http://dx.doi.org/10.2139/ssrn.893321; (Kaufmann et al., 2005[28]), "Governance Matters IV: Governance Indicators for 1996-2004", www.worldbank.org/wbi/governance/govdata/; (Hall and Jones, 1999[29]), "Why Do Some Countries Produce So Much More Output per Worker than Others?", *The Quarterly Journal of Economics*, Vol. 114/1, pp. 83-116; (OECD, 2011[30]), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264116573-en.

Regulatory policy is even more important given the transformative and disruptive changes in our societies and economies

Regulating in "normal times" can be a daunting task. With the ever-increasing pace of transformative technological change, governments face growing complexity and uncertainty in many regulated areas. Transformative technologies are innovations that use advances in computing power, connectivity, mobility, and data storage capacity to fundamentally change – "disrupt" – an established market. By doing so, these technologies simultaneously offer potential economic rewards, higher productivity growth, and improvements to living standards by often fulfilling a gap in consumer preferences. These technologies and business platforms can also posing a risk, potentially significant, and a range of regulatory challenges. These include managing the social, employment and other impacts of the digital economy, balancing the progress and impacts of artificial intelligence and robotics in a range of sectors, and addressing the ethics of stem cell technology and other genetic technologies.

Given the distinct potential of significant gains and losses, governments have to balance how to promote the adoption of innovative technologies while managing or mitigating the risks they pose. On the one hand, governments must be vigilant in adopting regulations that mitigate and protect from any potentially adverse economic and societal impacts of

technological disruptions. On the other hand, the regulatory environment should not unduly limit innovation. This trade-off is complicated by the fact that disruptive technologies are increasingly blurring the lines between consumers and producers and between regulatory domains thus making targeted interventions all the more difficult to manage. A further difficulty faced by many regulators in developing their responses is whether or not they have the mandate to address the issue, or whether they are reliant on government to institute a more fundamental policy change.

Governments have taken a variety of approaches to developing adaptive regulations that both promote innovation and mitigate risks in an impartial and proportional fashion. These have ranged from heavy handed approaches that explicitly prevent the development or adoption of new technologies to lighter touch ones, for example by adopting fixed-term regulatory exemptions (e.g. regulatory sandbox) for innovative entrants that maintains overarching regulatory objectives, such as consumer protection. In many sectors and markets, given the pace of technological advancement, regulators have opted for "wait and see" approaches to allow for time to discover which perceived risks materialise. In a few rare cases, governments also have seized the opportunity of the disruption to reform markets where legacy regulations were burdensome or irrelevant and regulatory reforms were unsuccessful.

New technologies have also shown their potential to provide consumers with more information than through more traditional sources. This can ultimately result in less information asymmetry and less need for regulation to protect consumers. However, this also requires frameworks to ensure information integrity, uphold quality and safety standards, ensure privacy, and address potentially negative impacts on society. Similarly, changes to the nature of employment brings up considerations about how workplaces are regulated, what types of support mechanisms are in place, and how to ensure workers are adequately trained to benefit from new opportunities. When considering restrictions to new technologies, governments need to consider if the restrictions are essential to public safety or interest, if they reflect real or perceived risks, and consider the best options to achieve the intended outcome.

If anything, this disruptive environment is a further justification for a more systematic use of regulatory policy and governance principles and tools. Indeed, regulatory management tools such as regulatory impact assessment, stakeholder engagement and *ex post* evaluation, offer opportunities to reflect and gather a variety of views on the impacts of regulation on innovation, while safeguarding public interest. A majority of countries assess the impacts of new regulatory measures on innovation as part of the regulatory impact assessment process, a new development since the 2015 *OECD Regulatory Policy Outlook* (OECD, 2015[14]). Using approaches such as behavioural insights throughout the policy cycle has also helped in obtaining and using evidence to drive decision making and ensure that implementation is taken into account in the early phase of policy development.

One of the great benefits of new digital technologies is that government administrations themselves can use these advances to increase their capacity to regulate effectively. Technological innovation, in particular in the field of information technology, creates opportunities to promote evidence-based, inclusive and effective laws and regulations. Artificial intelligence, the use of algorithms and the growing uptake up of open data, as well as social media are some examples of how new technologies can help regulators collect timely information, conduct data analysis, engage with various communities and

ensure greater coherence in policy. Also, the possibilities offered by "big data" might enable the development and enforcement of regulations based on risk analysis.

Data has already been utilised by governments to improve monitoring capacities and create better responses to problems in the market, especially regarding public policy objectives that were previously imperfectly observable or only observable at a significant cost. Digital technologies can also replace or complement traditional enforcement methods and support policy evaluation. However, governments often lack the capacity to use these technologies to monitor economic, environmental and social outcomes leaving them "flying – at least partly – blind". Sharing of data and cooperation between agencies would improve capacities to solve complex problems, but how to break down silos remains an issue. All these approaches require further exploration. Alongside their obvious benefits, they bring up unprecedented issues of privacy, legitimacy and impartiality.

The increased interconnectedness of economies puts strain on regulatory capacities

Partly due to the many technical revolutions of the past 30 years, the interconnectedness of countries and the integration of the world economy have increased drastically by any number of measures (trade, migration, transport, communication) (Box 1.5). The rapid flow of goods, services, people and finance across borders is testing the effectiveness and the capacity of domestic regulatory frameworks. Both the quality of new regulatory measures and their effective enforcement are under strain.

National jurisdictions are increasingly losing oversight and control of activities happening in, or having an influence on, their territory. For example, digitalisation, and in particular its consequences in terms of erasing borders, is challenging tax frameworks. Tax avoidance strategies exploit gaps and differences in tax rules across jurisdictions as well as the possibility to artificially shift profits to low- or no-tax locations.[4] The sophisticated markets of the global economy are also opening up opportunities for criminal networks to expand illicit trade activities, including trafficking in persons, wildlife, narcotics, counterfeit medicines, tobacco and alcohol, with serious negative consequences for the economy and society. The profits of international organised crime could be as high as USD 870 billion, or around 1.5% of global GDP (OECD, 2016[31]).

In addition to financial losses, these trends may undermine the benefits of international flows and citizens' trust in globalisation. For example, trade in counterfeit goods undermines the competitive advantage of rights holders, hampers innovation and employment, reduces tax revenue and can jeopardise public health and security. Globalisation also allows larger and more organised actors to take advantage of loopholes in the international framework. For instance, some multinational companies shift their revenues to other jurisdictions to reduce or evade taxation, and de facto avoid paying part of their contribution to domestic welfare.

In this context, close co-operation among regulators has become a key element of regulatory effectiveness. In particular, the exchange of information and evidence among regulators helps better identify the issues that laws and regulations are meant to address. Co-operation is also necessary in many new areas of regulation to facilitate law enforcement and prevent regulatory gaps and arbitrages. For example, countries increasingly need to discuss issues such as how to allocate taxation rights and determine the share of multinational companies' profits that will be subject to taxation in a given jurisdiction (OECD, 2018[32]).

Box 1.5. The increasing economic connectedness of countries

- Between 1990 and 2015, global trade intensity, measured as the share of the total volume of exports and imports of goods and services in world GDP, doubled (OECD, 2017[33]). Today, products cross many borders before they are finally purchased by consumers in a given country (OECD, 2013[34]).
- In 2015, 124 million people living in OECD countries were foreign-born (13% of the total population), compared to 9.5% in 2000 (OECD, 2017[35]). One in four among 15-year-old students was foreign-born or had at least one foreign-born parent (OECD, 2018[36]).
- In 2016, about 83% of the adult population in OECD countries had Internet access. In the same year, 95% of OECD firms had high-speed Internet connection and over half of individuals in OECD countries bought products online (OECD, 2017[37]). Information on Google searches and YouTube viewing revealed an almost universal trend of users increasingly accessing content outside their own country.
- Data on financial flows over Paypal's payment system showed that the Internet is enabling significant cross-border financial transfers on a daily basis, not just between developed countries but also with emerging economies (OECD, 2016[38]).
- A third of US exports in 2011 had become digitally deliverable services, and EU and US exports in general incorporate significant amounts of digitally deliverable services as intermediate inputs (OECD, 2016[38]).
- The number of airports in the world having at least one direct connection to one of the top 100 international airports grew by almost 20%, from 1 795 airports in 2005 to 2 085 in 2015. Over the next 15 years, passenger air traffic is expected to grow by between 3% and 6% annually (ITF, 2017[39]).

Source: (OECD, 2017[33]), *OECD Economic Outlook, Volume 2017 Issue 1*, OECD Publishing, Paris, http://dx.doi.org/10.1787/eco_outlook-v2017-1-en; (OECD, 2013[34]), *Interconnected Economies: Benefiting from Global Value Chains*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264189560-en; (OECD, 2017[35]); *International Migration Outlook 2017*, OECD Publishing, Paris, http://dx.doi.org/10.1787/migr_outlook-2017-en; (OECD, 2018[36]), *The Resilience of Students with an Immigrant Background: Factors that Shape Well-being*, OECD Reviews of Migrant Education, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264292093-en; (OECD, 2016[38]), "Economic and Social Benefits of Internet Openness", *OECD Digital Economy Papers*, No. 257, OECD Publishing, Paris, http://dx.doi.org/10.1787/5jlwqf2r97g5-en; (ITF, 2017[39]), *ITF Transport Outlook 2017*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789282108000-en.

Mistrust in traditional institutions is growing

This is all happening in a context where trust in public institutions, evidence, and expert advice is deteriorating in many OECD countries, a trend summarised in articles such as (Huang, 2016[40]). International surveys show that the level of trust in government has declined since the 2008 financial crisis (Box 1.6). Lack of trust compromises the success of many government policies, programmes and regulations that depend on co-operation and compliance of citizens.

Box 1.6. Results of international surveys on trust

According to the Gallup World Poll, between 2007 and 2015:

- trust in government decreased by an average of 2 percentage points in OECD member countries (from 45% to 43%). In certain countries, such as Slovenia, Portugal, Spain, Finland and Mexico, the decrease has been sharper.
- satisfaction with the education system increased by 6 percentage points in OECD member countries (from 62% to 68%).
- trust in the judicial system increased by 4 percentage points in OECD member countries (53% in 2015 compared to 49% in 2007).
- trust in financial institutions decreased by an average of 9 percentage points in OECD member countries (down to 46% in 2015.

According to Eurobarometer, between 2007 and 2015:

- trust in political parties decreased by an average of 2 percentage points in OECD/EU member countries (from 21% to 19%).
- trust in the press decreased by an average of 1 percentage point in OECD/EU countries (from 47% to 46%).
- trust in television decreased by an average of 4 percentage points in OECD/EU countries (from 60% to 56%).

According to the European Social Survey, between 2008 and 2014:

- trust in parliaments decreased by 5 percentage points (from 58% to 53%) in OECD/EU countries.

Source: (OECD, 2017[41]), *Trust and Public Policy: How Better Governance Can Help Rebuild Public Trust*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264268920-en.

Regulatory governance needs to be at the core of government action… but is it?

This increasingly complex environment should convince policy makers, oversight bodies and regulators of the need to entrench sound and robust regulatory policy. This would lay a solid foundation for more advanced regulatory governance initiatives such as increasing international regulatory co-operation or integrating behavioural insights in regulation. In particular, there is an urgent need to stabilise the evidence base that supports policy decisions and establish its credibility. The focus of regulatory policy needs to be on outcomes rather than process, on the effectiveness of laws and regulations and their expected achievements rather than on burden reduction and cost-savings.

The traditional tools of regulatory impact assessment and *ex post* evaluation of regulation, can generate a virtuous circle if used more systematically to improve regulatory quality rather than as a purely bureaucratic exercise. Stakeholder engagement, critical for regulatory transparency and evidence collection, should be reinforced as a safeguard against policy capture, to collect valuable insights from those affected by regulation, and to drive policy innovation.

However, the shortcomings of countries' current approaches that were highlighted in the *OECD Regulatory Policy Outlook 2015* (OECD, 2015[14]) remain largely the same in 2018. In particular, there is still a tendency to adopt a procedural rather than a strategic approach to the use of regulatory policy tools within public administrations. The "lifecycle" of regulations also remains incomplete: countries are more adept at the "early years" – making laws and regulations – than they are at what comes afterwards, enforcing and reviewing them. As a consequence, although certain laws and regulations might be obsolete, imposing unnecessary costs on business and potentially putting citizens at risk, countries still fail to systematically collect evidence, monitor implementation and evaluate results. Without this second half of the lifecycle, it is challenging for countries to reform or remove those regulations that are not working.

Nevertheless, some (albeit slow and patchy) progress has been made in the uptake of regulatory management tools. Countries increasingly seek feedback from citizens and businesses on forthcoming laws and regulations. They use more evidence-based and inclusive processes for developing laws and regulations, for example by consulting with stakeholders early in the process and allowing sufficient time for such consultations. Yet the outcomes of consultation could be better taken into account in designing regulations. More meaningful engagement, greater transparency and better communication is needed to ensure that citizens and business feel included in the policy making process, accept regulatory decisions and, ultimately, trust the government.

Regulatory impact assessment has clearly become an important step in the regulatory process. But it has also become an over-burdened and procedural step, and it is not always targeted to the most significant laws and regulations. Moreover, while attention tends to be focussed on major economic impacts of regulations, assessments largely ignore other significant effects, such as social impacts. Strikingly, despite some progress, there is still no systematic approach to evaluate *ex post* whether laws and regulations achieve their objectives in practice. This lack of evaluation seriously undermines a well-functioning regulatory policy cycle. These gaps may stem from limited quality control and oversight of regulatory policy disciplines – described in OECD work as the "missing piece of the puzzle" (Arndt et al., 2016[42]).

In 2015, the *OECD Regulatory Policy Outlook* noted implementation and enforcement as the weakest links in the application of regulatory policy, and urged countries to pay more attention to regulatory delivery. In 2018, most OECD countries still do not perceive regulatory delivery as part and parcel of regulatory policy. Government-wide policies to promote better governance structures and processes for delivering regulations, as well as to close the feedback loop between those implementing regulations and those responsible for developing them, are still missing.

The 2018 edition of the *Regulatory Policy Outlook* focuses on regulatory oversight as the critical link in the regulatory governance framework, one that can help bridge the gap between formal requirements and implementation. There are clear signs that OECD countries (and others) are establishing regulatory oversight capacities and functions in line with the 2012 Recommendation. For now, responsibilities for regulatory oversight tend to be fragmented. Quality control of regulatory management tools occurs late in the rule-making cycle, and mainly focuses on the procedural quality of RIA. Nonetheless, there are ample opportunities for countries to learn from their institutional differences and collect further evidence on how well their oversight functions are working.

The institutional set-up of regulatory policy also matters. Regulatory authorities and inspection agencies are at the front lines of regulatory delivery and have great potential to foster trust in public administrations. Their actions remain, however, largely disconnected from national agendas for regulation. The number of countries with an explicit policy and framework for improving the governance and performance of regulatory agencies remains limited. It is even worse for inspection and enforcement agencies. Effective cross-cutting policies in these areas require transparent and predictable accountability mechanisms as well as the capacity to use data to report on results. Operating in increasingly complex and uncertain markets, authorities responsible for enforcing regulations must also remain flexible and focused on encouraging and promoting compliance, rather than on exposing and punishing non-compliance.

There is currently much enthusiasm for behavioural insights (BI) as a tool for designing and delivering better policies. OECD research shows that governments around the world are increasingly using BI to improve the design and delivery of regulation, with over 190 public bodies institutionalising the use of BI. The key feature of BI is an experimental approach, seeking to understand the actual behaviour of the beneficiaries of policies and testing possible solutions before implementation. Evidence shows that this new approach is having a real impact by providing countries with the resources necessary to learn, adapt, and implement innovative policy.

There is also scope for embedding BI throughout the regulatory policy cycle to obtain and use evidence in the *ex ante* (RIA) and *ex post* phases of the policy-making process. A new frontier could entail the application of insights from individual behaviour to public and private organisations. For example, BI could be used to help create a compliance culture, helping to implement policies more effectively and to reduce the need for costly and sometimes ineffective enforcement mechanisms. These approaches can be particularly valuable when the success of a policy and regulation depends on a sustainable change in entrenched behaviours and attitudes (e.g. healthy and sustainable food consumption, energy use patterns, etc.).

While the "internationalisation" of regulation has not kept pace with globalisation, the importance of international regulatory co-operation (IRC) does seem to be increasingly recognised across countries. The *OECD Regulatory Policy Outlook 2018* sees some evidence of IRC policy, but few countries have a cross-governmental vision of IRC and IRC governance is highly fragmented. Exceptions include Canada, which has embedded a strong IRC dimension in its new Cabinet Directive on Regulation; New Zealand, which has created a toolkit for applying its IRC vision; and the European Union (EU), which relies on deep regulatory co-operation among members. An overview of OECD countries' IRC practices shows that the mainstreaming of IRC in rule-making is only partial and, so far, relatively superficial. Mexico has made great strides in embedding trade impacts in its RIA process and in systematically linking stakeholder engagement and trade notification. It is, however, quite the exception. The consideration of international instruments in domestic rule-making, a vector of regulatory coherence in line with international commitments under the 1994 WTO agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS), could be made more systematic.

The *OECD Regulatory Policy Outlook 2018* acknowledges today's major challenges for regulators and their oversight bodies. It identifies areas where countries can invest to improve the quality of laws and regulations. It also provides an essential platform for stressing the importance of laws and regulations as tools of public policy, and of getting

them right, as well as for disseminating countries' efforts to improve regulatory quality. Nevertheless, the Outlook remains partial in its approach – it relies heavily on data collected for 2014 and 2017 through the Regulatory Indicators Survey and its extension to regulatory oversight and international regulatory co-operation. The 2012 Recommendation identifies 12 areas where efforts are needed to make a difference in regulatory quality. A comprehensive better regulation agenda goes beyond the systematic use of regulatory management tools – very much at the heart of this report. More analysis, data collection and identification of best practices need to be undertaken to provide an exhaustive overview of efforts, achievements and gaps in regulatory reform. Future editions of the Outlook will seek to progressively fill the knowledge gaps based on ambitious evidence-based analysis.

Notes

[1] The Nationaler Normenkontrollrat (NKR) evaluates that the annual costs of complying with regulation and rules in Germany increased by EUR 6.7 billion in the period 2013-17, of which EUR 6.3 billion result from the introduction of the German Minimum Wage (2017 Annual Report, http://www.normenkontrollrat.bund.de/webs/nkr/en/publications/_node.html). The Canadian Federation of Independent Business estimates that broad regulatory compliance costs for US businesses are around CAN 205 billion per year, while Canadian businesses, far fewer in number, pay CAN 37 billion. (Marvin Cruz et al., Canada's Red Tape Report 2015 and Toronto: Canadian Federation of Independent Business, 2015).

[2] Statistisches Bundesamt (2017), www.amtlich-einfach.de. We also have a pilot database example: (OECD, 2016[9]).

[3] www.edelman.com/trust-barometer.

[4] See the OECD "BEPS" website and work on Tax Challenges Arising from Digitalisation: www.oecd.org/ctp/beps.

References

Arndt, C. et al. (2016), "Building Regulatory Policy Systems in OECD Countries", *OECD Regulatory Policy Working Papers*, No. 5, OECD Publishing, Paris, http://dx.doi.org/10.1787/dbb1a18f-en. [42]

Bouis, R. and R. Murtin (2011), "The Policy and Institutional Drivers of Economic Growth Across OECD and Non-OECD Economies: New Evidence from Growth Regressions", *OECD Economics Department Working Papers*, No. 843, OECD Publishing, Paris, http://dx.doi.org/10.1787/5kghwnhxwkhj-en. [25]

Browne, C. et al. (2016), "The Executive Opinion Survey: The Voice of the Business Community", *The Global Competitiveness Report 2016–2017*, http://reports.weforum.org/global-competitiveness-index-2017-2018/appendix-c-the-executive-opinion-survey-the-voice-of-the-business-community/. [7]

Coglianese, C. and T. Rubin (2018), "Learning What Works in Regulation", https://www.theregreview.org/2018/03/07/coglianese-rubin-learning-what-works-regulation/ (accessed on 16 May 2018). [13]

Djankov, S., C. McLiesh and R. Ramalho (2006), "Regulation and Growth", *SSRN Electronic Journal*, http://dx.doi.org/10.2139/ssrn.893321. [27]

European Commission (2017), *REFIT Scoreboard*, http://publications.europa.eu/webpub/com/refit-scoreboard/en/index.html (accessed on 16 May 2018). [21]

GOV.UK (2016), "Business regulation: perception survey 2016", https://www.gov.uk/government/publications/business-regulation-perception-survey-2016. [6]

GOV.UK (2014), *Hancock: red tape drive saves business a record £10 billion*, https://www.gov.uk/government/news/hancock-red-tape-drive-saves-business-a-record-10-billion. [5]

Government of the Netherlands (2017), "Better Regulation: Towards a Responsible Reduction in the Regulatory Burden 2012-2017", https://www.government.nl/topics/reducing-the-regulatory-burden/documents/reports/2017/08/22/better-regulation-towards-a-responsible-reduction-in-the-regulatory-burden-2012-2017 (accessed on 16 May 2018). [19]

Hall, R. and C. Jones (1999), "Why Do Some Countries Produce So Much More Output per Worker Than Others?", *The Quarterly Journal of Economics*, Vol. 114/1, http://www.jstor.org/stable/2586948, pp. 83-116. [29]

Huang, S. (2016), "A Departure from Truth", *Harvard Political Review*, http://harvardpolitics.com/world/anti-intellectualism/. [40]

ITF (2017), *ITF Transport Outlook 2017*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789282108000-en. [39]

Jacobzone, S. et al. (2010), "Assessing the Impact of Regulatory Management Systems: Preliminary Statistical and Econometric Estimates", *OECD Working Papers on Public Governance*, No. 17, OECD Publishing, Paris, http://dx.doi.org/10.1787/5kmfq1pch36h-en. [26]

Kaufmann, D. et al. (2005), "Governance Matters IV: Governance Indicators for 1996-2004", *The World Bank*, http://www.worldbank.org/wbi/governance/govdata/.. [28]

Le Portail de la modernisation de l'action public (2016), *Baromètre 2016 de la qualité de l'accueil dans les services de l'État : la progression se confirme | Modernisation*, http://www.modernisation.gouv.fr/la-qualite-des-services-publics-sameliore/en-fixant-des-referentiels/barometre-2016-de-la-qualite-de-laccueil-dans-les-services-de-letat-la-progression-se-confirme (accessed on 16 May 2018). [10]

Lind, E. and C. Arndt (2016), "Perceived Fairness and Regulatory Policy: A Behavioural Science Perspective on Government-Citizen Interactions", *OECD Regulatory Policy Working Papers*, No. 6, OECD Publishing, Paris, http://dx.doi.org/10.1787/1629d397-en. [16]

Mazerolle, L. et al. (2012), "Procedural justice, routine encounters and citizen perceptions of police: main findings from the Queensland Community Engagement Trial (QCET)", *Journal of Experimental Criminology*, Vol. 8/4, pp. 343-367, http://dx.doi.org/10.1007/s11292-012-9160-1. [17]

Moody's Investors Service (2013), *Moody's publishes revised methodology for Regulated Electric and Gas Utilities - Moody's*, https://www.moodys.com/research/Moodys-publishes-revised-methodology-for-Regulated-Electric-and-Gas-Utilities--PR_289882 (accessed on 16 May 2018). [22]

OECD (2018), *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264293083-en. [32]

OECD (2018), *The Resilience of Students with an Immigrant Background: Factors that Shape Well-being*, OECD Reviews of Migrant Education, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264292093-en. [36]

OECD (2017), *International Migration Outlook 2017*, OECD Publishing, Paris, http://dx.doi.org/10.1787/migr_outlook-2017-en. [35]

OECD (2017), *OECD Digital Economy Outlook 2017*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264276284-en. [37]

OECD (2017), *OECD Economic Outlook, Volume 2017 Issue 1*, OECD Publishing, Paris, http://dx.doi.org/10.1787/eco_outlook-v2017-1-en. [33]

OECD (2017), *Trust and Public Policy: How Better Governance Can Help Rebuild Public Trust*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264268920-en. [41]

OECD (2016), "Economic and Social Benefits of Internet Openness", *OECD Digital Economy Papers*, No. 257, OECD Publishing, Paris, http://dx.doi.org/10.1787/5jlwqf2r97g5-en. [38]

OECD (2016), *Illicit Trade: Converging Criminal Networks*, OECD Reviews of Risk Management Policies, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264251847-en. [31]

OECD (2016), *Perception surveys on the quality of law and the administration (Germany)*, http://www.oecd.org/gov/regulatory-policy/deu-life-events-survey.pdf (accessed on 16 May 2018). [9]

OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en. [14]

OECD (2014), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264214453-en. [23]

OECD (2014), *OECD Regulatory Compliance Cost Assessment Guidance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209657-en. [1]

OECD (2013), *Interconnected Economies: Benefiting from Global Value Chains*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264189560-en. [34]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en. [8]

OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264116573-en. [30]

OECD (1995), *Recommendation of the Council on Improving the Quality of Government Regulation*, https://legalinstruments.oecd.org/en/instruments/128 (accessed on 16 May 2018). [15]

OECD (Forthcoming), *One-in X-Out: A Discussion Note*, OECD Publishing, Paris. [2]

Parker, D. and C. Kirkpatrick (2012), "Measuring Regulatory Performance: The Economic Impact Of Regulatory Policy: A Literature Review of Quantitative Evidence", OECD, Paris, http://www.oecd.org/gov/regulatory-policy/3_Kirkpatrick%20Parker%20web.pdf. [24]

Shelanski, H. (2016), *Making All Levels of Government More Efficient and Effective Through Retrospective Review*, https://obamawhitehouse.archives.gov/blog/2016/03/04/making-all-levels-government-more-efficient-and-effective-through-retrospective. [20]

Smith, S. (2017), "Public remains divided over role of government in financial regulation", *Pew Research Center*, http://www.pewresearch.org/fact-tank/2017/03/02/public-remains-divided-over-role-of-government-in-financial-regulation/. [11]

Sparrow, M. (2000), *The regulatory craft : controlling risks, solving problems, and managing compliance*, Brookings Institution Press, https://www.google.fr/search?q=The+regulatory+craft%3A+controlling+risks%2C+solving+problems%2C+and+managing+compliance&oq=The+regulatory+craft%3A+controlling+risks%2C+solving+problems%2C+and+managing+compliance&aqs=chrome..69i57.2118j0j9&sourceid=chrome&ie=UTF-8 (accessed on 16 May 2018). [12]

The Federal Government (2015), *Better Regulation 2014: Official – simple – tangible*, https://m.bundesregierung.de/Content/EN/Artikel/Buerokratieabbau_en/Anlagen_en/2015-07-20-jahresbericht-2014_en.pdf?__blob=publicationFile&v=5. [3]

The Federal Government (2012), *A foundation for better law: five years of bureaucracy reduction and better regulation*, https://m.bundesregierung.de/Content/Infomaterial/BPA/BeauftrBuerokratieabbau/Jahresbericht_2011_grundstein_fuer_besseres_recht_englisch.pdf;jsessionid=1FB39C329465B664792B56A4E7177913.s1t1?__blob=publicationFile&v=2. [4]

Van den Bos, K., L. Van der Velden and E. Lind (2014), "On the Role of Perceived Procedural Justice in Citizens' Reactions to Government Decisions and the Handling of Conflicts", *Utrecht Law Review*, Vol. 10/4, p. 1, http://dx.doi.org/10.18352/ulr.287. [18]

Chapter 2. Recent trends in regulatory management practices

Whilst most countries have made some improvements to their regulatory management systems and practices over the last years, few have undertaken comprehensive reforms. In particular, ex post evaluation of regulations remains relatively undeveloped without consistent review methodologies. More needs to be done to ensure that OECD countries reach the agreed standards for their regulatory management practices – namely, the 2012 Recommendation of the Council on Regulatory Policy and Governance *– in a timely manner. If further improvements are not forthcoming, economies will be slowed by unnecessary burdens, thereby threatening future prosperity. This chapter focuses on recent trends in three key elements of the 2012 Recommendation: the engagement with stakeholders and the use of evidence in the development and revision of regulations.*

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

The global financial and economic crises, and their aftermath, have uncovered stark failings in governance and regulations across the globe. Amid ongoing economic uncertainty, it is imperative to ensure that markets and economies more broadly are able to deliver for all. Against this backdrop, the *2012 Recommendation* was developed to help ensure that economies can be put on stronger regulatory footings so as to improve growth. Stakeholder engagement, regulatory impact assessment (RIA), and *ex post* evaluations are three key enablers to improve regulatory environments across OECD countries. However, despite their importance, countries have been slow to adopt and deepen regulatory management practices to improve the lives of their citizens.

Since 2014, OECD countries have made some improvements in their use of stakeholder engagement and RIA to support the development of laws and regulations. That said, the regulatory lifecycle remains incomplete as *ex post* evaluation remains less developed.

At a time of general mistrust of governments, it is imperative that consultation with stakeholders provides a meaningful avenue for those affected to be able to help best shape regulations so as to maximise overall well-being. Countries are increasingly seeking feedback from citizens and businesses about regulatory proposals. Nevertheless, consultation could be better integrated into regulatory decision-making. In particular, regulators could better demonstrate how consultations have affected the final development of laws.

RIA is a central aid to decision making, helping to provide objective information about the likely benefits and costs of particular regulatory approaches, as well as critically assessing alternative options. A growing number of countries apply a proportionate approach to decide whether or not RIA is required and to determine the appropriate depth of the analysis. Whilst this is praiseworthy, it is important to note that a number of countries are excepting regulatory proposals from regulatory management practices, particularly those with significant impacts. This can have the effect of undermining public trust in countries' regulation making processes. It is therefore important that there is strong political support for the continued use of RIA to help better inform decision making.

The stock of regulations is far larger than the flow, yet scant attention is often paid to regulatory proposals once they have become laws. *Ex post* evaluation is thus a crucial tool to ensure that regulations remain fit for purpose, that businesses are not unnecessarily burdened, and that citizens' lives are protected. Yet despite this, there has only been a minor increase in the number of countries that have formal requirements and a comprehensive methodology in place for *ex post* evaluations.

Although there have been some improvements in the adoption and use of regulatory management tools, they need to be seen in context. The normative framework has long been agreed between members, which ultimately culminated in the 2012 Recommendation. Nevertheless, whilst there have been some notable reforms undertaken, members remain a long way from meeting the 2012 Recommendation.

Introduction

This chapter provides an overview of recent trends and the progress made by OECD countries in implementing the 2012 Recommendation (OECD, 2012[1]). It focuses particularly on stakeholder engagement, regulatory impact assessment (RIA) and *ex post* evaluation of regulations, where:

- Stakeholder engagement refers to informing and eliciting feedback from citizens and other affected parties so that regulatory proposals can be improved and broadly accepted by society
- RIA refers to the process of critically examining the consequences of a range of alternative options to address various public policy proposals
- *Ex post* evaluation involves an assessment of whether regulations have in fact achieved their objectives, as well as looking as to how they can remain fit for purpose.

These three areas are important regulatory management practices, forming critical aspects of the regulatory lifecycle.

The analysis is based on results from the 2017 OECD Indicators of Regulatory Policy and Governance (iREG) Survey, which covers 38 OECD member and accession countries and the European Union. It is the second time, after 2014, that the survey has been run, thereby allowing for the first comparative analysis of trends and improvements in regulatory policy across countries. Graphs over time cover only the 34 countries and the European Union for which data is available for both 2014 and 2017 to facilitate comparison, unless indicated otherwise.

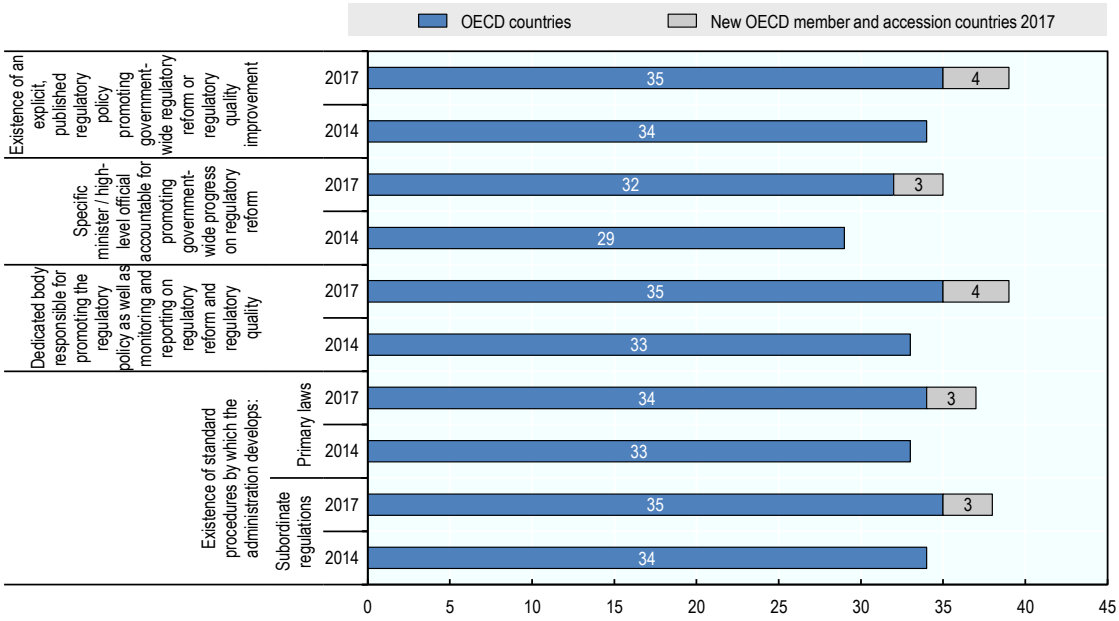
Content of regulatory policies

OECD countries have demonstrated a strong in-principle commitment to regulatory management via the widespread publication of regulatory policy documents. However, the basis and content of various policy documents vary across countries.

Whole-of-government approach for regulatory quality

OECD and accession countries continue to invest in their whole-of-government approach to regulatory quality (Figure 2.1). The vast majority of them have adopted an explicit regulatory policy promoting government-wide regulatory reform or regulatory quality and established dedicated bodies to support the implementation of regulatory policy. They also generally have a specific minister or high-level official who is accountable for promoting government-wide progress on regulatory reform. Countries also continue to use standard procedures for the development of primary laws and subordinate regulations.

Figure 2.1. Whole-of-government approach for regulatory quality



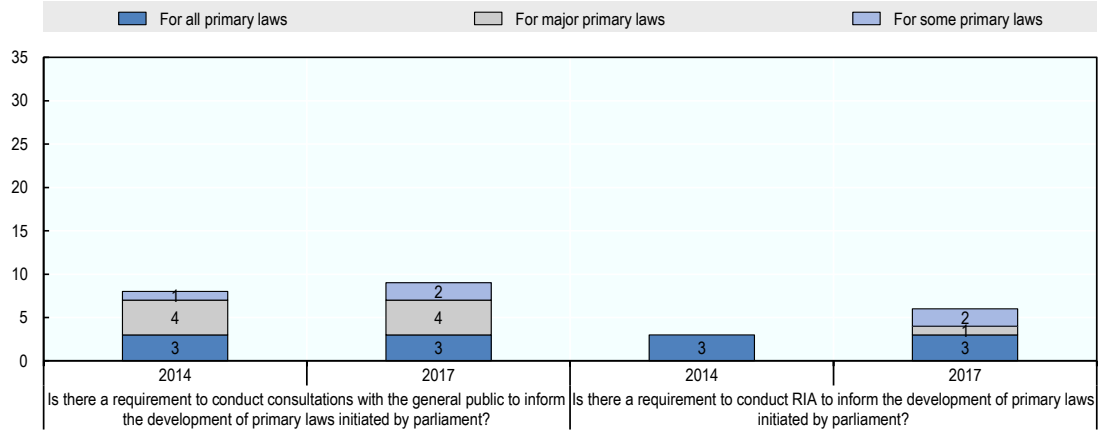
Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933813951

Application of regulatory management tools to laws initiated by parliament

In most countries, processes and requirements with regards to the use of better regulation tools in the development of new laws seem to focus mostly on laws initiated by the executive. Only in a small minority of OECD countries do the same processes apply to laws initiated by parliament as for the executive (Figure 2.2 and Figure 2.3).

Figure 2.2. Consultation and RIA requirements for laws initiated by parliament

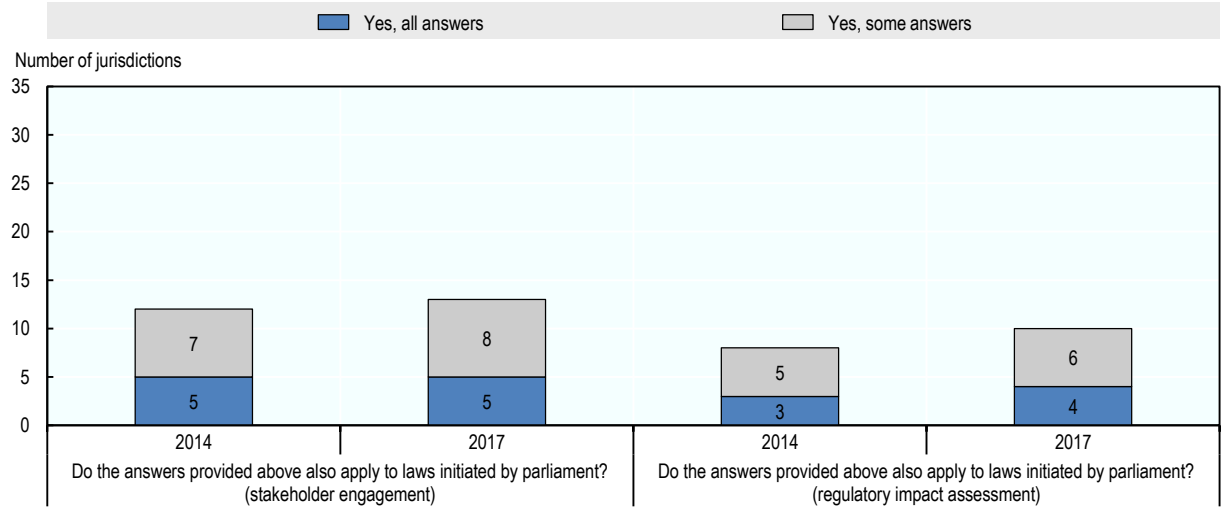


Note: Data is based on 34 OECD member countries.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933813970

In a small minority of OECD countries, there are specific requirements to conduct stakeholder engagement and RIA to support the development of laws initiated by parliament.

Figure 2.3. Application of stakeholder engagement and RIA to laws initiated by parliament



Note: Data is based on 34 OECD member countries.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

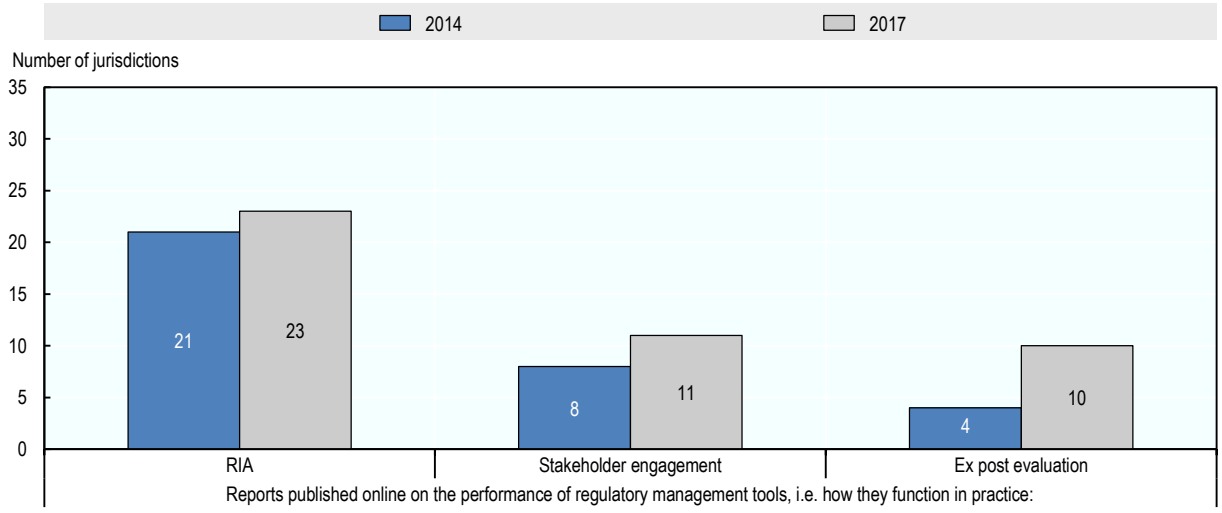
StatLink https://doi.org/10.1787/888933813989

Evaluation of regulatory policy

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. Regulatory performance measures can also provide a benchmark for improving compliance by ministries and agencies with the requirements of regulatory policy (OECD, 2012[1]). Since 2014, OECD countries have further invested in the evaluation of the use of regulatory management tools. RIA continues to be the most evaluated tool in OECD countries with two thirds of OECD countries having evaluated how it functions in practice (Figure 2.4).

However, reports on stakeholder engagement practices and *ex post* evaluations are far less frequent. While the number of reports for both have increased since 2014, less than one third of OECD countries are currently reporting on their stakeholder engagement practices and *ex post* evaluations.

Figure 2.4. Reports on the performance of regulatory management tools



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814008

General trends in the adoption of regulatory management tools

Progress towards achieving the 2012 Recommendation in the three focus areas of stakeholder engagement, RIA, and *ex post* evaluation is partly measured via composite indicators based on information collected through the iREG survey (Box 2.1).

Box 2.1. Construction of the composite indicators

The three composite indicators provide an overview of countries' practices in the areas of stakeholder engagement, regulatory impact assessment (RIA) and *ex post* evaluation. Each indicator comprises four equally important and therefore equally weighted categories:

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

The maximum score for each category is 1 and the maximum score for the aggregate indicator is 4. The composite indicators are based on the results of the OECD 2014 and 2017 Regulatory Indicators Survey, which gathers information from all 38 OECD member and accession countries and the European Union as of 31 December 2014 and

31 December 2017, respectively. The survey focuses on regulatory policy practices as described in the 2012 Recommendation (OECD, 2012[1]). The more of these practices a country has adopted, the higher its indicator score.

The questionnaire and indicators methodology were developed in close co-operation with delegates to the Regulatory Policy Committee and the Steering Group on Measuring Regulatory Performance. The methodology for the composite indicators draws on recommendations provided in the 2008 *JRC/OECD Handbook on Constructing Composite Indicators* (OECD/EU/JRC, 2008[2]). The information presented in the indicator 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. 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.

Whilst the indicators provide an overview of a country's regulatory framework with respect to stakeholder engagement, RIA and *ex post* evaluation,, they cannot fully capture the complex realities of its quality, use and impact Moreover, they are limited to evaluating the implementation of measurable aspects across the three areas currently assessed and do not cover the full 2012 Recommendation. As such, a full score does not imply full implementation of the 2012 Recommendation. In-depth country reviews are therefore required to complement the indicators and to provide specific recommendations for reform. Please also note that the results of composite indicators are always sensitive to methodological choices and it is therefore not advisable to make statements about the relative performance of countries with similar scores.

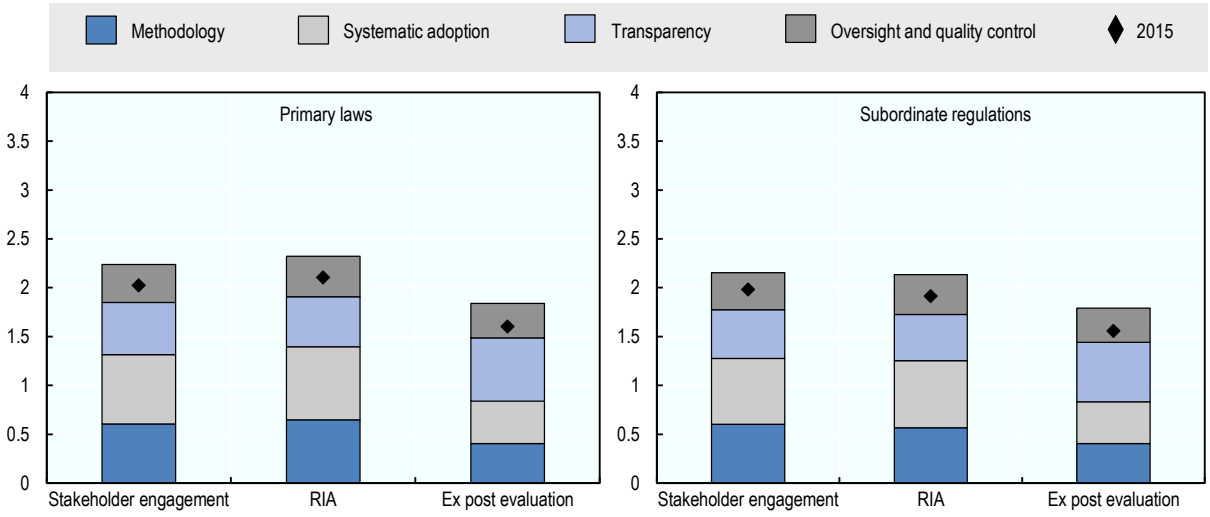
Further information on the methodology is available at www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm, as well as via an OECD working paper (Arndt et al., 2015[3]). Further analysis of the 2014 iREG survey results were made available through a subsequent working paper (Arndt et al., 2016[4]).

Additional analysis of the results of the 2017 iREG survey by the OECD will be available via an analytical paper (Arndt, Davidson and Thomson, forthcoming[5]).

Please see also the reader's guide at the beginning of the Regulatory Policy Outlook.

On average, countries have made small improvements in the uptake of regulatory management tools since 2014 (Figure 2.5), with changes of a similar magnitude across the three tools and with respect to both primary and subordinate regulations. Strikingly, *ex post* evaluation remains the least developed regulatory management tool overall despite the large potential for reform: Countries would benefit from improving the stock of regulation, which is much larger than the flow, to ensure regulations are still relevant, do not impose unnecessary costs on society and do not lead to unintended consequences. For example, reforms to anticompetitive regulation in Australia during the microeconomic reform programme of the 1980s and 90s were estimated to yield gains totalling some 5% of GDP, with households across all income groups significantly better off (Australia Productivity Commission, 2006[6]; OECD, Forthcoming[7]).

Figure 2.5. Composite indicator scores, OECD averages 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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On average across the composite indicators, systematic adoption continues to be the strongest area throughout OECD countries, indicating that the foundations for better regulatory management practices including formal requirements are in place. It is nevertheless noticeably weaker for *ex post* evaluation, which would indicate less political commitment and also an easy area for improvement.

Methodology has remained behind systematic adoption, and is the second-strongest category. This would suggest that once countries have the systematic 'building blocks' in place, they are next focussing on improving their technical capabilities across stakeholder engagement and RIA, in particular.

Transparency has remained relatively weak across OECD countries. It would be anticipated that once the systems are in place with sound methodologies, countries will be able to improve the transparency of their regulatory management practices.

Oversight is still underdeveloped relative to the other three categories, which was also the case in 2014. This suggests that there are real gains that can be made by OECD countries with regards to improving the quality control of regulatory proposals.

It is worth noting that although the overall pace of change is slow, some countries have made significant progress in their regulatory management practices since 2014. Across the three areas, major reforms have been undertaken in Israel, Italy, Japan, and Korea.

- Israel has made significant progress in strengthening its regulatory policy since 2014. It now has in place stricter rules and guidance for RIA, while the central focus is on regulatory burden reduction including an extensive programme on reviewing existing regulations with respect to the burdens they impose. Stakeholder engagement is now a central part of RIA, although it should be noted that there is no external quality control of RIAs in Israel and the Better Regulation Department does not have a gatekeeper function.

- Italy recently updated its procedures relating to regulatory management practices, tackling some of the challenges identified in the *Regulatory Policy Outlook 2015* (OECD, 2015[8]). Stakeholder engagement has been improved via the introduction of a section in the central government website, RIA quality control has been strengthened, and procedures around *ex post* evaluations have been improved, although they could be more systematically planned.
- Japan has made significant efforts to improve its regulatory environment since 2014. It has updated its guidance material for RIA, with a particular emphasis on the importance of conducting a thorough impact assessment of a policy, including the various techniques and processes that ministries can adopt. There are also strengthened rules requiring *ex post* evaluations within the first five years of new laws. These improvements may yield further benefits if stakeholders were able to be better involved *ex ante* in the policy development process, and in *ex post* reviews.
- Korea has strengthened existing methods of stakeholder engagement and complemented them with online platforms. RIA has been significantly amended via the launch of e-RIA, which is aimed at increasing the quality of RIA whilst at the same time lessening the burden of preparing RIA. There have also been improvements as Korea has moved towards a much more systematic basis for the sun-setting of regulations. However, RIA does not apply to regulations initiated by the National Assembly. More potential gains from the improvements to Korea's regulatory management practices could be realised if RIA also applied to laws initiated by the National Assembly, which accounts for approximately 90% of primary laws.

So while it is worth noting that some countries have improved their regulatory management practices since 2014, more fundamentally, much remains to be done in order to fully embed the 2012 Recommendation into OECD countries' systems. The sections below provide a more detailed overview of progress in key areas of the 2012 Recommendation.

Stakeholder engagement

Engaging with those concerned and affected by regulation is fundamental to improve the design of regulations, enhance compliance with regulations and increase public trust in government. Stakeholders include citizens, businesses, consumers, and employees (including their representative organisations and associations), the public sector, non-governmental organisations, international trading partners and other stakeholders (OECD, 2012[1]).

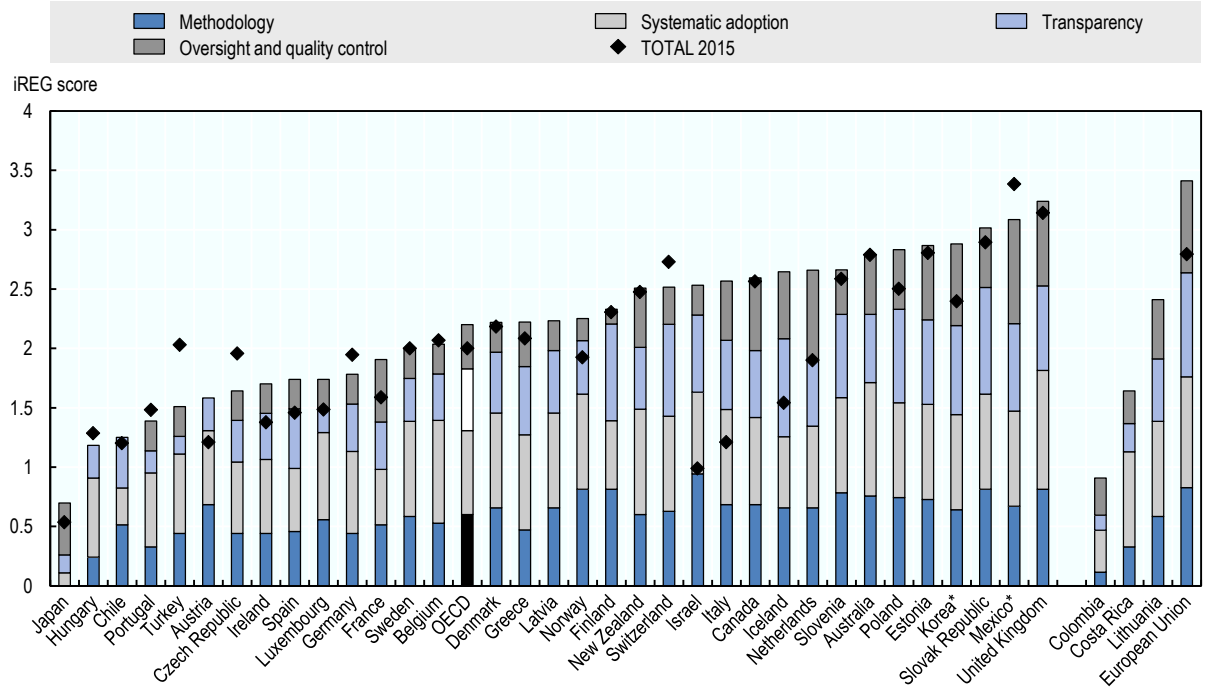
By engaging with stakeholders – who can contribute their own experiences, expertise, perspectives and ideas to the discussion – governments gain valuable information on which to base their policy decisions. Information from stakeholders can help to avert unintended effects and practical implementation problems of regulations. Tapping into the knowledge of stakeholders is also useful in connection with RIA to collect and check empirical information for analytical purposes, identify policy alternatives, including non-regulatory options and measure stakeholders' expectations. Furthermore, stakeholders can provide a quality check on the regulators' assessment of costs and benefits (OECD, Forthcoming[9]).

Meaningful stakeholder engagement in the development of regulation is expected to lead to higher compliance and acceptance of regulations, in particular when stakeholders feel that their views were considered, they received an explanation of what happened with their comments, and they feel treated with respect (Lind and Arndt, 2016[10]). Pro forma consultation without any actual interest in the views of stakeholders because a decision has already been made or failure to demonstrate that consultation comments have been considered may have the opposite effect.

Recent trends in stakeholder engagement

Countries improved their practices with respect to primary laws to a greater extent than with respect to subordinate regulation. Improvements to the transparency of the system – including public access to information on planned consultations; comments received by stakeholders during the consultation phase; as well as on replies to consultation comments – account for most of this change, followed by some slight improvements in the methodology of stakeholder engagement including more engagement at earlier stages of the development of regulations (Figure 2.6 and Figure 2.7).

Figure 2.6. Composite indicators: Stakeholder engagement in developing primary laws, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress. *In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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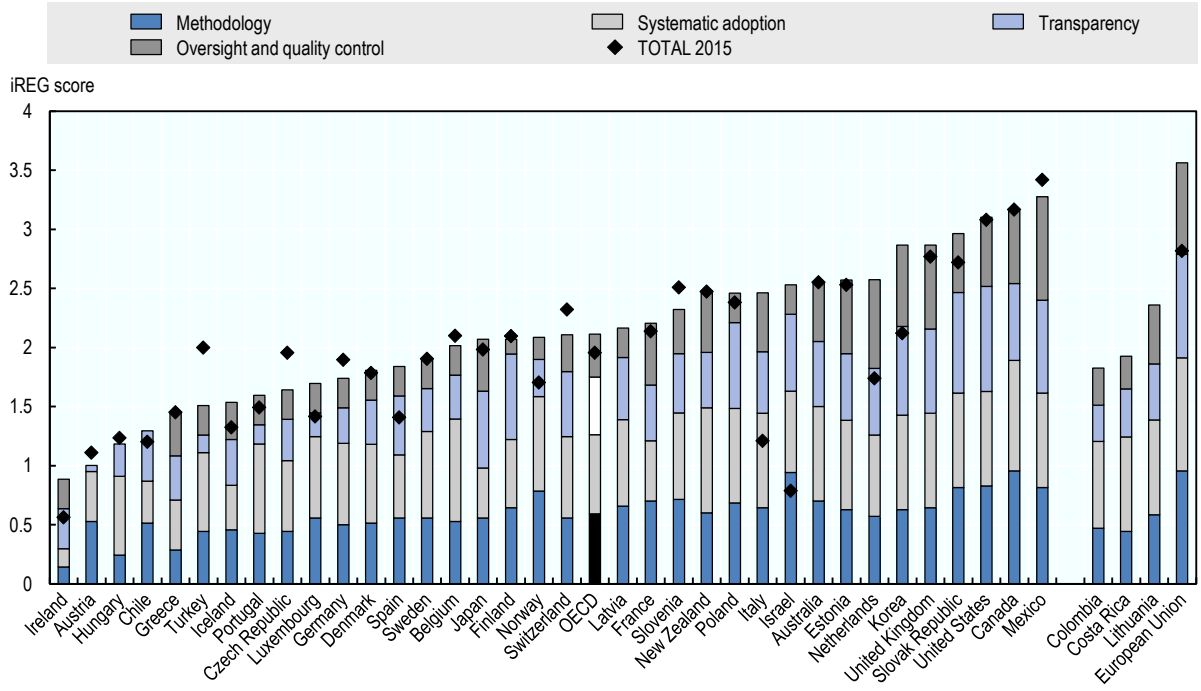
Figure 2.7. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814065

Countries which undertook substantive reforms include Iceland, Italy, Israel, Korea, as well as the European Union.

- Since 2017, Iceland has required early stage consultation with the general public on a legislative intent document and preliminary RIA prior to drafting a law as well as public consultation on the full draft law and RIA before being presented to Cabinet.
- Italy improved the transparency and forward planning of its consultation system, introducing for example open consultation on draft *ex post* evaluation ministerial plans.
- Israel opened up consultation more widely to the general public and connected it to the RIA system, and Korea strengthened their online consultation system in 2015 to allow the general public to submit opinions on draft regulatory bills and RIAs and to access all consultations through a central website.
- The European Commission has introduced consultation on inception impact assessments and roadmaps in the early stages of the development of legislation. The EC also consults on major aspects of impact assessments and evaluations, and allows stakeholders to comment on draft legislative proposals after the approval by the College of Commissioners and to make suggestions for simplification and review of EU legislation through the REFIT Platform.

On average, stakeholder engagement practices have not improved much in OECD countries though and most countries still have important room for improvement in implementing the 2012 Recommendation with respect to stakeholder engagement. Countries still score highest on systematic adoption and lowest on oversight and quality control, i.e. they have the formal requirements for stakeholder engagement in place yet are lacking the institutional structure to ensure it functions well in practice.

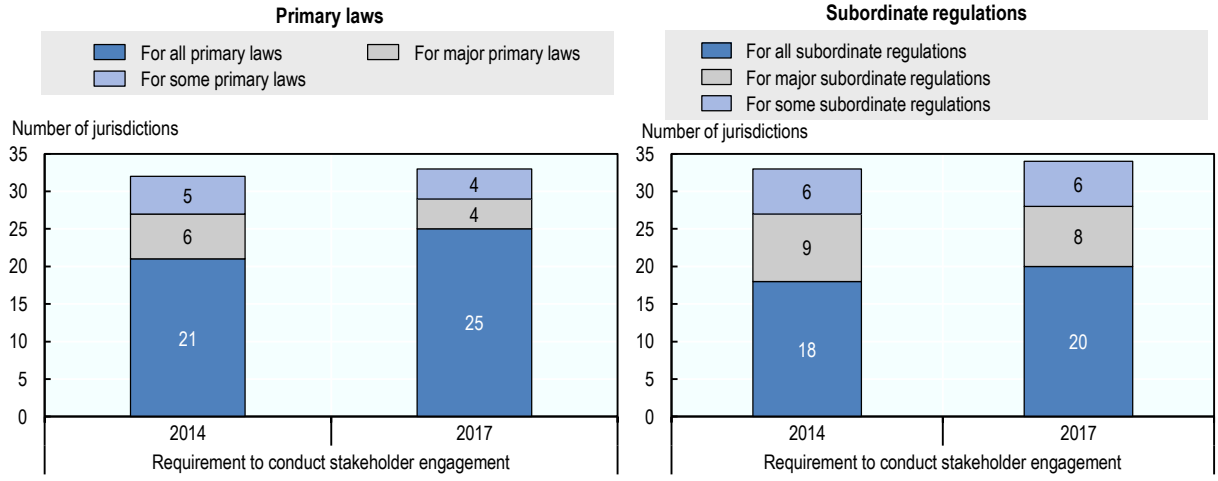
Requirements to conduct stakeholder engagement in the development of primary laws and subordinate regulations

Almost all OECD countries have entrenched stakeholder engagement in their rule-making process by establishing and expanding formal requirements to consult on new laws and regulations (Figure 2.8).

In a number of countries, existing consultation requirements have been expanded since 2014 to cover all new primary laws, where previously the approach was less systematic.

Since 2014, only one additional country has established consultation requirements for the development of subordinate regulations. Overall, requirements are less stringent than for primary laws, i.e. focussing only on some or major subordinate regulations in a third of OECD countries.

Figure 2.8. Requirements to conduct stakeholder engagement



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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Consultation at different stages of rule making

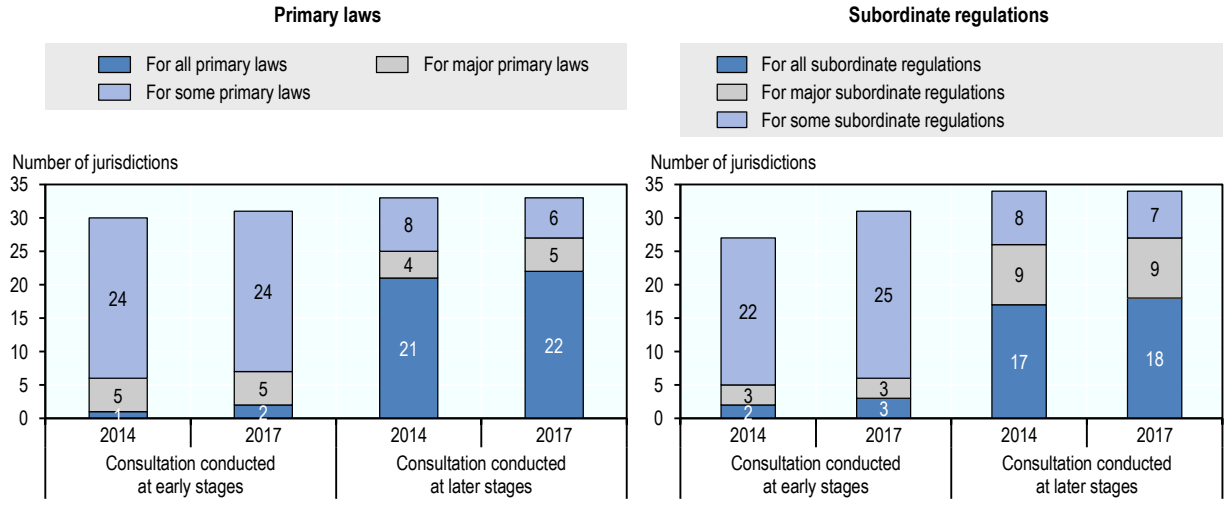
A great majority of OECD countries seem to systematically consult with stakeholders on all or major laws and regulations under development, suggesting that formal requirements are implemented in practice in the vast majority of cases.

While most consultation efforts continue to focus on later stages of the rule-making process, i.e. when a preferred solution has been identified and/or a draft regulation been prepared, the number of countries engaging with stakeholders at an early stage has

increased (Figure 2.9). However, the engagement at this stage is not systematic in the vast majority of countries.

In line with less stringent formal requirements, in some countries consultation practices are less developed for subordinate regulations than for primary laws.

Figure 2.9. Stakeholder consultation at different stages of rule making



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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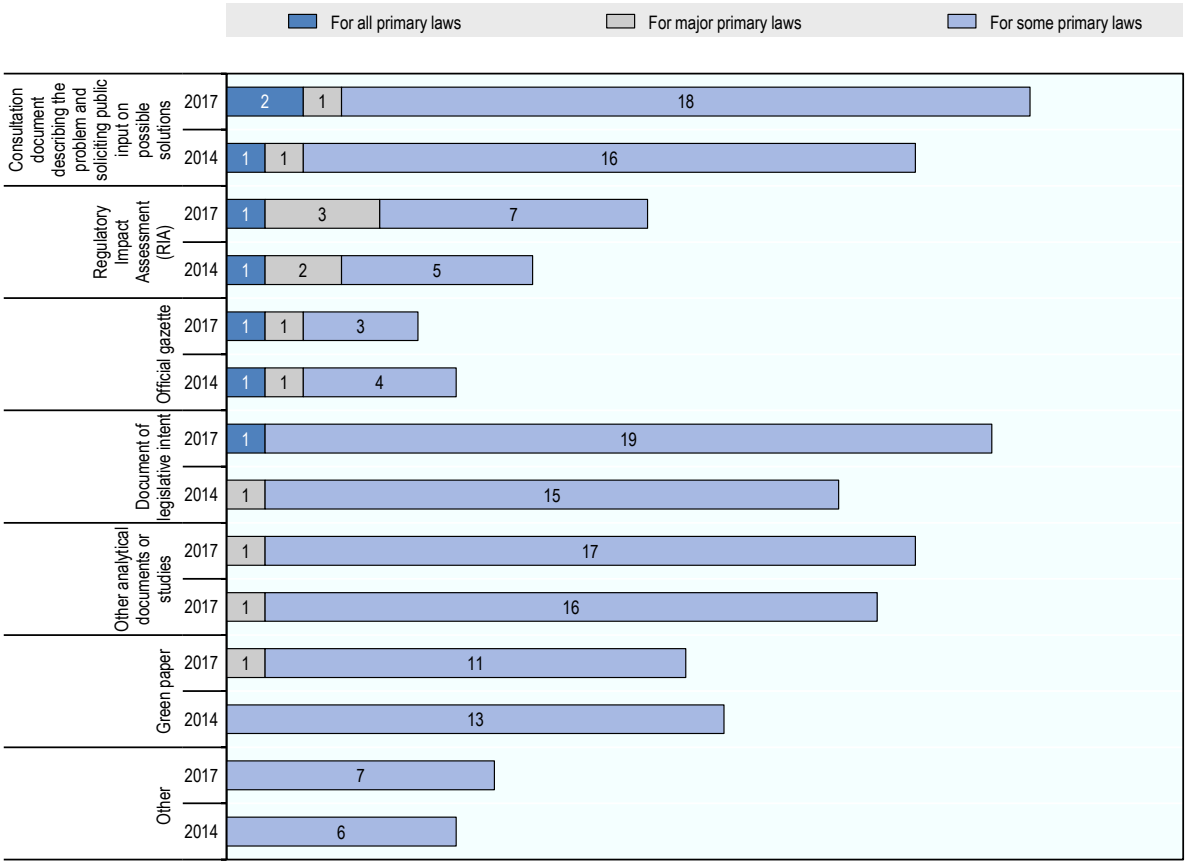
Documents available to support stakeholder engagement

OECD countries make a number of different documents available to support stakeholder engagement at the different stages of the rule-making process (Figure 2.10 and Figure 2.11). Countries tend to use these documents more systematically at the later stage of the rule-making process, i.e. when a preferred solution has been identified and/or a draft regulation been prepared.

While already in 2014 a majority of OECD countries used the draft text of a regulation to support stakeholder consultation at a later stage, countries tend to use this practice more frequently in recent years.

OECD countries also increasingly make RIA available to support stakeholder engagement. However, governments continue to publish RIA more frequently when the preferred solution has been identified, rather than using RIA to inform stakeholders about the nature of the problem and to inform discussions on possible solutions.

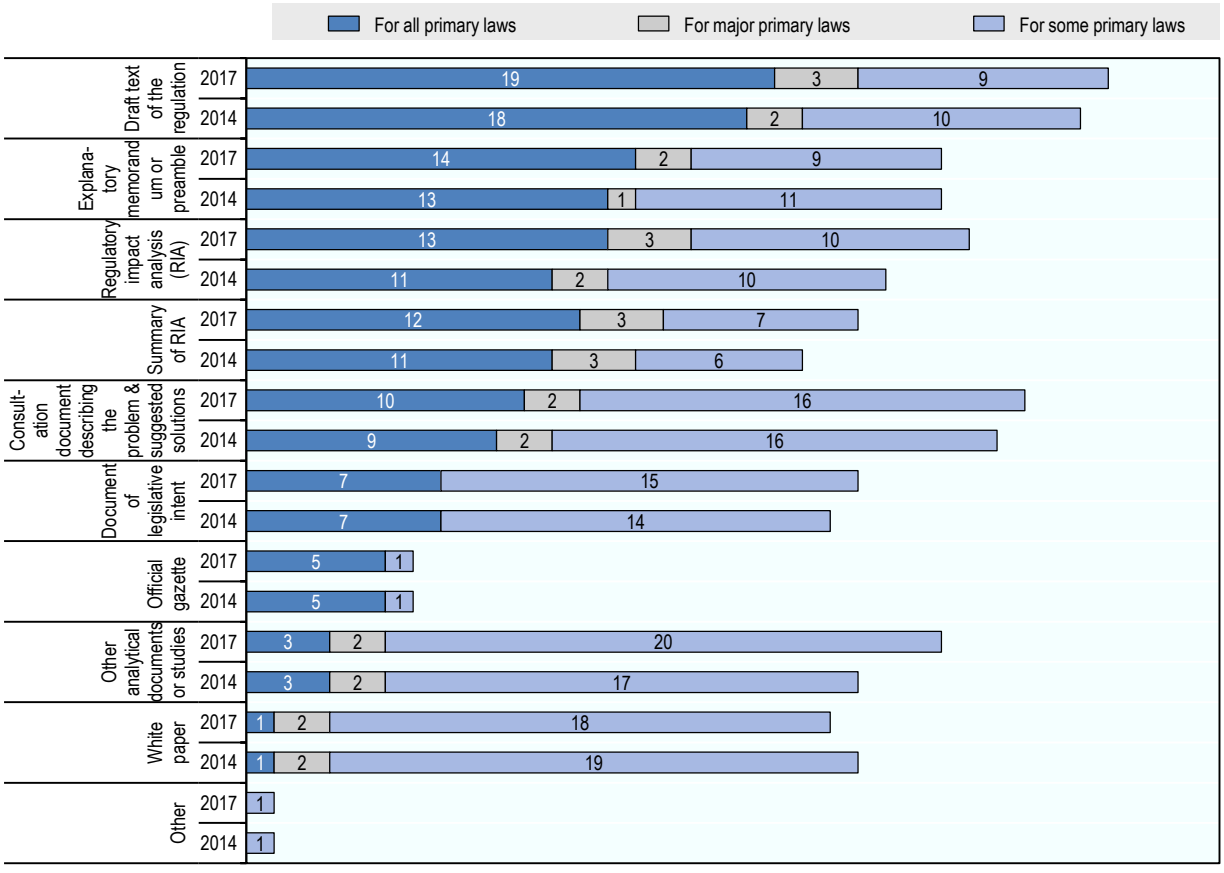
Figure 2.10. Documents available to support stakeholder engagement on primary laws at an early stage of rule-making process



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814122

Figure 2.11. Documents available to support stakeholder engagement on primary laws at a later stage of rule-making process



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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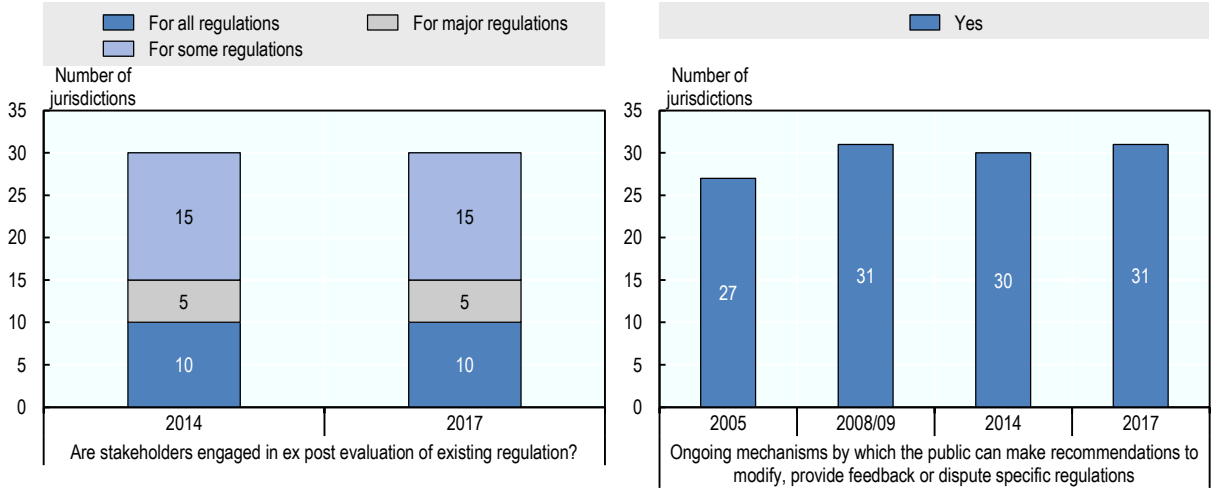
Stakeholder engagement in ex post *evaluation*

A vast majority of OECD countries continue to use ongoing mechanisms by which the public can make recommendations to modify, provide feedback or dispute specific regulations.

However, the use of stakeholder engagement to inform *ex post* evaluations is far less systematic. Only a minority of the countries surveyed regularly engage with stakeholders when evaluating existing regulations to gather potential suggestions for improvement. This illustrates that countries have some way to go before closing the regulatory cycle.

Figure 2.12. Stakeholder engagement in *ex post* evaluation



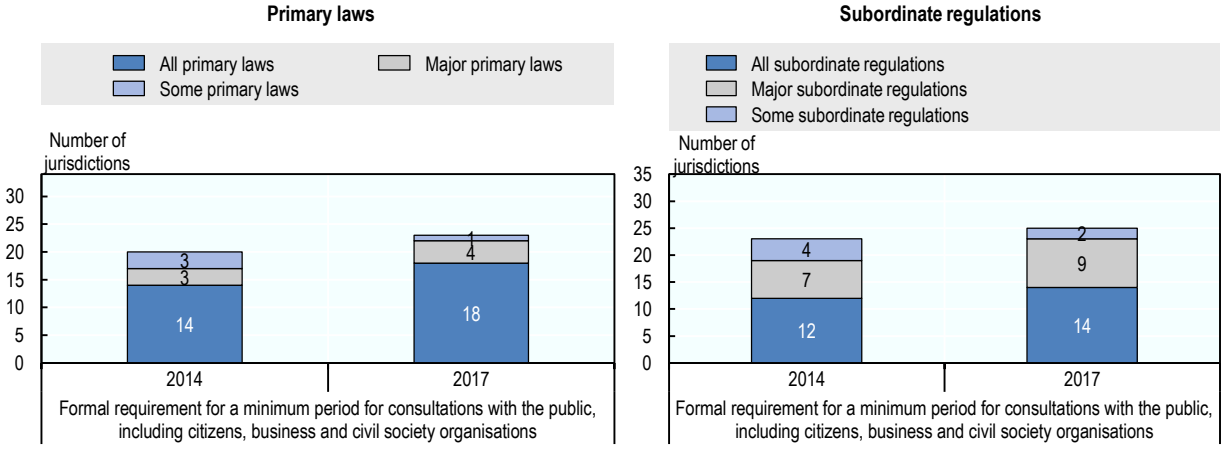
Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814160

Minimum periods for public consultation

A growing number of OECD countries have established minimum periods for consultation with the public, including citizens, business and civil society organisations on the development of laws and regulations (Figure 2.13).

Figure 2.13. Minimum periods for public consultation



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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By 2017, a majority of countries systematically make use of such minimum periods with a view to ensuring stakeholders have sufficient time to provide meaningful input in the rule-making process. Generally, OECD countries allow for a minimum period of four

weeks' consultation, although there are both shorter and longer periods across members. For instance, Costa Rica, Hungary, Iceland, Lithuania, Poland, and Spain provide for shorter periods, while both Switzerland and the European Union have 12 week minimum periods.

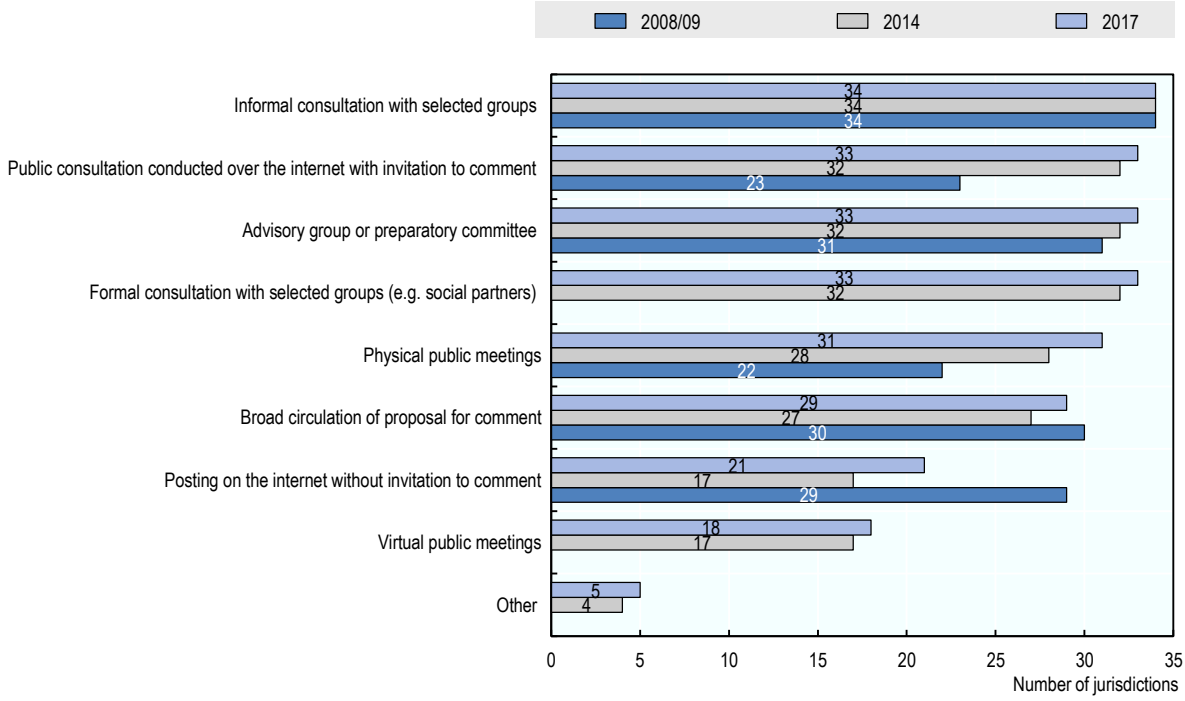
Where such minimum periods exist, they are usually applied systematically, i.e. for all or major primary laws or subordinate regulations.

Forms of stakeholder engagement

OECD countries continue to make use of a variety of tools to consult, both with the general public and in a more targeted approach with selected stakeholders (Figure 2.14).

The most popular forms of stakeholder engagement have remained the same: Governments continue to make use of the internet to actively seek feedback from the general public and of advisory groups or preparatory committees to benefit from the expertise of specific groups. Formal consultation with selected groups such as social partners remains a key part of the system in most OECD countries. While countries make increasing use of physical public meetings to complement web-based consultations with the broader public, fewer use virtual public meetings to engage with stakeholders on plans to regulate.

Figure 2.14. Forms of stakeholder engagement



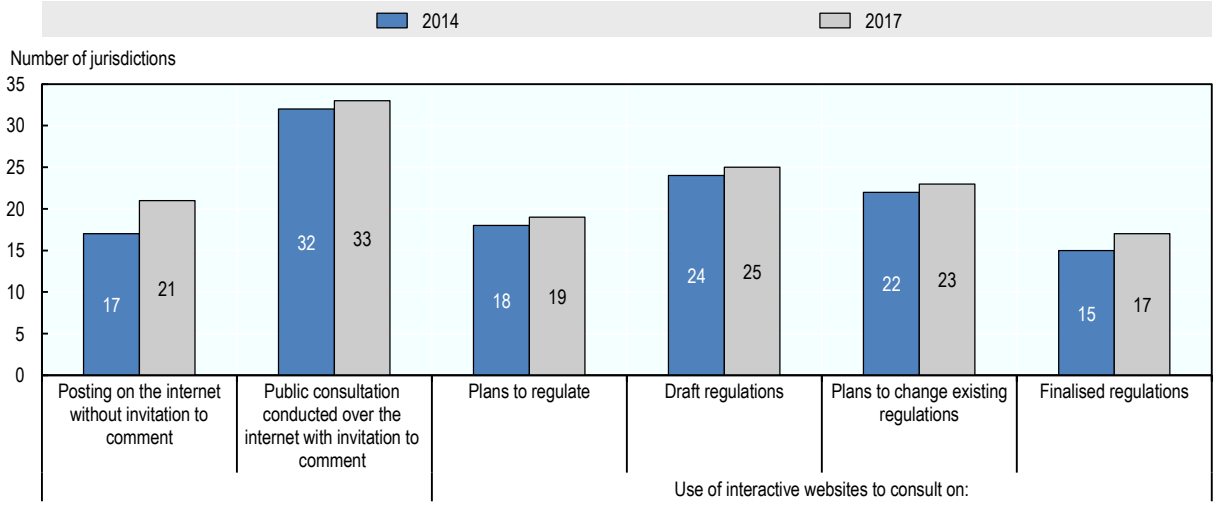
Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814198

Use of ICTs to engage with stakeholders at different stages of rule making

The use of ICTs by OECD countries to engage with stakeholders throughout the regulatory process is well established and continues to increase (Figure 2.15). The most frequent use of ICTs is to gather feedback from the public on draft regulations and to consult on plans to change existing regulations. Countries make less use of ICTs to consult on plans to regulate and on finalised regulations with a view to ensure stakeholders are engaged throughout the regulatory cycle and not only at one specific stage.

Figure 2.15. Use of ICTs to engage with stakeholders at different stages of rule making



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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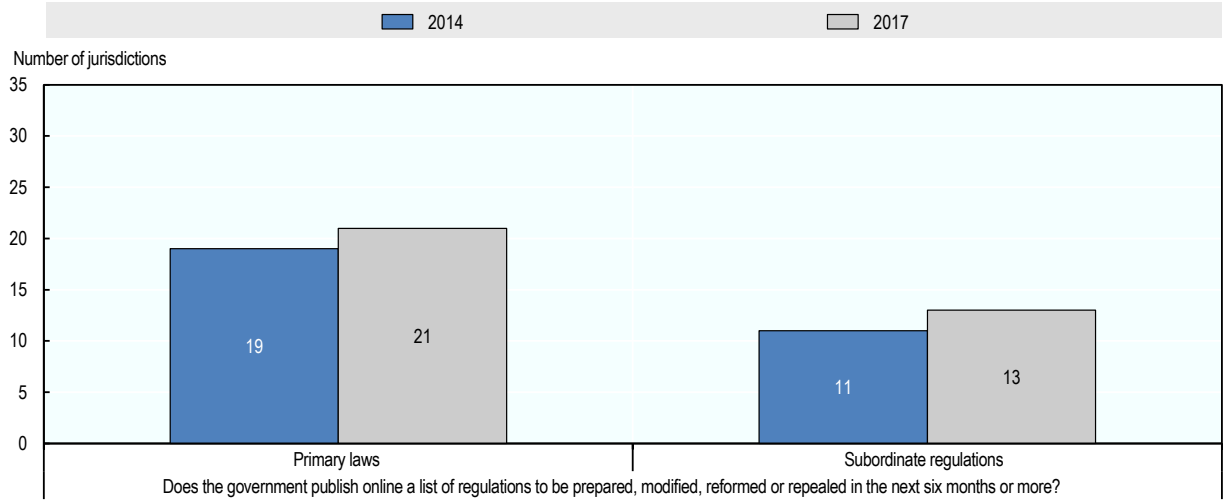
However, information is often dispersed across websites making it hard for stakeholders to find. Websites could be better integrated and linkages between different sites could be improved. The number of countries that have recognised the importance of having a central website listing all ongoing consultations has increased since 2014 to about half of OECD countries.

Forward planning

The number of OECD countries publishing a list of regulations to be prepared, changed or repealed online in the next six months or more has increased, but it is not yet established as a consistent practice across the membership. A majority provides forward planning by publishing such lists on primary laws and around one third of countries do so for subordinate regulations (Figure 2.16). Informing the public more generally about forthcoming consultations is not systematically undertaken although it has slightly improved since 2014 (Figure 2.17).

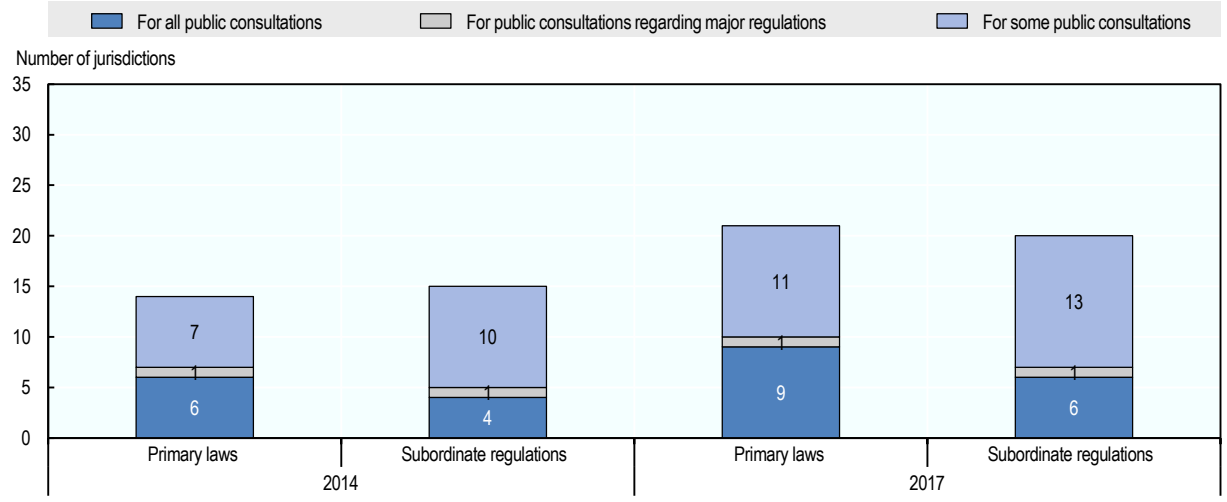
Figure 2.16. Online lists for regulatory forward planning



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814236

Figure 2.17. Informing members of the public of forthcoming consultations



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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Feedback and use of consultation comments

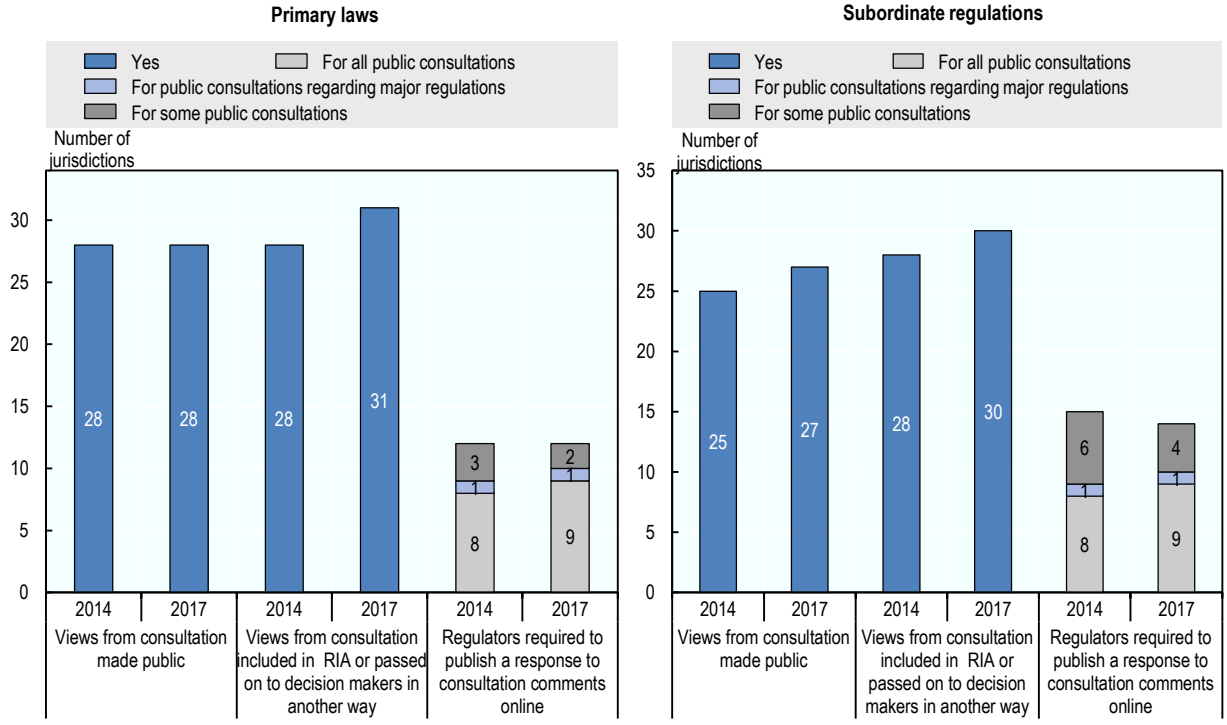
OECD countries have put in place mechanisms to ensure the transparency of the consultation process and to effectively integrate it into the regulatory process.

For instance, the number of countries that publish at least for some regulations the views of participants expressed during the consultation has further increased (Figure 2.18).

Similarly, most countries include views from consultation in the RIA or pass them on to decision makers in some other way to make sure stakeholders' feedback effectively feeds into the decision-making process. More broadly, there may be synergies that countries can avail themselves of by incorporating both *ex ante* and *ex post* consultations on a central website.

Only a minority of OECD countries provide stakeholders with feedback as to how their input was used in the rule-making process by publishing a response to consultation comments online, and the number has seen a slight decrease for subordinate regulations. As has been found previously, receiving an explanation is a key element for stakeholders to feel included and fairly treated in their interaction with government (Lind and Arndt, 2016[10]).

Figure 2.18. Feedback and use of consultation comments



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814274

Regulatory impact assessment (RIA)

Regulatory impact assessment (RIA) provides crucial information to decision makers on whether and how to regulate to achieve public policy goals (OECD, 2012[1]). It is challenging to develop "correct" policy responses which also maximise societal well-being. It is the role of RIA to help assist with this, by critically examining the impacts and consequences of a range of alternative options. Improving the evidence base for regulation through RIA is one of the most important regulatory tools available to governments (OECD, 2012[1]).

A well-functioning RIA system can assist in promoting policy coherence by clearly illustrating the inherent trade-offs within regulatory proposals. It does this by showing the efficiency and distributional outcomes of regulation. RIA also has the ability to reduce regulatory failures: for example RIA can illustrate that reducing risks in one area may create risks for another. RIA can also reduce regulatory failure by demonstrating where there is no case for regulating, as well as highlighting the failure to regulate when there is a clear need (OECD, 2009[11]).

Recent trends in RIA

Compared to the 2014 results, OECD members on average improved their RIA practices in relation to subordinate regulations to a greater extent than in relation to primary laws, reflecting the larger scope for improvement in delegated legislation practices (Figure 2.19 and Figure 2.20).

In absolute terms, the area of systematic adoption of RIA was most improved between 2014 and 2017 in relation to primary laws. Systematic adoption was already the area where countries scored best in relation to RIA in 2014, and this has continued in 2017. Systematic adoption assesses whether there are developed formal requirements for RIA which includes proportionality and institutional arrangements (OECD, 2015[8]).

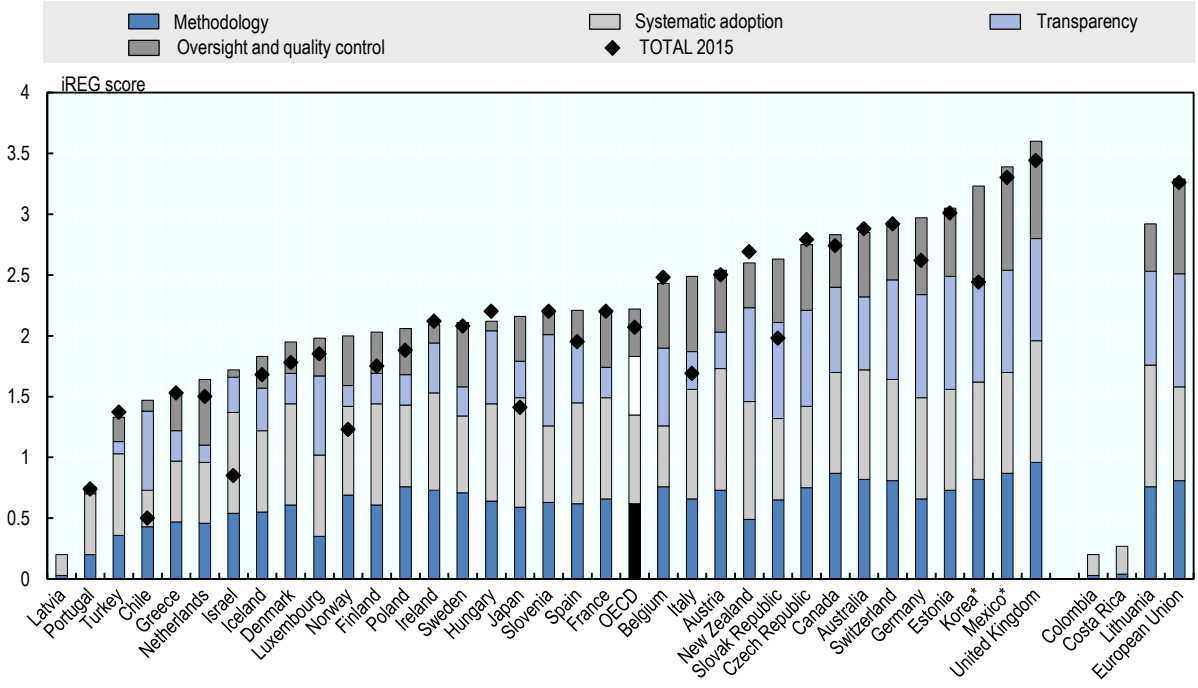
The next best improvement between 2014 and 2017 was in relation to oversight and quality control. Oversight and quality control measures whether the functions are in place to monitor the practice of RIA as are the requirements to assure the quality of the analysis (OECD, 2015[8]). Compared to the other composite indicators, OECD members have made more of an effort to improve their oversight and quality control of RIA. Despite this improvement, it still remains the least applied element overall.

Countries which undertook substantive reforms include Chile, Israel, Italy, Japan, Korea, Norway, and the Slovak Republic.

- In Chile, the Government issued a Presidential Instruction which for the first time introduced the obligation to carry out RIA, focussing on productivity, for the economic ministries.
- Since the publication of the Government Resolution in late 2014, Israel has provided stricter rules and guidance for RIA, so as to provide a solid basis for a whole-of-government regulatory policy, although the focus is mainly on reducing regulatory burdens.
- Italy has introduced selection criteria for significant regulations, and attempted to expand its focus of analysis to different types of impacts, for example considering economic, social, and environmental impacts.
- Japan has made significant efforts to improve its regulatory environment. In 2017 it revised its Implementation Guidelines for Policy Evaluation of Regulations, which updates the 2007 guidelines and continues to highlight the importance of conducting a thorough impact assessment of a policy, including the various techniques and processes that ministries can adopt.
- To increase the quality of RIA and lessen the burden of preparing RIA statements in Korea, e-RIA was launched in May 2015. It provides the public officials who prepare RIAs the possibility to automatically obtain the necessary data for cost-benefit analysis, and a sufficient amount of descriptions and examples for all fields.

- Norway improved its standard procedure for developing regulations by updating the *Instructions for Official Studies and Reports* in 2016. The Instructions establish new thresholds for determining when a simplified versus full analysis is required.
- In the Slovak Republic, a whole-of-government approach to regulatory policy making was instituted via the introduction of the *RIA 2020 – Better Regulation Strategy*. This has helped to strengthen the methodological basis for assessing a variety of economic impacts. In addition, the Permanent Working Committee responsible for overseeing the quality of regulatory impact assessments was established in 2015 at the Ministry of Economy.

Figure 2.19. Composite indicators: regulatory impact assessment for developing primary laws, 2018

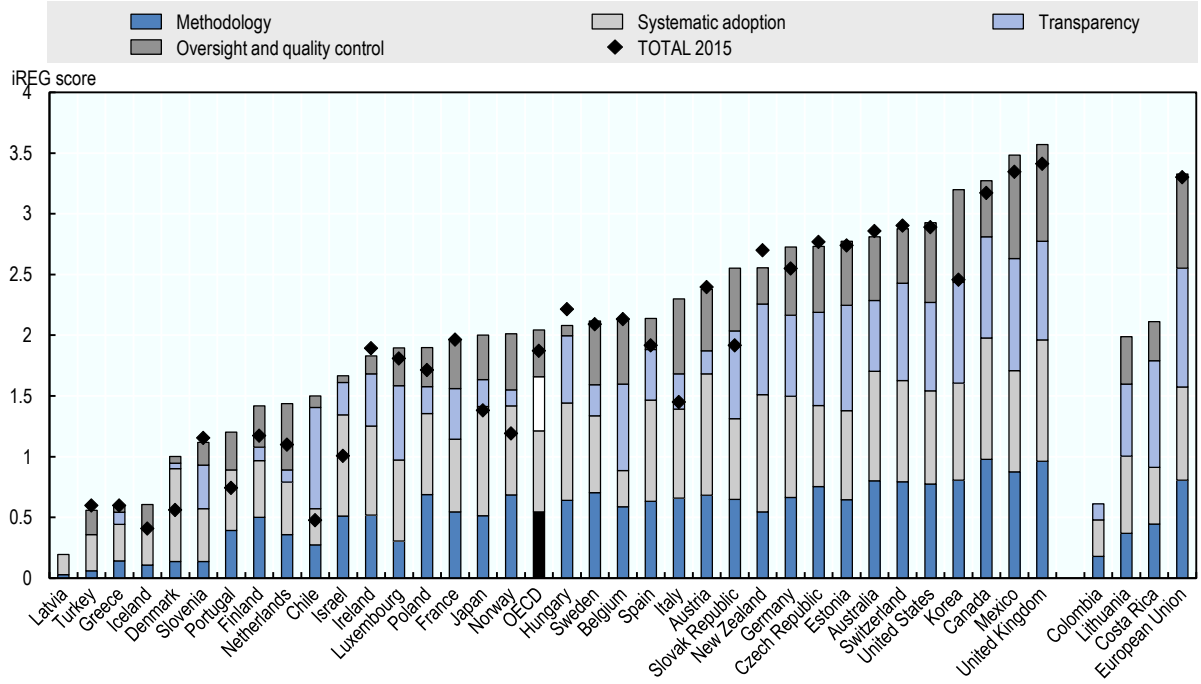


Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress. * In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814293

The largest improvements in subordinate regulations came from countries that had improved their application of RIA to subordinate regulations more generally, i.e. the improvements were across the four areas. Those countries were Israel, Italy, Japan, and Korea, which was a reflection of their RIA reforms more broadly outlined above.

Figure 2.20. Composite indicators: regulatory impact assessment for developing subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814312

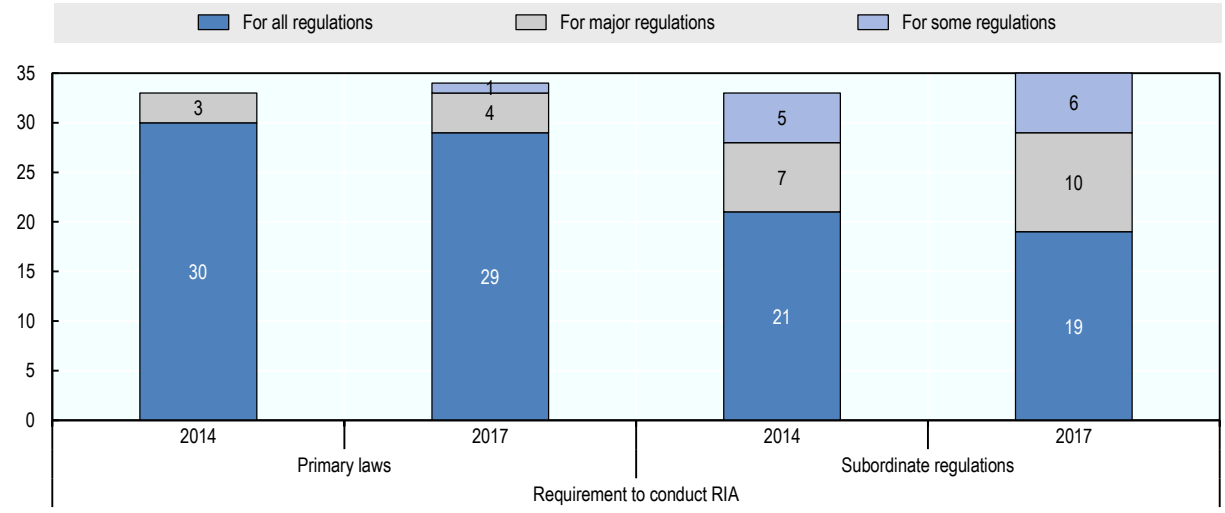
Although a number of member countries have improved their RIA systems between 2014 and 2017, overall the improvements are marginal. As was foreshadowed in the previous *Regulatory Policy Outlook* (OECD, 2015[8]), the largest gains for countries from implementing a well-functioning RIA system will come from strengthening transparency practices and oversight. That is still the case today as it was then. Much more needs to be done to fully embed the 2012 Recommendation (OECD, 2012[1]) in member countries' RIA systems.

Adoption of RIA: Formal requirements and practice

RIA is now required in almost all OECD countries for the development of both primary laws and subordinate regulations. The scope of the requirement has slightly changed, with less countries requiring RIA for all regulations, in line with a more proportionate approach to impact assessment (Figure 2.21).

While implementation still lags behind, the gap between requirement and practice seems to have reduced since 2014 and is smaller for primary laws than for subordinate regulation (Figure 2.22).

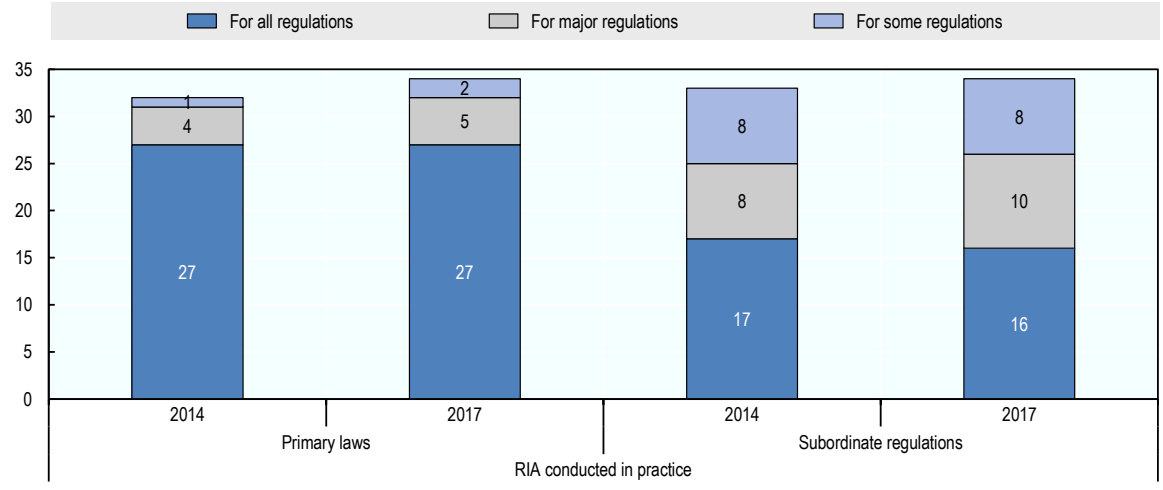
Figure 2.21. Formal requirements for RIA



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814331

Figure 2.22. RIA conducted in practice



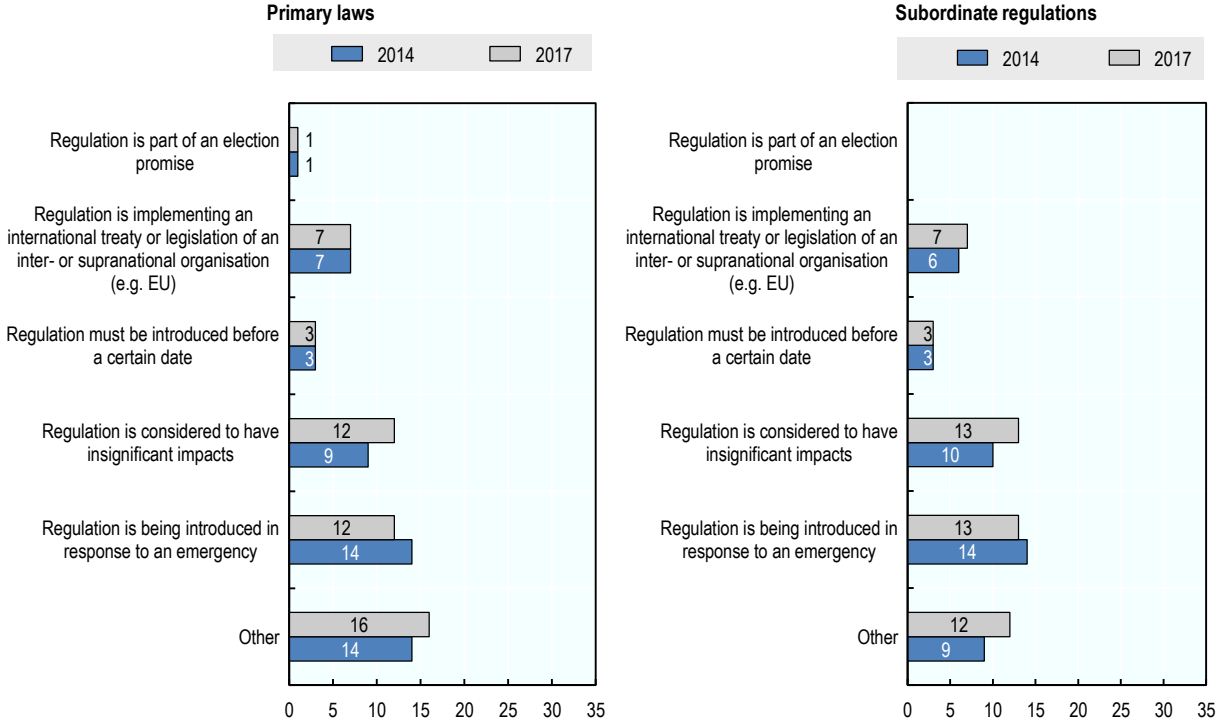
Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814350

Exceptions to RIA and consequences of not conducting RIA

More than one-third of OECD members have exceptions to conducting RIA (Figure 2.23), indicating that countries are improving in adopting a proportionate approach to analysing regulatory proposals. Nevertheless, it is important to ensure that assessments are able to be provided where appropriate, and on that point it is worth noting that there has been an overall increase in the types of exceptions available.

Figure 2.23. Exceptions to conducting RIA

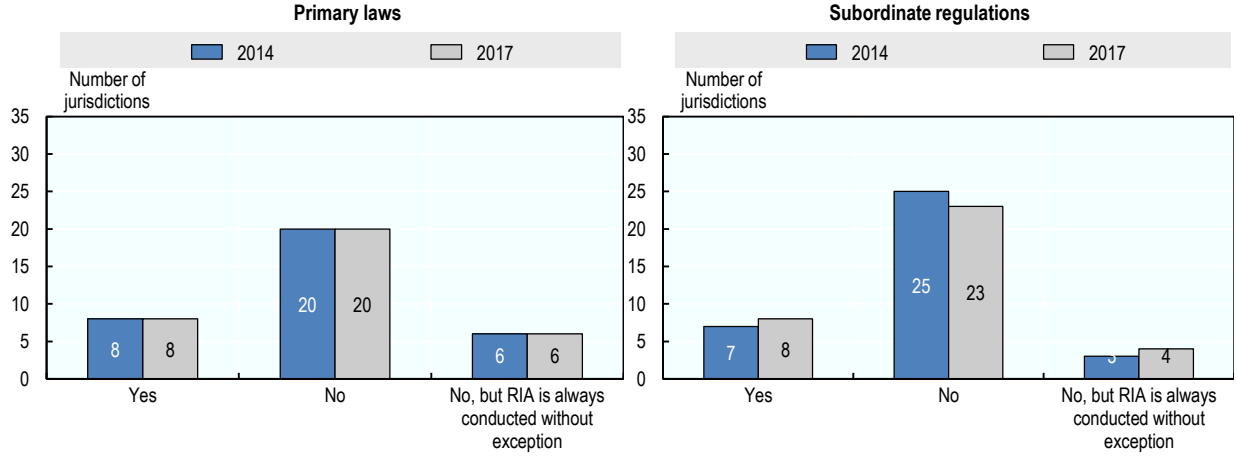


Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814369

However, the consequences of not conducting RIA in circumstances where it was required are limited. Only in eight countries is there a requirement to undertake a post-implementation review in the event that RIA does not take place where it ought to have (Figure 2.24).

Figure 2.24. If RIA does not take place, is a post-implementation review required?



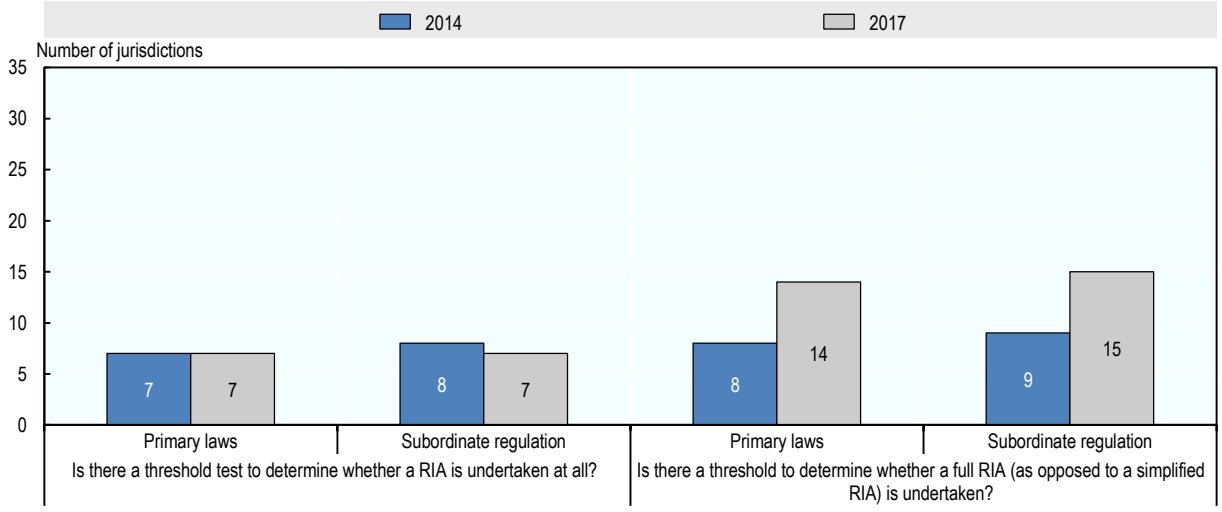
Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814388

Threshold tests for RIA

Countries are moving towards a more proportionate approach to RIA (Figure 2.25). Although relatively few countries provide a threshold test for whether to undertake RIA, it is published in even less. Only Mexico, the United States and the European Union publish such information.

Figure 2.25. Threshold tests for RIA



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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The use of threshold tests for determining whether a full RIA as opposed to a simplified RIA is undertaken has increased for both primary laws and subordinate regulation, to around one third of OECD countries.

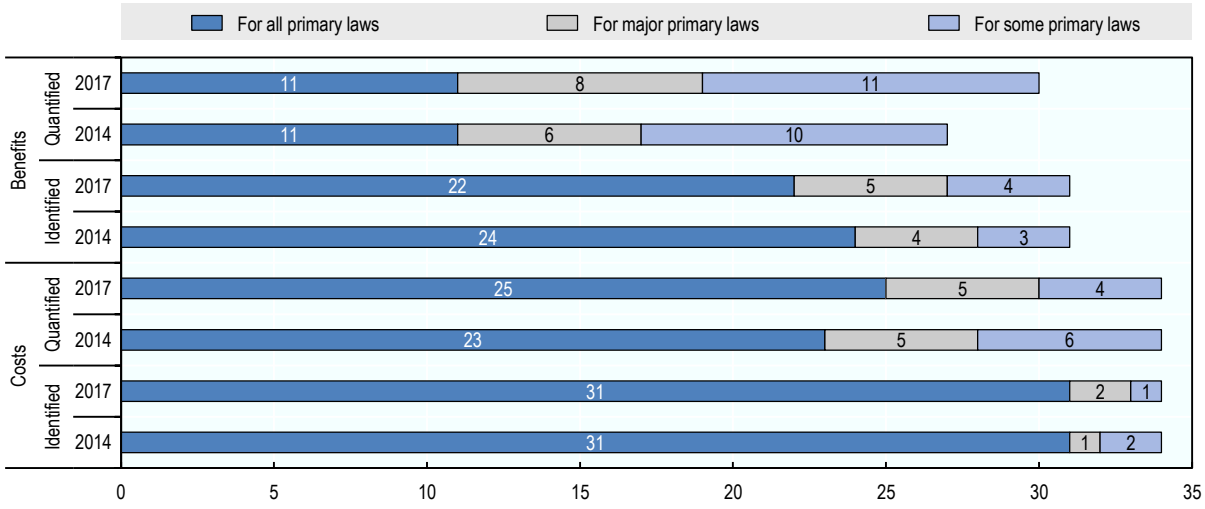
Analysis of costs, benefits and distributional effects

Countries increasingly quantify costs and benefits, in particular for primary laws (Figure 2.26 and Figure 2.27).

The number of OECD countries requiring the quantification of benefits for primary laws has increased since 2014 from 26 to 30. The scope of the requirement of quantifying costs has been extended with 25 compared to 23 countries requiring a quantification of costs for all primary laws and 20 compared to 18 for all subordinate regulation.

Quantification of benefits still lags behind quantification of costs. While in the majority of OECD countries quantification of costs is required for all regulations, quantification of benefits is often only required for some regulations. The identification of distributional effects of regulation is now required in less countries than in 2014, and its scope of application has been reduced to fewer regulations (Figure 2.28).

Figure 2.26. Analysis of costs and benefits for primary laws



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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Figure 2.27. Analysis of costs and benefits for subordinate regulations

Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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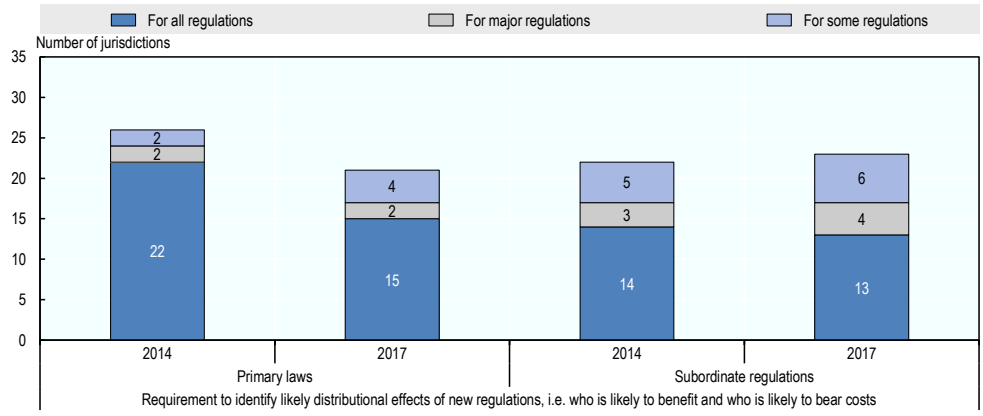
Figure 2.28. Analysis of distributional effects



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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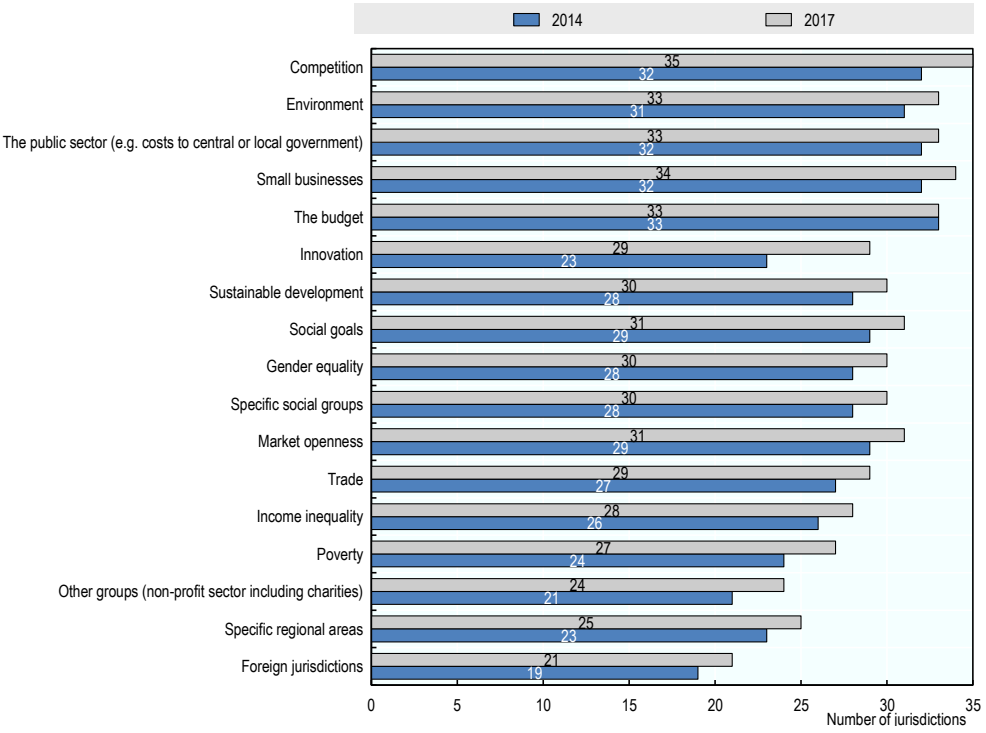
Types of impacts assessed in RIA

For most types of impacts, the number of countries requiring an assessment has slightly increased (Figure 2.29). Economic impacts, such as on competition and on small businesses, impacts on the environment and on the public sector as well as the budget remain the most frequently assessed types of impacts.

Figure 2.29. Types of impacts assessed in RIA



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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Despite an increase, the analysis of social impacts, e.g. on income inequality and poverty remains comparably less developed across countries. Likewise, the assessment of impacts on foreign jurisdictions remains low compared to other types of assessment, with about nearly two-thirds of OECD countries requiring an assessment at least for some regulations.

Interestingly and in line with a dynamic technological environment, there has been a significant increase of countries assessing the impacts of new regulations on innovation, which is now done in 29 OECD countries.

Ex post evaluation

The stock of laws and regulations has grown rapidly in most countries. However not all regulations will have been rigorously assessed *ex ante*, and even where they have, not all effects can be known with certainty in advance. Regulations should be periodically reviewed to ensure that they remain fit for purpose.

Many of the features of an economy or society of relevance to particular regulations will change over time (OECD, 2017[12]). For instance, markets change, technologies advance and preferences, values and behaviours within societies evolve. And the very accumulation of regulations over time can lead to interactions that exacerbate costs or reduce benefits, or have other unintended consequences (OECD, Forthcoming[7]).

It is also evident that the stock of regulations will generally be much larger than the flow, with proportionately greater aggregate impacts. Even a small improvement in the quality of the regulatory stock, therefore, could bring large gains to society (OECD, Forthcoming[7]).

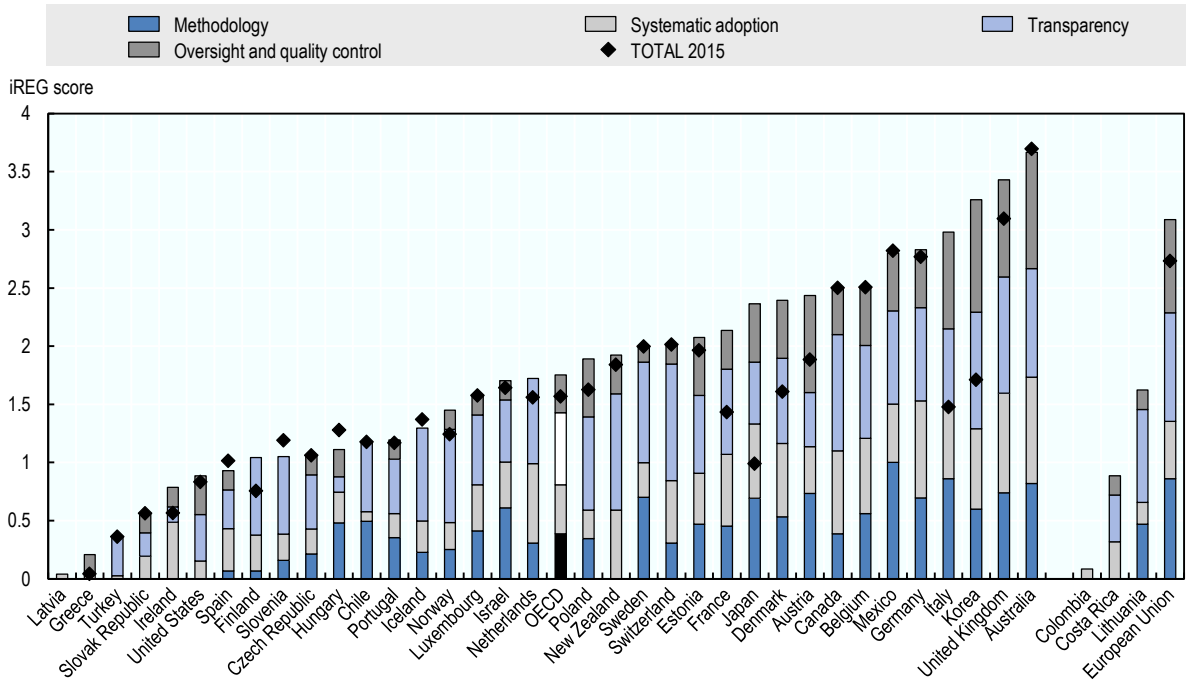
The 2012 Recommendation therefore calls on governments to *"[c]onduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives."*

Evaluations of existing regulations can also produce important learnings about ways of improving the design and administration of *new* regulations – for example, to change behaviour more effectively. In this way, *ex post* reviews complete the 'regulatory cycle' that begins with *ex ante* assessment of proposals and proceeds to implementation and administration (OECD, 2015[8]; OECD, Forthcoming[7]).

Recent trends in ex post *evaluation*

Despite the high benefits in reforming the stock of regulation *ex post* evaluation systems are still rudimentary in most OECD countries and changes since 2014 are marginal on average (Figure 2.30 and Figure 2.31). Most improvements were made to oversight and quality control and the systematic adoption of *ex post* evaluation. Despite these improvements however, oversight and quality control to ensure effective implementation continue to be underdeveloped.

Figure 2.30. Composite indicators: *Ex post* evaluation for primary laws, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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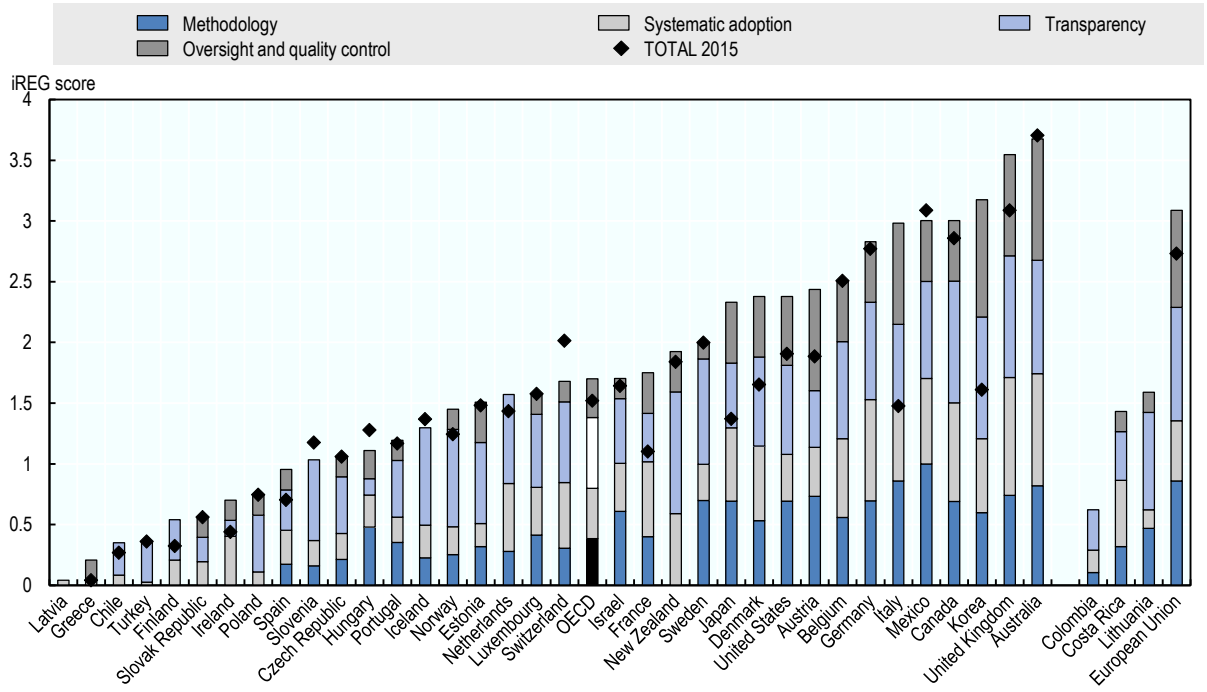
Countries which undertook substantive reforms of their *ex post* evaluation systems over the last years include Austria, Denmark, France, Italy, Japan, Korea, and the United States.

- Austria has introduced mandatory *ex post* evaluation for major laws and regulations.
- Denmark has introduced several principle-based *ex post* reviews, for example on the overlaps between local, regional and federal regulation, and the Danish Business Forum now conducts in-depth reviews of regulations in different policy areas.
- France has engaged in important simplification efforts, including a public stocktake exercise, and has released in 2017 new guidelines for the evaluation of public policies.
- Italy introduced a new set of procedures for *ex post* evaluation, including criteria to select major laws and regulations, and strengthened its institutional settings.
- Japan introduced a threshold test for *ex post* evaluation and improved its methodology and oversight of *ex post* evaluation.

- Korea has recently subjected its *ex post* evaluation system to its *ex ante* RIA requirements, started a series of in-depth reviews of regulations in specific policy areas, made *ex post* evaluations publicly available, introduced quality control and publishes now every year a report on the performance of the *ex post* evaluation system.
- The United States has introduced a stock-flow linkage rule and the Office of Information and Regulatory Affairs (OIRA) has issued guidance to implement this rule, requiring *ex post* evaluation of regulations. OIRA also reviews the quality of *ex post* evaluations.

Figure 2.31. Composite indicators: *Ex post* evaluation for subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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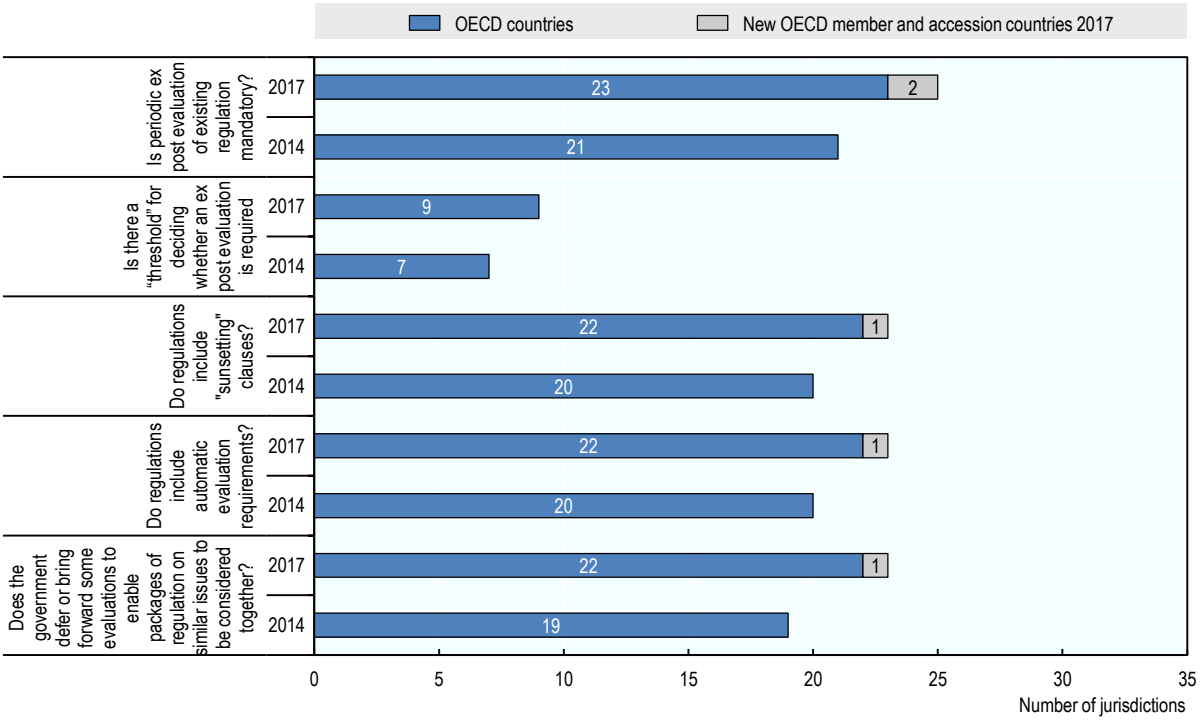
Requirements for ex post evaluation

The number of countries with formal requirements for *ex post* evaluation has only slightly increased and it is still not mandatory in one third of OECD countries (Figure 2.32). Furthermore, in most countries where a requirement exists, it does not apply systematically to all or major regulations. OECD countries have put in place different types of requirements to trigger *ex post* evaluations, including "thresholds", "sunsetting" clauses or automatic evaluation requirements. A growing number of countries conduct evaluations of regulations on similar issues as a "package".

Figure 2.32. Requirements for *ex post* evaluation



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

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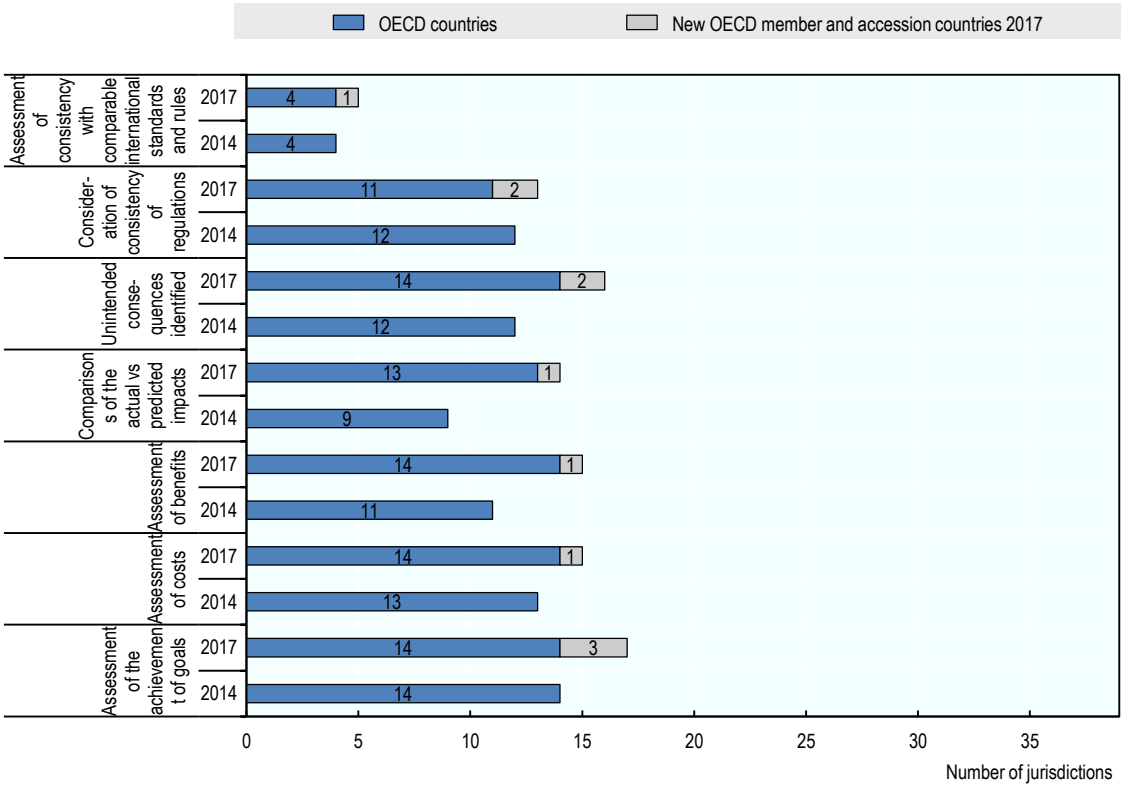
Methodology of ex post *evaluation*

Overall, a majority of OECD countries are still yet to establish a comprehensive methodology for *ex post* evaluation (Figure 2.33). Furthermore, there has been no noticeable improvement across the different dimensions since 2014.

Assessing whether the regulation's goals have been met is an integral part of a sound *ex post* evaluation system. However, this is part of the standard methodology for *ex post* evaluation only in around one-third of OECD countries.

Figure 2.33. Systematic adoption of a methodology for *ex post* evaluations



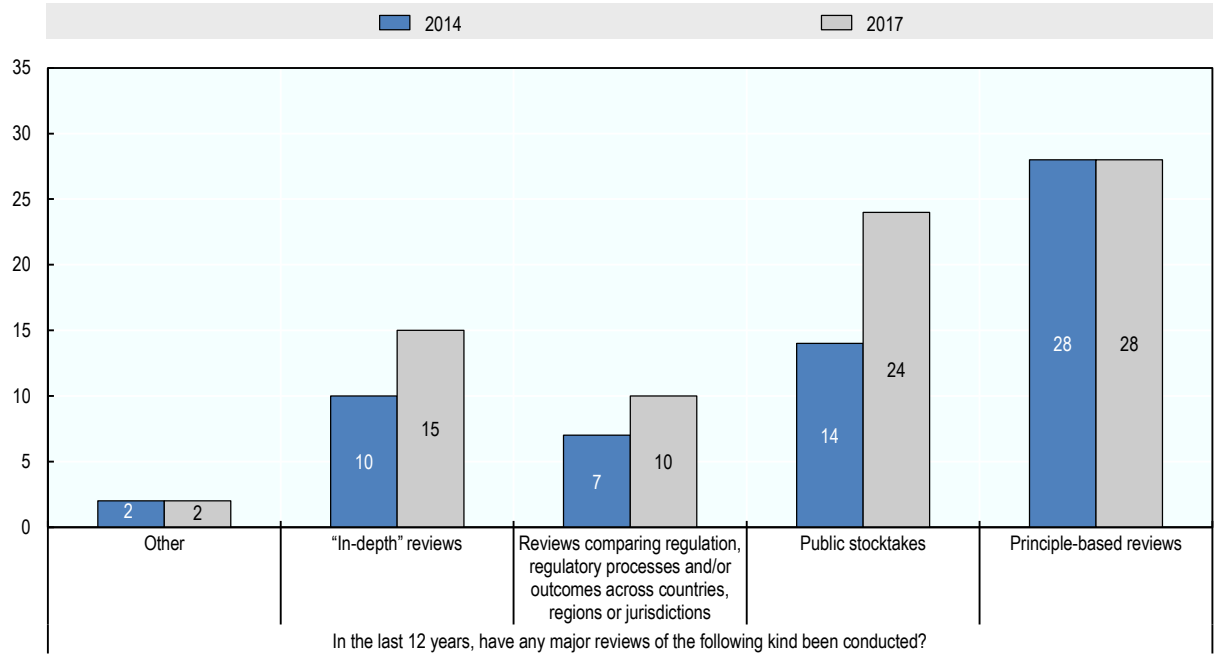
Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814559

Ad hoc reviews of the stock of regulation conducted in the last 12 years

Principle-based reviews continue to be the most frequently used type of ad hoc review of the stock of regulation (Figure 2.34). However, there has been a significant increase in countries conducting public stocktakes and, to a lesser degree, "in-depth" reviews.

Figure 2.34. Ad hoc reviews of the stock of regulation conducted in the last 12 years



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

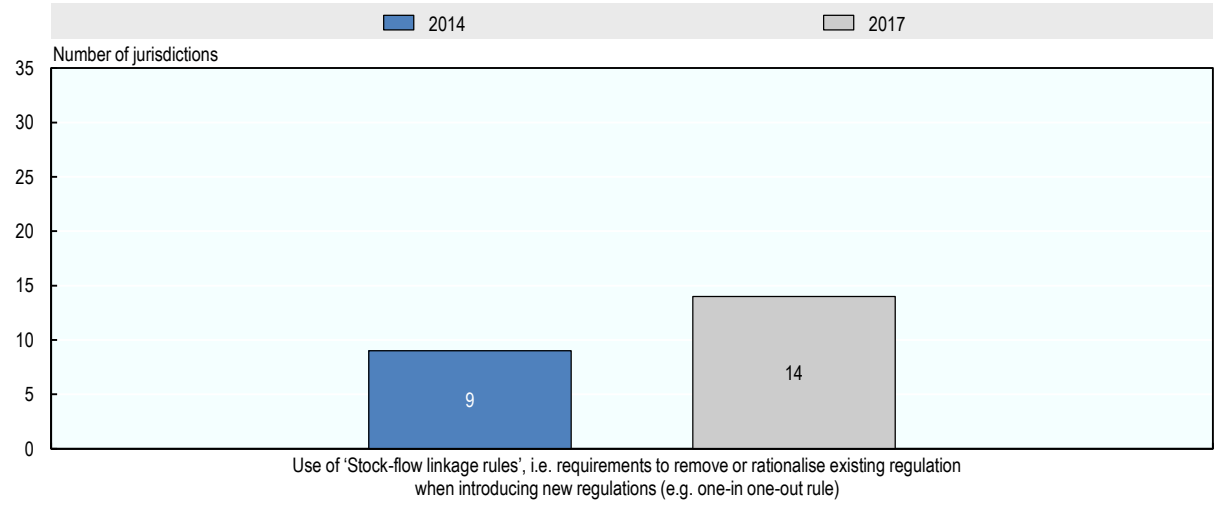
StatLink https://doi.org/10.1787/888933814578

Ongoing management of regulation

Since 2014, more OECD countries make use of 'stock-flow linkage' rules to remove or rationalise existing regulations (e.g. one-in X-out rules), but remain a minority overall (Figure 2.35).

The first OECD country to formalise such approach was the United Kingdom in 2011, with other countries such as Canada and Germany following in 2012 and 2015, respectively. More recently, France, Korea, the United States and Mexico have introduced their own versions of regulatory offsetting. While there are a number of countries presently experimenting with stock-flow linkage rules, or considering introducing them, the overall number remains marginal (OECD, Forthcoming[13]).

Figure 2.35. Use of "stock-flow linkage rules"



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814597

References

Arndt, C. et al. (2015), "2015 Indicators of Regulatory Policy and Governance: Design, Methodology and Key Results", *OECD Regulatory Policy Working Papers*, No. 1, OECD Publishing, Paris, http://dx.doi.org/10.1787/5jrnwqm3zp43-en. [3]

Arndt, C., P. Davidson and E. Thomson (forthcoming), "Indicators of Regulatory Policy and Governance 2018", *OECD Regulatory Policy Working Papers*, OECD, Paris. [5]

Arndt, C. et al. (2016), "Building Regulatory Policy Systems in OECD Countries", *OECD Regulatory Policy Working Papers*, No. 5, OECD Publishing, Paris, http://dx.doi.org/10.1787/dbb1a18f-en. [4]

Australia Productivity Commission (2006), "Potential Benefits of the National Reform Agenda", *Report to the Council of Australian Governments*, https://www.pc.gov.au/research/completed/national-reform-agenda/nationalreformagenda.pdf (accessed on 07 June 2018). [6]

Lind, E. and C. Arndt (2016), "Perceived Fairness and Regulatory Policy: A Behavioural Science Perspective on Government-Citizen Interactions", *OECD Regulatory Policy Working Papers*, No. 6, OECD Publishing, Paris, http://dx.doi.org/10.1787/1629d397-en. [10]

OECD (2017), "Closing the regulatory cycle: effective ex post evaluation for improved policy outcomes", http://www.oecd.org/gov/regulatory-policy/Proceedings-9th-Conference-MRP.pdf. [12]

OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en. [8]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en. [1]

OECD (2009), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264067110-en. [11]

OECD (Forthcoming), *Best Practice Principles on Reviewing the Regulatory Stock*, OECD Publishing, Paris. [7]

OECD (Forthcoming), *Best Practice Principles on Stakeholder Engagement in Regulatory Policy*, OECD Publishing, Paris. [9]

OECD (Forthcoming), *One-in X-Out: A Discussion Note*, OECD Publishing, Paris. [13]

OECD/EU/JRC (2008), *Handbook on Constructing Composite Indicators: Methodology and User Guide*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264043466-en. [2]

Chapter 3. The institutional landscape of regulatory policy and oversight

The institutional setup for regulatory policy and oversight is a key enabler of effective regulatory frameworks. Oversight mechanisms are essential to bridge the gap between the establishment of formal requirements for using regulatory management tools and their implementation in practice. While most countries have invested in regulatory oversight in line with the 2012 Recommendation of the Council on Regulatory Policy and Governance at least to some extent, institutional mandates vary widely across the OECD membership. In many countries, several bodies share oversight responsibilities and the organisation of regulatory oversight differs importantly across jurisdictions. With a view to clarify how regulatory oversight is carried out across countries, this chapter provides a descriptive overview of the institutional landscape for regulatory policy with a specific focus on regulatory oversight and quality control arrangements. It is based on a new data collection and case studies and lays the ground for further analytical work on the performance of regulatory oversight.

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

The institutional setup for regulatory policy and oversight is a critical enabler of effective regulatory frameworks. The *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012[1]) outlines a wide range of oversight functions to promote high quality evidence-based decision making and enhance the impact of regulatory policy. These functions include the quality control of regulatory management tools; examining the potential for regulation to be more effective; contributing to the systematic improvement of the application of regulatory policy; co-ordination; training and guidance; and strategies for improving regulatory performance.

Regulatory oversight provides important impulses for the implementation of better regulation efforts. Regulatory oversight mechanisms incentivise civil servants to use regulatory management tools and follow due process to produce high-quality regulations that achieve their objectives and are aligned with long-term policy goals. Oversight also helps foster a whole-of-government perspective towards regulation and performs essential co-ordination activities to ensure a homogenous approach to regulatory policy across the public administration.

OECD countries have invested in regulatory oversight in line with the 2012 Recommendation, although institutional setups vary strikingly across the OECD membership. All OECD countries have a body in place that covers at least one of the regulatory oversight functions identified in the 2012 Recommendation. Responsibility for different oversight functions is frequently split between several bodies within one jurisdiction. This raises the issue of effective co-ordination mechanisms between bodies with shared responsibilities and the merits and challenges of various organisations for regulatory policy tasks and responsibilities.

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

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

Bodies responsible for the quality control of regulatory management tools focus most frequently on RIA. The scrutiny of stakeholder engagement processes and *ex post* evaluation practices is less widespread. Almost all bodies provide guidance and advice, and many of them issue formal opinions on the quality of regulatory management tools. About a third of quality control bodies have a sanctioning function that can halt the regulatory process in case the quality of a tool is considered insufficient. In a majority of cases, this sanctioning function can be overturned by Cabinet or a high-level official. Generally, these bodies tend to intervene late in the rule-making cycle, typically after the preferred policy solution has been identified and a first version of the draft/proposed regulation or evaluation has been prepared. The quality of their intervention could therefore be enhanced if their advice and feedback were embedded more systematically at an earlier stage of the rulemaking process.

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

Introduction

This chapter aims to provide a mapping of the institutional landscape for regulatory policy across OECD countries with a specific focus on regulatory oversight arrangements, building on the 2012 Recommendation. It does so relying on results from the 2017 OECD survey on regulatory oversight bodies (for details see Box 3.1). This survey is the first systematic collection of evidence on existing institutional frameworks for oversight of regulatory policy, on the roles different institutions have in the regulatory process and on their organisation, functions and powers. In addition, this chapter draws on insights from an expert paper defining and contextualising regulatory oversight (Renda and Castro, Forthcoming[2]) and from case studies developed with the 7 members of RegWatchEurope and the European Commission's Regulatory Scrutiny Board (OECD, Forthcoming[3]).

Box 3.1. OECD Survey on regulatory oversight bodies

Data presented in this chapter are based on results of new survey questions complementing the 2017 Regulatory Indicators Survey. They gather information on bodies responsible for different oversight functions described Principle 3 of the 2012 Recommendation for all 35 OECD member countries, as well as accession countries (Colombia, Costa Rica and Lithuania) and the European Union as of 31 December 2017.

The survey questions cover bodies, i.e. entities that are part of a line ministry/centre of government or that are structures with a higher level of autonomy, at the national level of government with an explicit mandate or that carry out in practice any of the following regulatory oversight functions (for details on the functions see Table 3.1):

- Quality control of regulatory management tools, i.e. reviewing the quality of individual regulatory impact assessments (RIA), stakeholder engagement processes, and *ex post* evaluations
- Other regulatory oversight functions, including: Promoting the systematic improvement of, and advocacy for, regulatory policy, evaluating regulatory policy, providing guidance and training, identifying areas of policy where regulation can be made more effective and co-ordination on regulatory policy; and
- Scrutiny of the legal quality of regulation under development.

Survey questions cover features of the institutional framework as well as key practices used to implement the respective functions for each body reported. For bodies responsible for the quality control of regulatory management tools, they collect answers to additional questions regarding the rationale for their establishment, governance arrangements, capacities and evaluation of their oversight activities.

A total of 163 bodies were reported by the 39 surveyed jurisdictions, of which 70 bodies are responsible for the quality control of regulatory management tools and 77 are responsible for scrutinising the legal quality of draft regulations.

The location of bodies reported in the survey goes beyond the executive and includes e.g. parliamentary bodies, supreme audit institutions, bodies that are part of the judiciary or located in the Office of the Attorney-General. However, bodies outside the executive branch of governments are likely to be underrepresented in the sample given the strong focus on and reporting by governmental entities.

Furthermore, respondents were encouraged to report the smallest unit with responsibility for an oversight function, e.g. by reporting one or several specific divisions/units responsible for regulatory oversight functions within a ministry rather than reporting the entire ministry.

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

What is regulatory oversight and why is it important?

Principle 3 of the 2012 Recommendation calls for countries to "establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality". The 2012 Recommendation highlights the importance of "a standing body charged with regulatory oversight (…) established close to the centre of government, to ensure that regulation serves whole-of-government policy. The specific institutional solution must be adapted to each system of governance." The 2012 Recommendation outlines a wide range of institutional oversight functions and tasks to promote high quality evidence-based decision making and enhance the impact of regulatory policy. These tasks and functions include: quality control; examining the potential for regulation to be more effective; contributing to the systematic improvement of the application of regulatory policy; co-ordination; training and guidance; and strategies for improving regulatory performance.

In line with the 2012 Recommendation, the definition of "regulatory oversight" in this chapter adopts a mix between a functional and an institutional approach. "Regulatory oversight" is defined as the variety of functions and tasks carried out by bodies / entities in the executive or at arm's length from the government in order to promote high-quality evidence-based regulatory decision making. Following the 2012 Recommendation and the 2015 Outlook, these functions can be categorised in 5 areas (Table 3.1).

These functions need not be carried out by a single institution / body. De facto, countries have reported a wealth of organisations responsible for the variety of oversight functions provided for in the 2012 Recommendation at different locations. While some institutions are common across countries, a number of countries report bodies that are less traditional. For example, a few countries reported ministries scrutinising the assessment of specific impacts analysed as part of RIA, or research institutes or hybrid bodies composed of members from different institutions within or external to government. Beyond the specificity of every institutional framework, countries do not yet share a common understanding of regulatory oversight and its scope. This variation in understanding has translated in differences in the reporting of bodies during the survey phase. It argues for further work among countries to refine the understanding of regulatory oversight, reflecting back on the 2012 Recommendation and building on key empirical findings from the survey exercise and further analytical work on the role of regulatory oversight.

Table 3.1. Regulatory oversight functions and key tasks

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

Source: Based on (OECD, 2012[1]), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, www.oecd.org/gov/regulatory-policy/2012-recommendation.htm (accessed 23 March 2018) (OECD, 2015[4]), *Regulatory Policy Outlook 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en.

In particular, while the survey upon which this chapter is based aimed at mapping the broader landscape of responsibilities for regulatory policy across OECD countries, a narrower definition of regulatory oversight may be needed to guide policy makers in the establishment of effective oversight. Castro and Renda argue for a sharper definition based on a distinction between "core" and "non-core" functions of regulatory oversight (Renda and Castro, Forthcoming[2]). According to the authors, "such distinction is needed in order to avoid conflating under the same umbrella definition too many institutions, dealing with aspects that are not essential to the function of regulatory oversight and to the smooth functioning of the regulatory governance cycle". The proposed allocation of functions across "core" and "non-core" functions is summarised in Box 3.2. The detailed analysis is carried out in (Renda and Castro, Forthcoming[2]).

Box 3.2. List of core and non-core oversight functions proposed by Renda and Castro

Core functions:

- Quality control
- Co-ordination
- Evaluation of implementation of regulatory policy tools (but not evaluation of entire framework)
- Guidance (but not training)

Non-core functions:

- Identifying areas where regulation can be made more effective
- Systematic improvement of regulatory policy (propose changes to framework, institutional relations).
- Training (but not guidance)
- Legal oversight

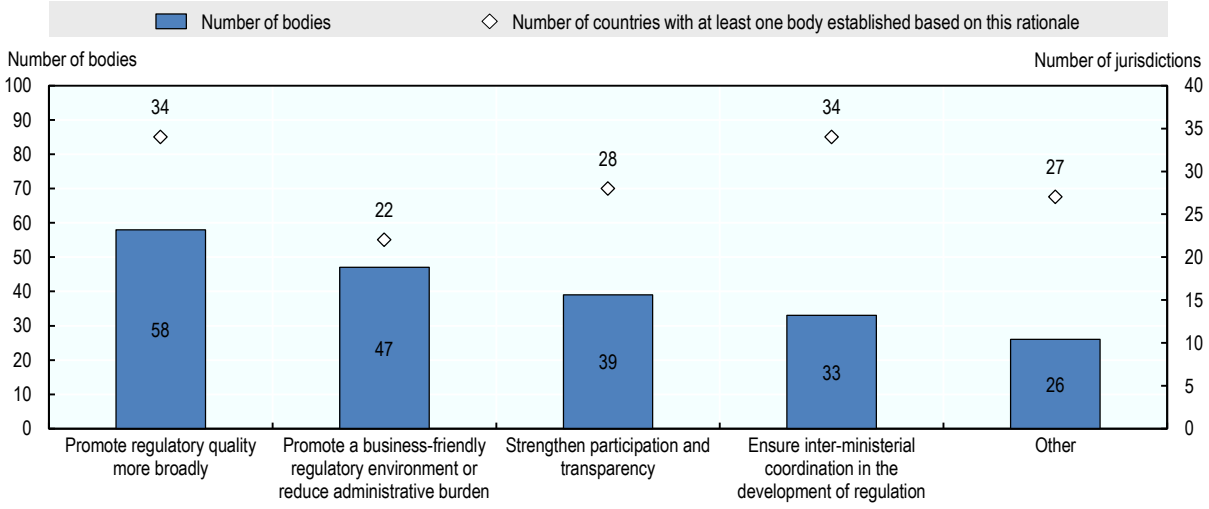
Source: Based on (Renda and Castro, Forthcoming[2]), "Defining and Contextualising Regulatory Oversight and Co-ordination", OECD, Paris.

In fine, the scope of regulatory oversight should be understood with respect to its capacity and effectiveness to promote high-quality evidence-based regulatory decision making. In this perspective, some of the functions highlighted in Table 3.1 may be more critical than others or may be complementary to others. Improving the understanding of what ultimately matters in regulatory oversight to effect change would help countries prioritise the needed institutional reforms. This chapter supports this objective by providing a picture as of December 2017 of the institutional set-up for regulatory oversight functions across countries and the organisation of bodies tasked with quality control.

The need for regulatory oversight is collateral to the uptake of regulatory policy across countries, i.e. of a political commitment on the part of governments to act in a transparent, responsive and adaptive way, and based on the best-available evidence. Such a commitment implies time-consuming and resource-intensive processes, extensive information-sharing within the administration across ministries, departments and agencies and a very committed administration. Ultimately, these factors justify the institutionalisation of oversight functions close to the centre of government. Castro and Renda identify four reasons to embed oversight capacity in this location (Renda and Castro, Forthcoming[2]):

- Quality control places incentives on civil servants to better and more consistently use instruments such as RIA, consultation and *ex post* evaluation. Simply mandating that administrations follow a due process and produce high quality documents is not enough to ensure that this will happen in practice.
- Strong oversight from within government helps governments align their incentives with the administration. Through enhanced regulatory control, governments can secure that administrations will use better regulation instruments in support of the stated government long-term policy goals.
- While ministries, departments or agencies work on their specific policy portfolios, only the centre of government can develop a whole-of-government approach to regulation, including stock and flow.
- Regulatory policy and governance require a set of co-ordination activities, which are best performed at the central level to ensure homogeneous understanding and practices. They include for example the organisation and delivery of training to civil servants; the drafting of guidelines on how to perform regulatory impact analysis, *ex post* evaluation, risk analysis or any other specific analysis of the impacts of legislation; the establishment of minimum standards for consultation of stakeholders; the overall regulatory planning to be carried out for the whole administration.

Figure 3.1. Rationale for establishing a body responsible for quality control of regulatory management tools



Notes: This figure is based on information available for 70 bodies reported in the survey and for all OECD countries, as well as Colombia, Costa Rica, Lithuania and the European Union. No data available for Chile, Hungary, Ireland and Luxembourg, as these countries did not report a body responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814616

Findings from the OECD survey confirm that countries have established oversight bodies with the aim of enhancing overall regulatory quality, increase transparency and support the implementation of regulatory management tools. Overwhelmingly (in 4 out of 5

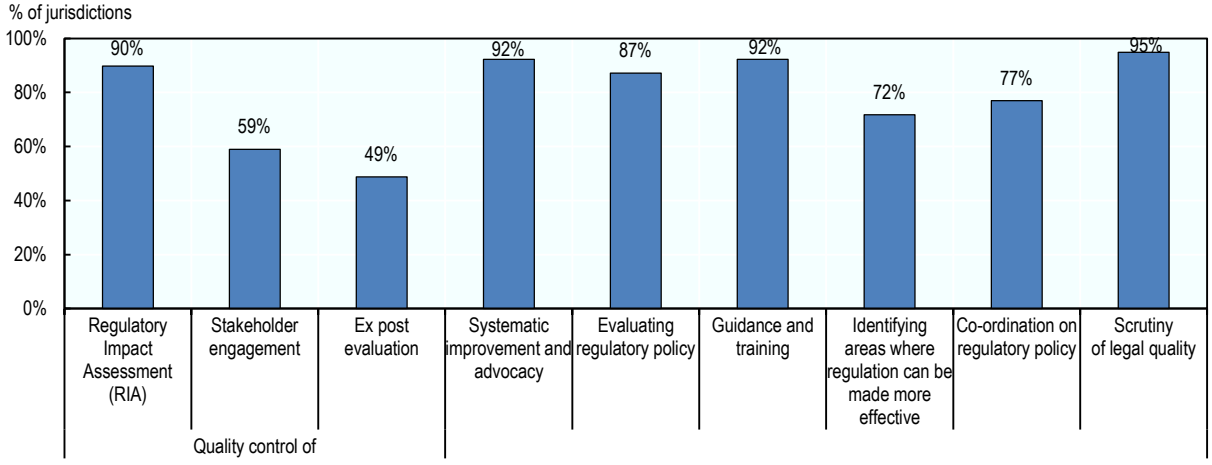
cases), the rationale for establishing a body responsible for quality control of RIA, stakeholder engagement or *ex post* evaluation is to broadly promote regulatory quality (Figure 3.1 above). Burden reduction and business facilitation come second, just before strengthening transparency and participation.

The institutional setup for regulatory policy and organisation of regulatory oversight functions

The survey shows clear signs that countries invest in regulatory oversight in line with Principle 3 of the 2012 Recommendation. All jurisdictions surveyed report to have bodies in place that cover at least one of the regulatory oversight functions identified in the 2012 Recommendation. In particular, virtually all countries have in place a body responsible for RIA quality control. Quality control of stakeholder engagement and *ex post* evaluation, while not uncommon, is less widespread (59% of bodies report having a body responsible for scrutinising stakeholder engagement, and less than half of all jurisdictions have a body responsible for the quality control of *ex post* evaluation). Similarly, only about three quarters of countries have established a body responsible for identifying areas where regulation can be made more effective, and for co-ordinating regulatory policy (Figure 3.2).

Interestingly, in a substantial number of cases, regulatory oversight is not an exclusive focus of the responsible bodies. A third of surveyed bodies report to only be responsible for regulatory oversight functions. Two thirds of these bodies also carry out other tasks.

Figure 3.2. Coverage of regulatory oversight functions in countries



Note: This figure is based on information available for all OECD countries, as well as Colombia, Costa Rica, Lithuania and the European Union.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

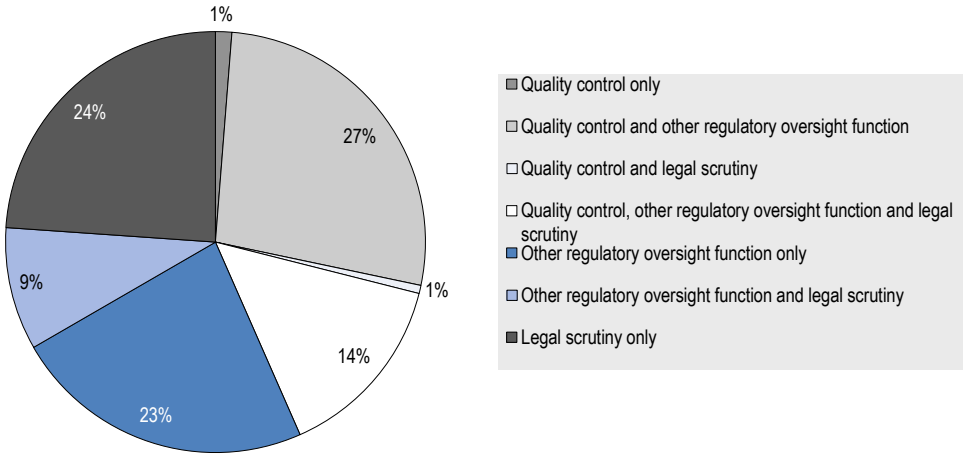
StatLink https://doi.org/10.1787/888933814635

Surveyed bodies tend to cumulate and combine different oversight functions (Figure 3.3). Responsibility for quality control of regulatory management tools is frequently coupled with at least one other function (28%), while bodies that focus exclusively on regulatory quality control functions are rare. Other regulatory oversight functions besides quality

control tend to be complementary. In particular, about half of the bodies responsible for the systematic improvement and advocacy for regulatory policy are also in charge of the evaluation of regulatory policy, or the provision of guidance and training of regulatory management tools.

In contrast, combined responsibility for regulatory and legal oversight is not widespread. For about a fourth of surveyed bodies, the scrutiny of legal quality is their sole responsibility. Only a small number of bodies cover the range of all oversight functions covered in the OECD survey, including quality control, other regulatory oversight functions and legal scrutiny (14%). The combination of responsibilities for legal scrutiny and quality control of regulatory management tools, or legal scrutiny and one of the other oversight functions is not very frequent either (1% and 9% respectively).

Figure 3.3. Combination of oversight functions carried out by bodies



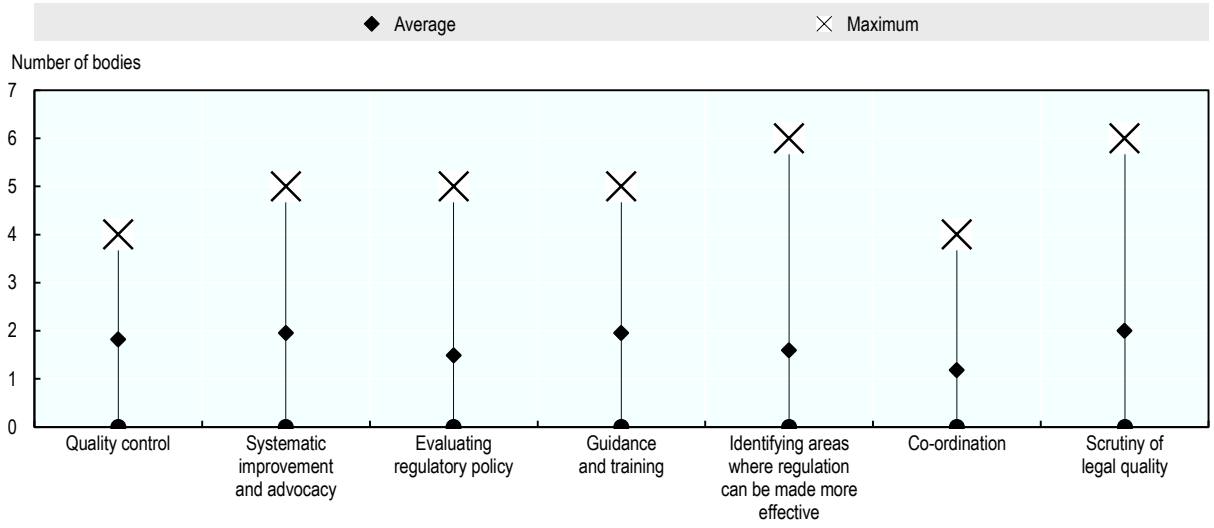
Notes: Other regulatory oversight functions are the systematic improvement and advocacy for regulatory policy, evaluation of regulatory policy, providing guidance and training in regulatory management tools, identifying areas where regulation can be made more effective, and co-ordination of regulatory policy. This figure is based on information available for 160 bodies reported in the survey and for all OECD countries, as well as Colombia, Costa Rica, Lithuania and the European Union.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814654

Responsibility for oversight functions is frequently split between several bodies (Figure 3.4). In some countries, up to 6 bodies may share the responsibility for one oversight function. This illustrates the fact that institutional mandates vary widely across countries. At the same time, this raises the issue of effective co-ordination mechanisms between bodies with shared responsibilities and the merits and challenges of a fragmented institutional landscape for regulatory policy. On average, close to two different bodies are responsible for the quality control of regulatory management tools, the systematic improvement of regulatory policy, guidance and training and the scrutiny of legal quality. The average is slightly lower for the evaluation of regulatory policy and the identification of areas where regulation can be made more effective. The average of bodies responsible for the co-ordination of regulatory policy is close to one, which confirms that jurisdictions tend to designate a single authority to co-ordinate regulatory policy. This confirms findings from Chapter 2 that most surveyed jurisdictions have designated

high-level responsibility for regulatory policy from a whole-of-government perspective as outlined in Principle 1 of the 2012 Recommendation.

Figure 3.4. Number of bodies responsible for different oversight functions



Note: This figure is based on information available for all OECD countries, as well as Colombia, Costa Rica, Lithuania and the European Union.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

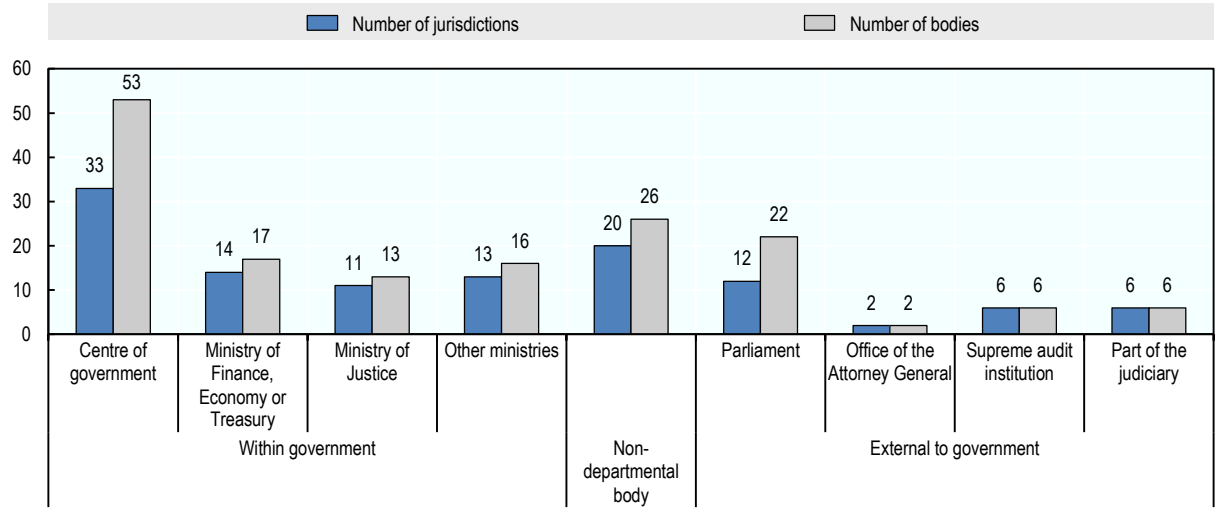
StatLink https://doi.org/10.1787/888933814673

A majority of surveyed bodies are located within government (Figure 3.5). In particular, a third of bodies in the sample are located at the centre of government. Many jurisdictions also have an additional body with responsibility for oversight functions in another part of government, such as the Ministry of Economy/Finance/Treasury, or the Ministry of Justice, drawing on line ministries' specific expertise in economic, legal or other matters. These trends largely confirm the observations made on the locations of bodies in charge of regulatory oversight within government in 2014.

Bodies external to government are however also involved in regulatory and legal oversight functions. They include parliamentary bodies, supreme audit institutions and bodies that are part of the judiciary. Two countries report bodies located in the Office of the Attorney General.

Finally, close to half of jurisdictions report non-departmental bodies that may be situated within or external to government, but are not directly traditional ministry entities or parliamentary/judiciary bodies. This group includes inter alia governmental or non-governmental arm's length bodies that are not subject to the direction on individual decisions by executive government, but may be supported by a secretariat located within government; and mixed bodies that may involve representatives from the government, the legislative branch and/or civil society (academia, business, other) (see Box 3.3 for a list of non-departmental bodies identified in the survey). Given their non-traditional features, these bodies are grouped into a separate category. Further work is needed to more clearly analyse the features of these bodies and determine sub-types among this group.

Figure 3.5. Location of bodies with oversight functions



Notes: This figure is based on information available for 161 bodies reported in the survey from all OECD countries, as well as Colombia, Costa Rica, Lithuania and the European Union. Data presents the number of jurisdictions with at least one body in a particular location.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814692

An analysis of the location of bodies across different oversight functions shows both evidence of centralisation of responsibilities in one location, as well as some clear patterns of specialisation. Bodies located within government tend to have overlapping responsibilities for several oversight functions. Centres of government, in particular, cover a diverse range of oversight responsibilities with no particular predominant oversight function. Bodies located at Ministries of Economy/Finance/Treasury also have a broad range of oversight responsibilities. They nevertheless most frequently focus on quality control of regulatory management tools, the provision of guidance and training, and promoting the systematic improvement of regulatory policy. They almost never deal with legal quality. For Ministries of Justice, in contrast, a clear pattern of specialisation can be identified, as all of them are involved in the scrutiny of legal quality.

Specialisation is even clearer for regulatory oversight bodies that are not located within government. Supreme audit institutions are most frequently involved in the evaluation of regulatory policy. Two out of 6 reported supreme audit institutions are responsible for identifying areas where regulation can be made more effective, or for the scrutiny of legal quality. None of the reported supreme audit institutions is responsible for quality control. More than half of the parliamentary bodies included in the survey are responsible for the scrutiny of legal quality, nine out of twenty parliamentary bodies have a responsibility to identify areas where regulations' effectiveness can be enhanced, and four parliamentary bodies evaluate regulatory policy. Both parliamentary bodies and supreme audit institutions are rarely involved in providing training and guidance. Non-departmental bodies are most prominently tasked with the quality control of regulatory management tools. About half of them are responsible for identifying areas where regulation can be made more effective.

Box 3.3. Composition of the group of non-departmental bodies reported in the OECD survey

- Seven members of RegWatchEurope: ATR (Netherlands), Czech RIA Board, Finnish Council of Regulatory Impact Analysis, Germany's NKR, Norwegian Better Regulation Council, Swedish Better Regulation Council, UK Regulatory Policy Committee
- Australia's and New Zealand's Productivity Commissions
- Czech Government Legislative Council
- Danish Business Forum for Better Regulation and EU Implementation Council
- EU Regulatory Scrutiny Board
- French Conseil national d'évaluation des normes
- Iceland's Consultative Committee on Public Inspection Rules
- Ireland's Law Reform Commission
- Japan's Fair Trade Commission
- Korea's Regulatory Research Centers at the Korea Development Institute and the Korea Institute of Public Administration
- Councils of State of Luxembourg and Spain
- New Zealand's Legislation Design and Advisory Committee (LDAC)
- Portuguese Administrative Modernisation Agency
- Swedish Agency for Economic and Regional Growth
- Swiss SME Forum
- UK Law Commission

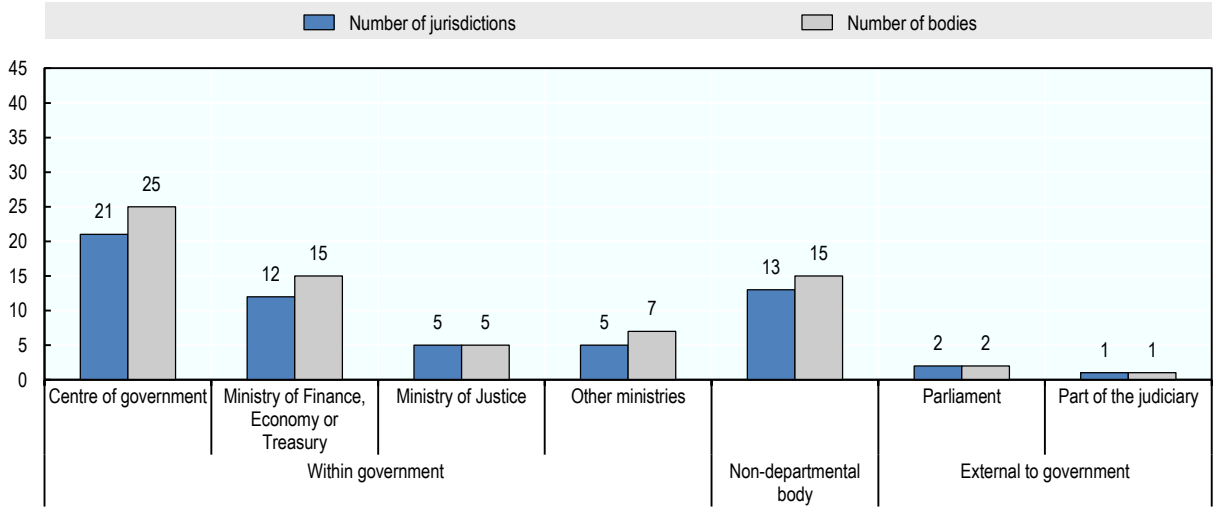
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Quality control of regulatory management tools

Responsibility for the quality control of regulatory management tools frequently seems to be assigned to bodies within government. In line with the 2012 Recommendation, a great number of bodies in charge of scrutinising the quality of RIA, stakeholder engagement or *ex post* evaluation is located at the centre of government (25 out of 70, representing 21 countries) (Figure 3.6). Some jurisdictions therefore have more than one body in place at the centre of government. A substantial number of jurisdictions have a body located in another part of government, such as the Ministry of Economy/Finance/Treasury. In a few jurisdictions, parliamentary bodies or bodies that are part of the judiciary scrutinise the quality of regulatory management tools. No supreme audit institutions or bodies located at the Office of the Attorney General are involved in regulatory quality control.

Among non-departmental bodies, "arms' length" bodies dedicated to regulatory oversight, such as the members of RegWatchEurope, form the greatest group. It is worth noting that compared to 2014, this group has even grown further, due to the establishment of a number of new such bodies in Norway (with the Norwegian Better Regulation Council) and in Finland (the Finnish Council on Regulatory Impact Analysis), for example.

Figure 3.6. Location of bodies responsible for quality control of regulatory management tools

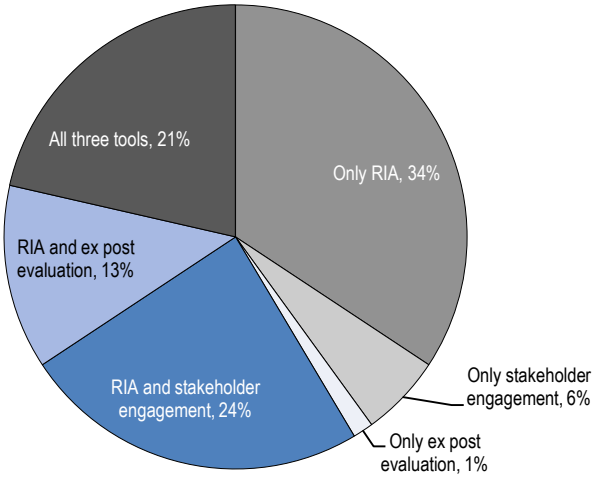


Note: This figure is based on information available for 70 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814711

Oversight bodies in charge of quality control of regulatory management tools focus mostly on RIA (Figure 3.7). By contrast, oversight of the quality of stakeholder engagement and of *ex post* evaluation is less developed. For a third of the bodies responsible for quality control, quality control of RIA is the only focus. For bodies responsible for more than one tool, the quality control of stakeholder engagement and *ex post* evaluation is almost always coupled with RIA quality control as well. Only 5 of the 70 reporting bodies do not have RIA in their portfolio and focus on the scrutiny of stakeholder engagement processes only.

Figure 3.7. Regulatory management tools covered by bodies responsible for quality control



Note: This figure is based on information available for 70 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

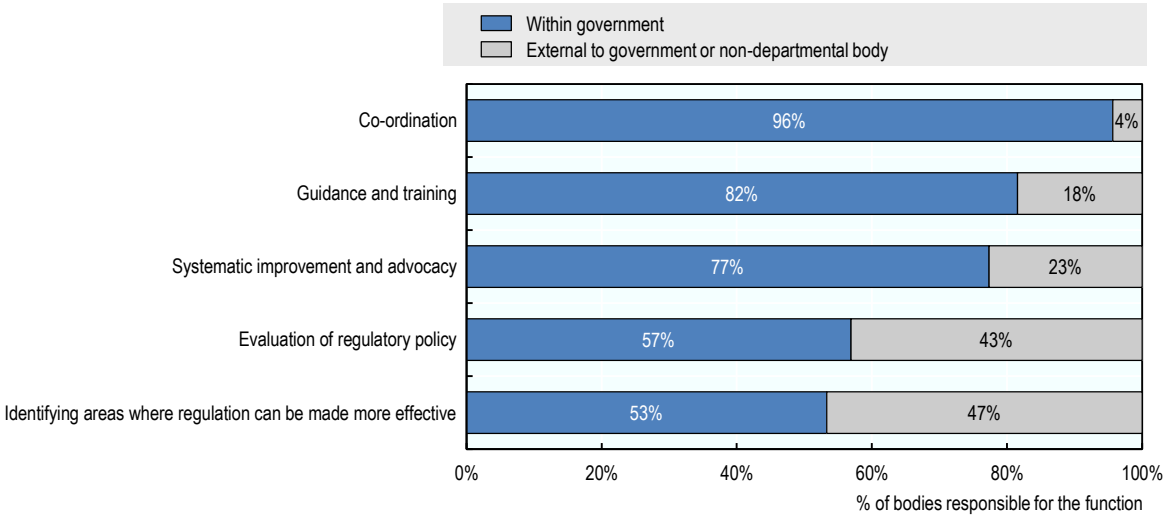
StatLink https://doi.org/10.1787/888933814730

Other regulatory oversight functions

The majority of bodies responsible for other regulatory oversight functions is located within government, although to a varying degree depending on the individual function (Figure 3.8). Functions supporting a whole-of-government approach to regulatory policy through the provision of guidance and training or the overall systematic improvement and advocacy for regulatory policy are located within government in about four out of five cases. Bodies with co-ordination functions are virtually all located within government. Centres of government play a particularly dominant role in carrying out these responsibilities: more than half of the bodies with a co-ordination function, and almost 40% of bodies in charge of systematic improvement or guidance and training are located there.

Almost half of bodies that evaluate regulatory policy or identify areas for regulatory improvement are non-departmental bodies or located external to government. Non-departmental bodies make up a quarter of the bodies with these functions. Both supreme audit institutions and parliamentary bodies seem to play an important role in the evaluation of regulatory policy in some jurisdictions. In addition, parliamentary bodies seem to be particularly involved in identifying areas where regulation can be made more effective.

Figure 3.8. Location of bodies responsible for other regulatory oversight functions



Note: This figure is based on information available for 161 bodies reported in the survey.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

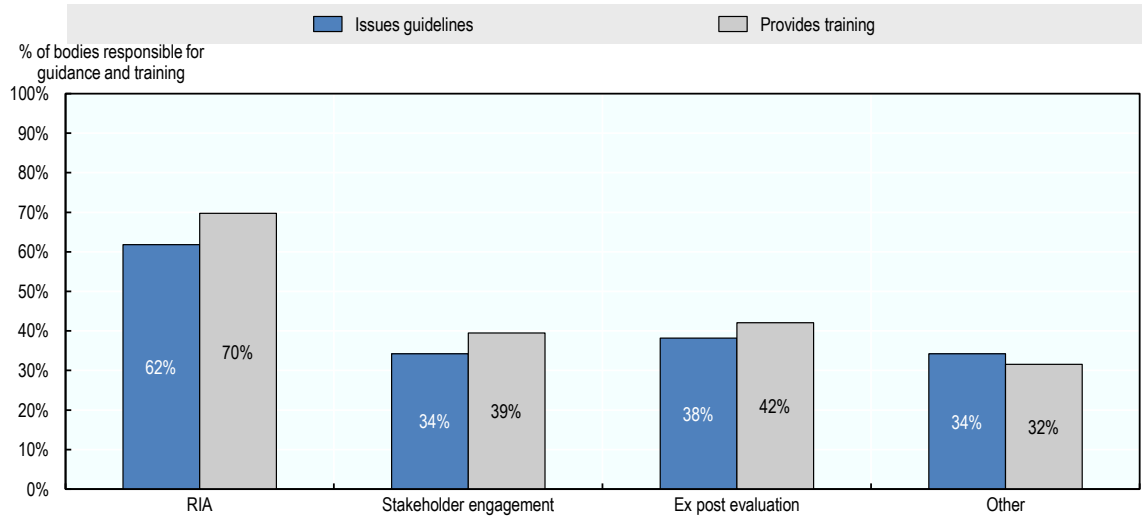
StatLink https://doi.org/10.1787/888933814749

Bodies responsible for the systematic improvement and co-ordination of regulatory policy use different practices to implement their mandates. Four out of five bodies responsible for the systematic improvement of regulatory policy propose changes to the regulatory policy framework, promote the use of good regulatory practices with relevant institutions and stakeholders, and ensure institutional relations, such as through co-operation in international fora. Less than half of the bodies in charge of this function also promote good regulatory practices at subnational levels. Bodies responsible for co-ordinating regulatory policy typically provide a co-ordinating platform and facilitate the sharing of information and evidence on the use of regulatory management tools. About half of the bodies responsible for co-ordination check if the lead ministry has consulted with other line ministries in the application of regulatory management tools.

Bodies providing guidance and training focus mostly on RIA (Figure 3.9), mirroring the emphasis on RIA in bodies' responsibilities for the quality control of regulatory management tools. While two thirds of bodies with a training/guidance function offer support on RIA, this is only the case for less than half of the bodies for other regulatory management tools.

Bodies responsible for identifying areas for regulatory improvement focus to a great extent on gathering inputs through consultation and evaluations. About half of the bodies with responsibility for this function gather opinions from stakeholders or advocate for particular areas of regulatory reform. 40% of them carry out analyses of the stock and/or flow of regulation. Finally, some bodies carry out in-depth reviews, i.e. comprehensive reviews focusing on the nature and extent of regulation in specific industries policy areas or sectors and its effects.

Figure 3.9. Focus of training and guidance function



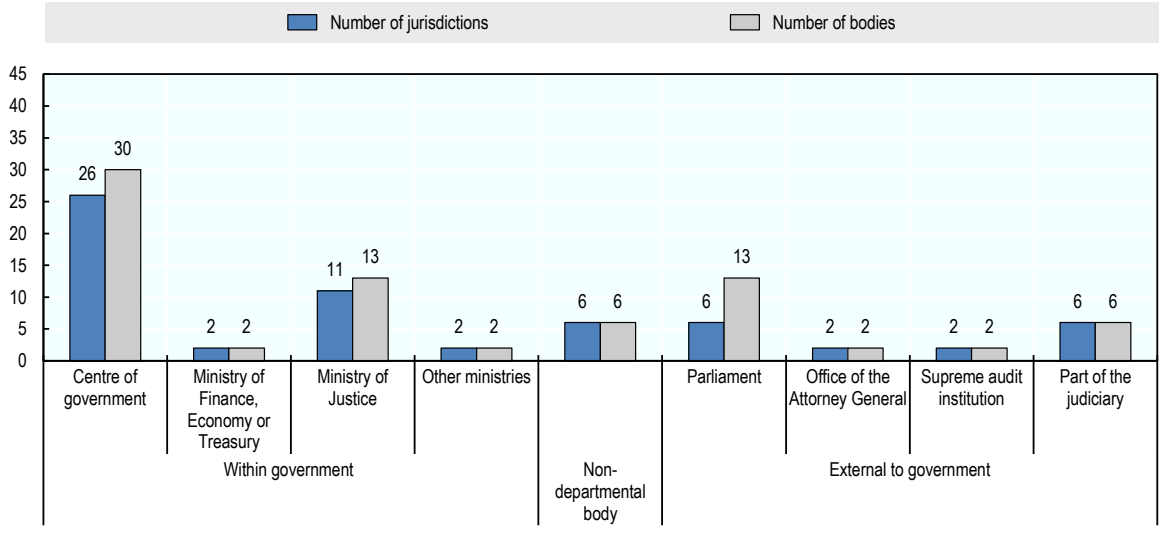
Note: This figure is based on data for a total of 76 bodies reported in the survey that are responsible for guidance and training.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814768

Scrutiny of legal quality of regulation

The legal quality of regulation in development is most frequently scrutinised by bodies at the centre of government (23 out of 76 bodies, representing 26 countries) or in the Ministry of Justice (in 11 countries) (Figure 3.10). At the same time, in six jurisdictions parliamentary bodies also look at the legal quality of draft regulations as part of their mandate.

Figure 3.10. Location of bodies responsible for legal scrutiny



Note: This figure is based on information available for 76 bodies reported in the survey responsible for the scrutiny of legal quality.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814787

The greatest share of bodies focus exclusively on the legal quality of draft regulations prepared by government. Two out of five surveyed bodies scrutinise primary laws initiated by the executive and subordinate regulations, but do not cover primary laws initiated by parliament. Virtually all bodies included in the survey look at the coherence of regulations with the existing body of law. Most of them also look at plain language drafting (81%), the coherence with international obligations (76%) and constitutionality (75%).

How are oversight bodies organised to deliver on their mandate?

The mandate of regulatory oversight bodies

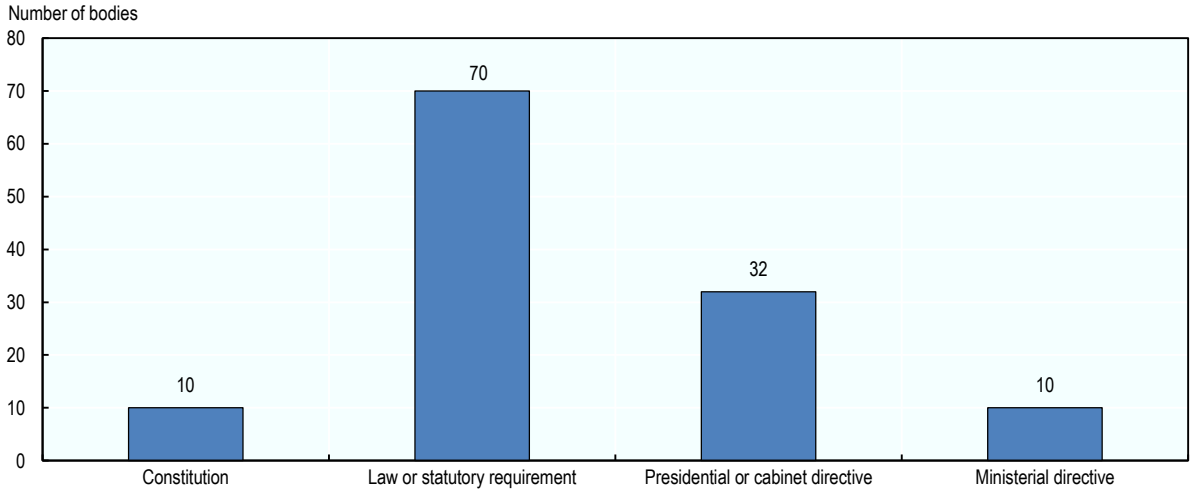
The evidence points to a strong legal anchoring of bodies with oversight functions. Indeed, the mandate of a majority of bodies is established either in law or statutory requirement, or alternatively in a presidential or cabinet directive (Figure 3.11). The mandate of a few bodies cited is enshrined in the country's Constitution, e.g. in the case of supreme audit institutions or governmental advisory bodies like councils of state. 92% of bodies cited in the survey have a permanent mandate.

About half of the surveyed bodies indicate that their mandate for regulatory oversight has been revised or extended over time. For bodies responsible for quality control, mandates have frequently been extended to scrutinise regulatory management tools for a greater share or different kinds of regulatory instruments (e.g. to cover also parliamentary legislative initiatives in addition to regulations initiated by the executive), or to further elements of RIA (see for example the case studies of RegWatchEurope members, (OECD, Forthcoming[3])).

In other cases, mandates have been extended to give bodies additional responsibilities as part of an overall reform or extension of the regulatory policy framework. For example, Italy overhauled its regulatory framework of RIA, *ex post* evaluation and consultation in 2017. In this context, the role of the Department of Legal and Legislative Affairs at the centre of government (DAGL) has been strengthened with regards to co-ordination, oversight and promotion of regulatory policy across the regulatory cycle. DAGL can issue negative opinions and return RIAs for revision if they are deemed inadequate, and validates ministries' programmes regarding planned RIAs, consultations, exemptions from RIA; and *ex post* evaluations. With the introduction of a stock-flow linkage rule in France in 2017, the *Secrétariat Général du Gouvernement* has become responsible for overseeing its implementation.

In a few cases, mandates have been refined rather than extended to streamline bodies' oversight functions. This is e.g. the case for the new Dutch oversight body ATR, who is involved earlier in the rulemaking process and has a greater focus on the *ex ante* scrutiny of regulatory proposals than its predecessor Actal. Similarly, the Swedish Better Regulation Council (SBRC)'s mandate has been revised in 2015 to focus more strongly on the quality of impact assessments, while responsibility for the provision of training and support were given to the Swedish Agency for Economic and Regional Growth. Some changes in mandates were reportedly introduced to strengthen the co-ordination of the use of Better Regulation tools across government, or to sustain the autonomy and capacities of the bodies. This is e.g. the case for the European Commission's Regulatory Scrutiny Board, which, unlike its predecessor, the Impact Assessment Board, comprises members recruited from outside the European Commission and has a broader mandate for scrutiny and more resources at its disposal.

Figure 3.11. Source of regulatory oversight bodies' mandate



Note: This figure is based on information available for 149 bodies reported in the survey.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

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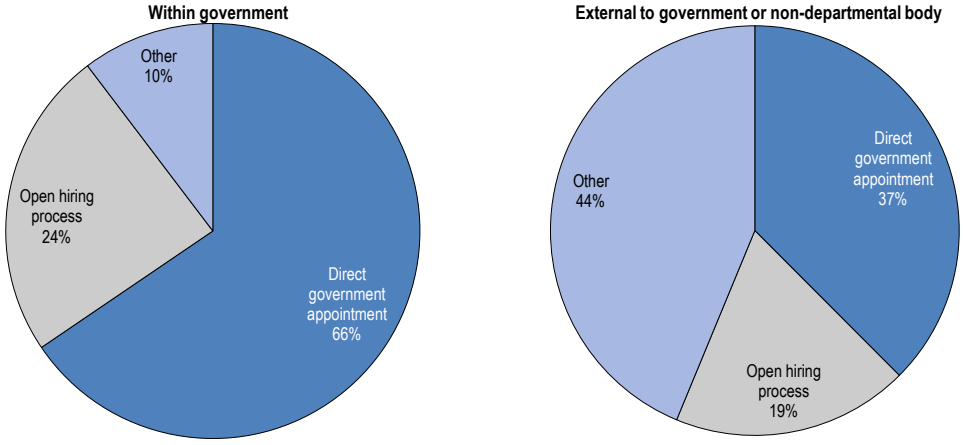
Governance arrangements of bodies responsible for the quality control of regulatory management tools

Governance arrangements for bodies responsible for quality control seem to differ for bodies depending on their location. Differences are manifest for selection processes for the body's management (Figure 3.12), the authority over the body's budget (Figure 3.13), as well as reporting obligations on their activities (Figure 3.14).

Figure 3.12. Selection process for the management structure of bodies responsible for quality control of regulatory management tools



Note: This figure is based on information available for 45 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

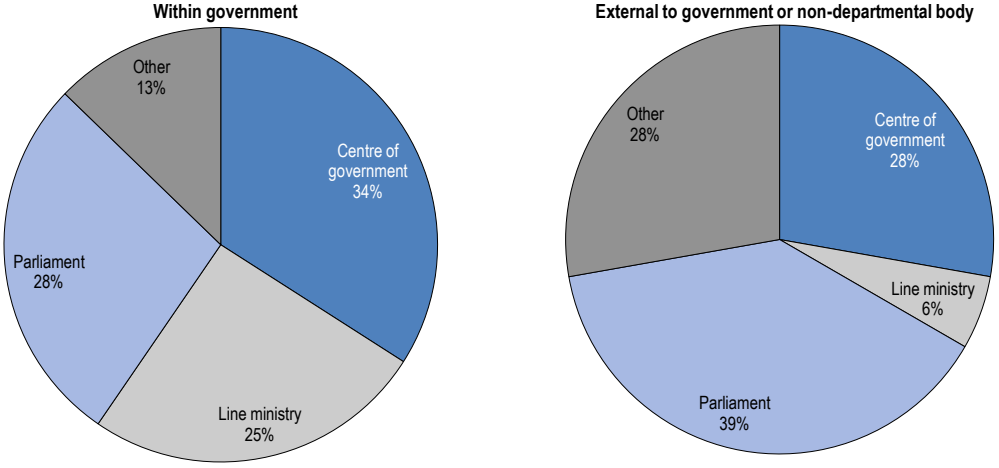
StatLink https://doi.org/10.1787/888933814825

The management of two thirds of bodies within government is appointed directly by government, while this is the case for about a third of non-departmental bodies or bodies external to government. Open hiring processes are used to recruit bodies' management for about a quarter of the bodies within government. The management of non-departmental bodies or those external to government is recruited through open hiring processes in less than 20% of cases. Seven bodies located external to government (44%) report using other mechanisms to select their board members. These include elections by parliament (e.g. for parliamentary bodies) and/or by representatives from subnational governments (e.g. for the French *Conseil national d'évaluation des normes* which scrutinises impacts on regional and local authorities), or appointments made by the head of the body.

The authority responsible for determining bodies' budgetary envelopes also tends to differ for bodies within and external to government. The budget of 60% of the bodies within government is determined by the centre of government or a line ministry, while this is only true for 30% of the other bodies. The budget about 40% of non-departmental bodies or bodies external to government is assigned by parliament. Budgets are appropriated on an annual basis for more than three quarters of bodies in the sample.

Quality control bodies located within government report less frequently on their activities than non-departmental bodies or bodies external to government. Non-departmental bodies or bodies located external to government almost all report on their activities either formally or publicly. In most cases these bodies report to government. In contrast, a third of bodies within government do not have a formal reporting obligation, nor do they report publicly on their activities.

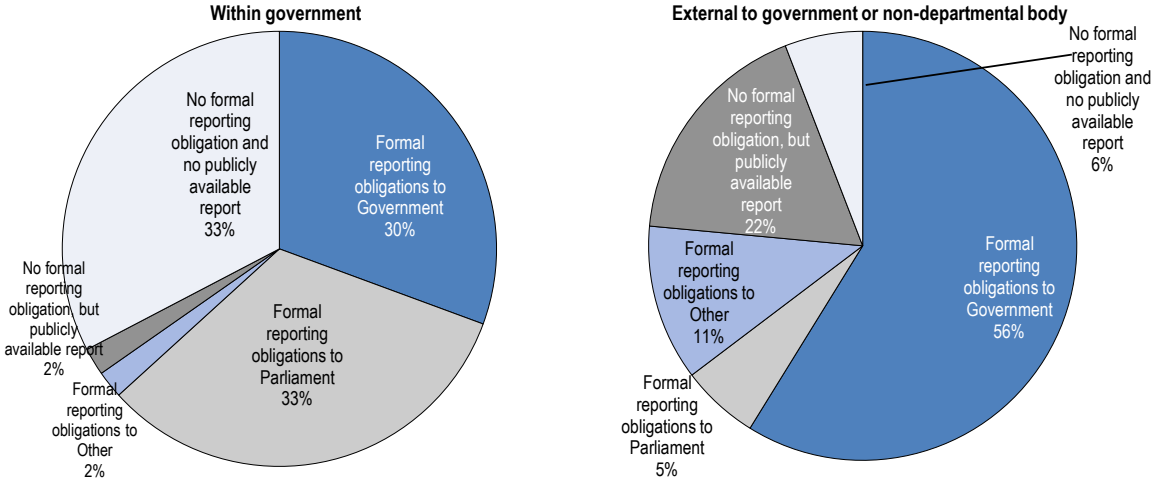
Figure 3.13. Authority responsible for deciding on quality control body's budgetary envelope



Note: This figure is based on information available for 65 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814844

Figure 3.14. Reporting obligations of bodies responsible for quality control of regulatory management tools



Note: This figure is based on information available for 67 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814863

The resources of oversight bodies responsible for quality control

Information on resources (staff and budget) is available for only about half of bodies responsible for the quality control of regulatory management tools. Many of them report challenges in providing exact figures for the staff and budget specifically dedicated to oversight functions. A number of bodies report not to have dedicated capacities for regulatory oversight functions. Rather, the staff working in the responsible units takes on regulatory oversight tasks as part of their overall portfolio. This is especially true for those bodies that are part of a department/agency responsible for other functions in addition to regulatory oversight. Hence, many bodies report the staff and budget for the overarching entity rather than resources dedicated to regulatory oversight.

Bodies that have been specifically established as regulatory oversight bodies (independently of their location) report annual budgets between one and two million euros and an average secretariat size of ten analytical staff (ranging from none to 17). This includes the members of the RegWatchEurope network, with the exception of the Finnish Council on Regulatory Impact Analysis, whose budget is significantly smaller, and the Czech RIA Board, which does not have a dedicated budget for its oversight functions (OECD, Forthcoming[3]). Outside of Europe, COFEMER in Mexico has a comparatively large budget (EUR 3.3 million) and number of employees (87).

Government Units rarely report more than ten full-time analyst staff. In a third of cases, they report less than five full-time employees responsible for the quality control of regulatory management tools. The exceptions are Canada's Regulatory Affairs Sector at the Treasury Board Secretariat, the US Office of Information and Regulatory Affairs in the Office of Management and Budget, and the European Commission's Secretariat-General, with between 20 and 50 staff. The Korean Regulatory Reform Office at the

Prime Minister's Office which functions as the secretariat of the Regulatory Reform Committee reports 85 staff.

Annual budgets also depend on the nature and scope of the additional functions carried out by the oversight bodies. Government units exclusively dedicated to regulatory oversight within existing institutions comparatively report smaller budgets, of between 300 000 and 650 000 Euros. New Zealand's Regulatory Quality Team in the Treasury (EUR 900 000) and the Better Regulation Division in the Israeli Prime Minister's office (almost EUR 2 million) constitute exceptions. By contrast, the largest budgets are reported by institutions that have a range of different co-ordination, policy evaluation or advice functions beyond regulatory oversight.

Scope and powers for quality control

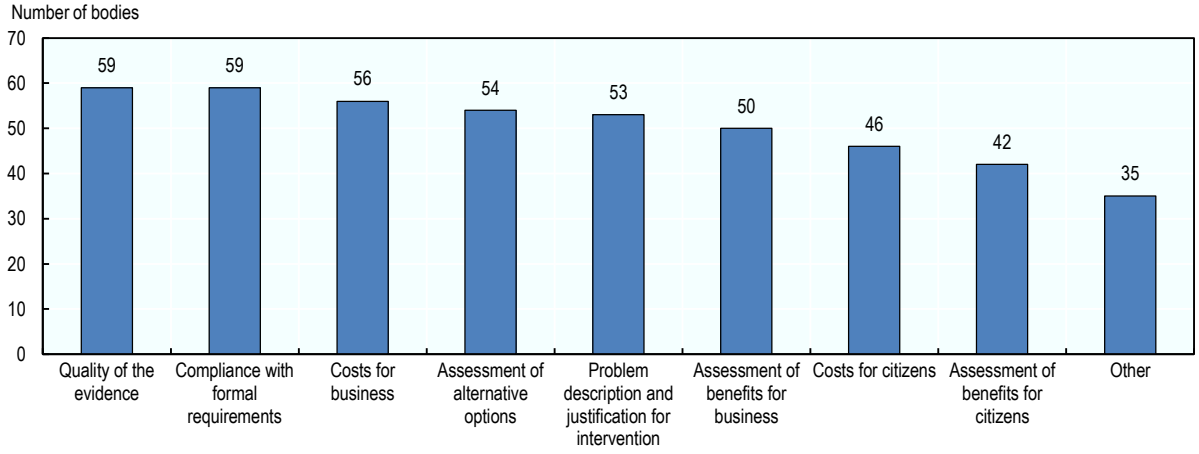
Scope and focus of scrutiny

Surveyed bodies focus in particular on scrutinising regulatory management tools for regulations originating from the executive. Almost all bodies indicate to scrutinise RIAs, stakeholder engagement processes and *ex post* evaluations for primary laws initiated by the executive or subordinate regulations. In contrast, less than 20% of bodies scrutinising RIA or stakeholder engagement look at the use of these tools for primary laws initiated by parliament. About a third of bodies scrutinising *ex post* evaluations looks at evaluations of laws that were initiated by parliament.

A majority of bodies doing RIA quality control look at all RIAs prepared. Only 11% of bodies report to review RIAs for all regulations with significant impact. More than a quarter of bodies review only selected RIAs. In these cases, the significance of a draft regulation frequently plays a role in selecting which RIAs will be reviewed.

Bodies in charge of quality control for RIA overwhelmingly focus on the quality of evidence and compliance with procedures (Figure 3.15). This is an important point that shows their value in supporting a decision making process by opposition to being a policy-making body. However, in their support to the quality of evidence, RIA oversight bodies focus to a greater extent on the assessment of regulatory costs and impacts for businesses rather than on the assessments of benefits of regulation and impacts on citizens. The calculations of administrative burdens or substantive compliance costs are assessed by most bodies included in the survey, albeit with a much greater focus on business (56 out of 65 bodies) than on citizens (46 out of 65 bodies). Benefit calculations are assessed more rarely by oversight bodies with a similar focus on businesses rather than citizens. These results may point to the partiality of the mandate of regulatory oversight, but also to the methodological issues that some of these assessments may raise.

Figure 3.15. Elements of RIA scrutinised



Note: This figure is based on information available for 65 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

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Scrutiny of stakeholder engagement processes and *ex post* evaluations of regulation focuses mostly on the correct use of these tools in line with formal requirements. For the scrutiny of stakeholder engagement, most bodies report to look at the overall quality of the engagement process and its results, frequently including whether and how views received during the consultation process have been taken into account, and which stakeholder groups were consulted in the process. Besides the compliance with formal requirements, bodies scrutinising the quality of *ex post* evaluations tend to focus on the accuracy of different elements of the evaluation, such as the methodology used, the calculation of expected and achieved results, or the estimation of costs. In a few cases, bodies report to scrutinise the involvement of stakeholders in the evaluation process, or whether the evaluation has made an effort to look into opportunities to reduce regulatory burden.

Quality control mechanisms and powers

Countries can choose from a range of quality control mechanisms to match their institutional setup and legislative culture. Oversight bodies may play an important role in guiding regulators in the use of regulatory management tools by providing advice and support in the preparation process – a case that (Renda and Castro, Forthcoming[2]) define as friendly "advisor". Advice can be provided in direct exchange with administrators and/or in the course of several feedback rounds. Bodies in charge of quality control may also issue opinions on the quality of regulatory management tools which may result in more or less binding consequences (Table 3.2). Formal opinions can be kept confidential to provide regulators with feedback and guidance on the use of the regulatory management tool and track implementation. Opinions can also be made publicly available to share signals on the quality of tools with a broader audience outside of government and provide an additional level of pressure to ensure quality. When a body issues an opinion, regulators are invited to consider it, but not required to take specific action if the opinion is non-favourable. They may choose to ignore it and proceed with the legislative process or the preparation of the *ex post* evaluation.

Table 3.2. Mechanisms for quality control

SOFT ← Challenge function → HARD			
Advice and feedback	Formal opinion	Sanctioning function that can be overturned	Sanctioning function that cannot be overturned
Body provides advice and feedback on the use of the regulatory management tool during the development of a regulation or the preparation of an ex post evaluation	Body can issue a formal opinion on the quality of the regulatory management tool, either publicly or internally	Body can formally ask administrators to redo/revise the regulatory management tool if the quality is deemed insufficient	Body has to give a positive opinion/approve the regulatory management tool for the regulation/evaluation to proceed
Does not trigger a specific process requiring regulators to revise the regulatory management tool, i.e. they can ignore it and go ahead with the regulation/evaluation	Does not trigger a specific process requiring regulators to revise the regulatory management tool, i.e. they can ignore it and go ahead with the regulation/evaluation	Triggers specific process by which regulators have to revise the regulatory management tool and/or take specific decision to acknowledge the negative opinion and overturn it	The regulation/evaluation cannot go ahead until the body has issued a positive opinion. A negative opinion cannot be overturned by any other body
E.g. oversight body provides feedback and answers questions regarding the methodology used to calculate certain impacts	E.g. RIA is deemed inadequate (and body makes it public). Ministers decide to move forward anyway.	E.g. RIA is deemed inadequate and body asks for a revision. Administrator revises RIA, which then gets positive opinion *or* competent authority (e.g. Cabinet, Head of Government, Minister, etc.) actively decide to overturn the negative opinion	E.g. RIA is deemed inadequate and body asks for a revision. The regulation will not pass until a positive opinion is issued.

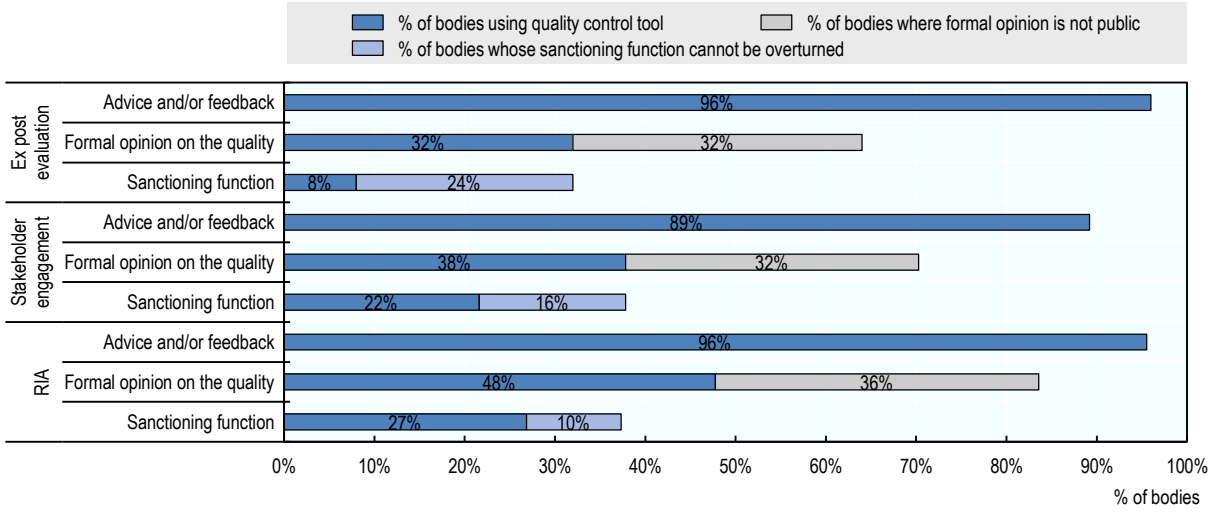
Bodies for quality control may also exercise a sanctioning function,[1] i.e. have the possibility to stop a regulation or evaluation from proceeding to the next stage if the tool's quality is considered inadequate, a situation that (Renda and Castro, Forthcoming[2]) characterise as "adversarial gatekeeper". Bodies with a sanctioning function can formally ask administrators to revise the use of the regulatory management tool if its quality is deemed insufficient. A negative opinion triggers a specific process for the revision of the tool and/or requires an active decision (e.g. from Cabinet, the Head of Government, Minister, etc.) to overturn the negative opinion and proceed to the next stage. In some cases, the body's negative opinion cannot be overturned, i.e. the body has to approve the use of the regulatory management tools before a regulation/evaluation can proceed to the next stage.

Evidence shows that bodies responsible for quality control use a mix of approaches and powers to ensure the quality and impact of their action (Figure 3.16). The use of mechanisms seems to follow a "Matroschka principle", i.e. functions are nested. Nearly all surveyed bodies have an advice function, i.e. they report using support and advice mechanisms to build capacity for the use of regulatory management tools. A substantial number of these bodies issues formal opinions that are either kept confidential or are made publicly available. Formal opinions on the quality of regulatory management tools are issued by almost all RIA quality control bodies, and also by about two thirds of bodies responsible for reviewing stakeholder engagement and *ex post* evaluation. However, in 40% to 50% of cases, formal opinions are not made public.

Finally, about a third of bodies responsible for reviewing regulatory management tools have a sanctioning function, i.e. the authority to prevent a regulation from proceeding to the next stage.[2] This sanctioning mechanism is consistent across regulatory management tools, i.e. bodies with a sanctioning function for stakeholder engagement and *ex post* evaluation also have a sanctioning function for RIAs. This sanctioning function can be overturned in a majority of cases, e.g. by Cabinet, the responsible Minister or a high-level

official. However, in eleven cases, the bodies report that their sanctioning function for RIA, stakeholder engagement or *ex post* evaluation cannot be overturned.[3]

Figure 3.16. Powers of bodies responsible for quality control

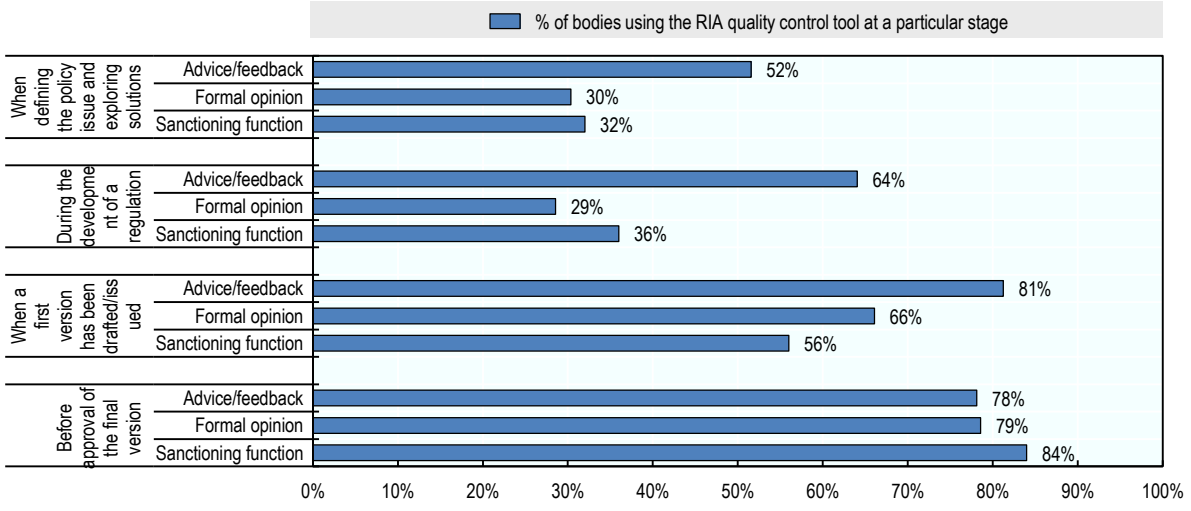


Note: This figure is based on information available for 70 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814901

Timing of intervention

Figure 3.17. Timing of RIA quality control



Note: This figure is based on information available for 67 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814920

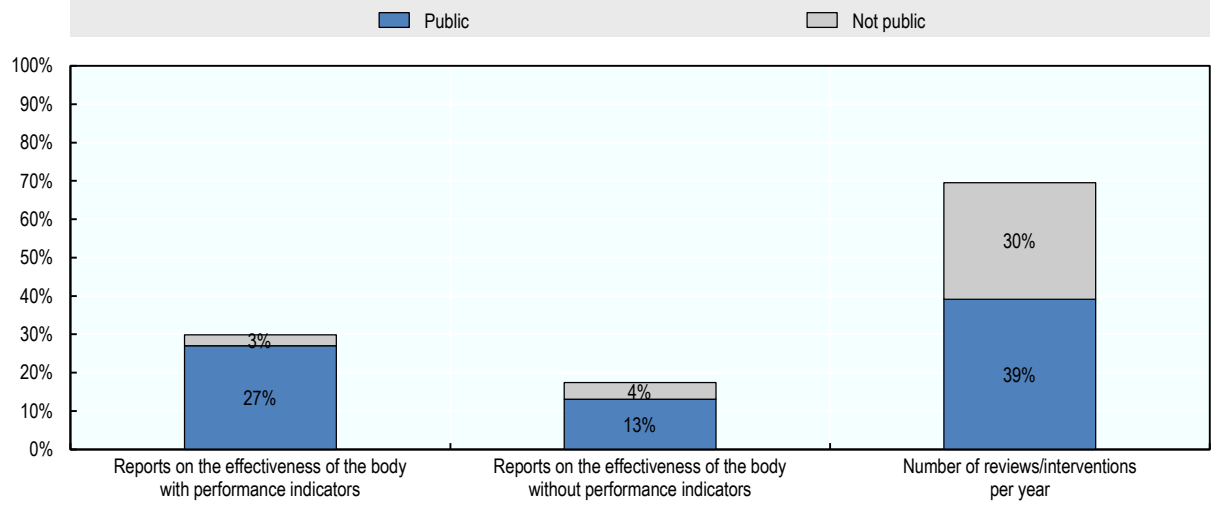
Oversight bodies in charge of quality control tend to intervene late in the rule-making cycle (Figure 3.17). Quality control of RIA, for example, typically occurs after the preferred policy solution has been identified and a first version of the draft/proposed regulation or evaluation has been prepared. While it is understandable why some level of control can only take place late in the process, it is particularly striking that such a pattern should apply to advice and feedback. This raises the question of the effectiveness of these mechanisms. Hence ultimately the quality of RIA, stakeholder engagement and *ex post* evaluation could be further enhanced if they were embedded more systematically at an earlier stage in the rulemaking process.

The effectiveness and impacts of regulatory oversight

About half of the bodies responsible for the quality control of regulatory management tools report to use some form of evaluation mechanism to monitor their activities, and results of evaluation efforts are frequently made public (Figure 3.18). Half of all bodies responsible for quality control prepare reports on their effectiveness. About two thirds of these evaluation reports (from 16 different countries) contain performance indicators. A majority of bodies also track the number of reviews or interventions they make annually. However, this performance information is tracked only internally in almost half of all cases.

Despite the existence of these mechanisms, there is very little evidence on the impacts of regulatory oversight on regulatory improvement and societal outcomes.

Figure 3.18. Reports on the effectiveness of regulatory oversight bodies responsible for quality control

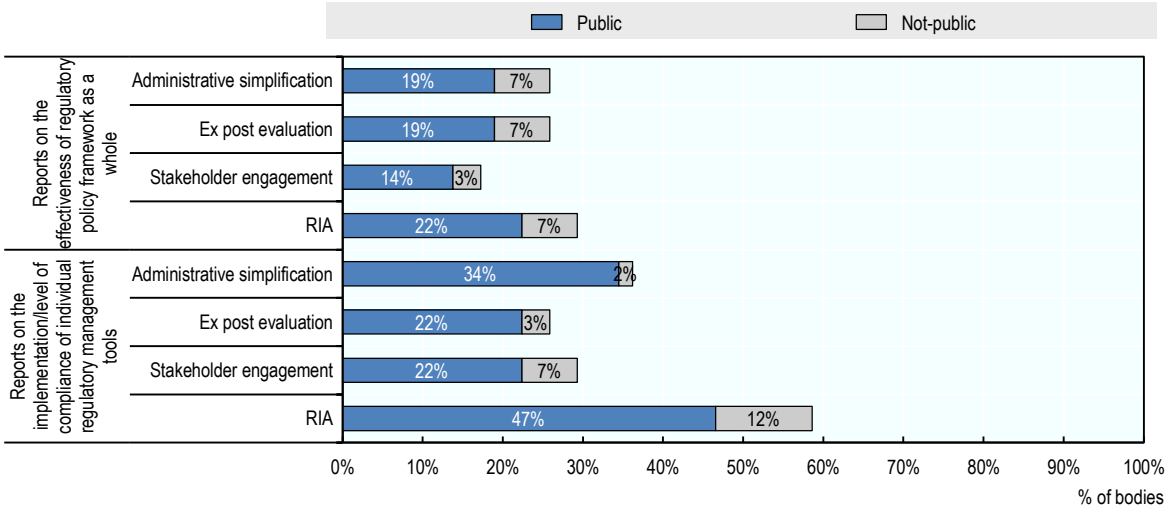


Note: This figure is based on information available for 70 bodies reported in the survey responsible for quality control of regulatory management tools.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814939

Bodies that evaluate regulatory policy focus most frequently on the implementation of RIA (Figure 3.19). While more than half of the bodies involved in evaluating regulatory policy report on the implementation or level of compliance with formal requirements of RIA, less than a third of them report on compliance levels for stakeholder engagement or *ex post* evaluation. Reports on the overall effectiveness of the framework for different regulatory management tools as a whole are much less common than reports on compliance with formal requirements.

Figure 3.19. Reports evaluating regulatory policy

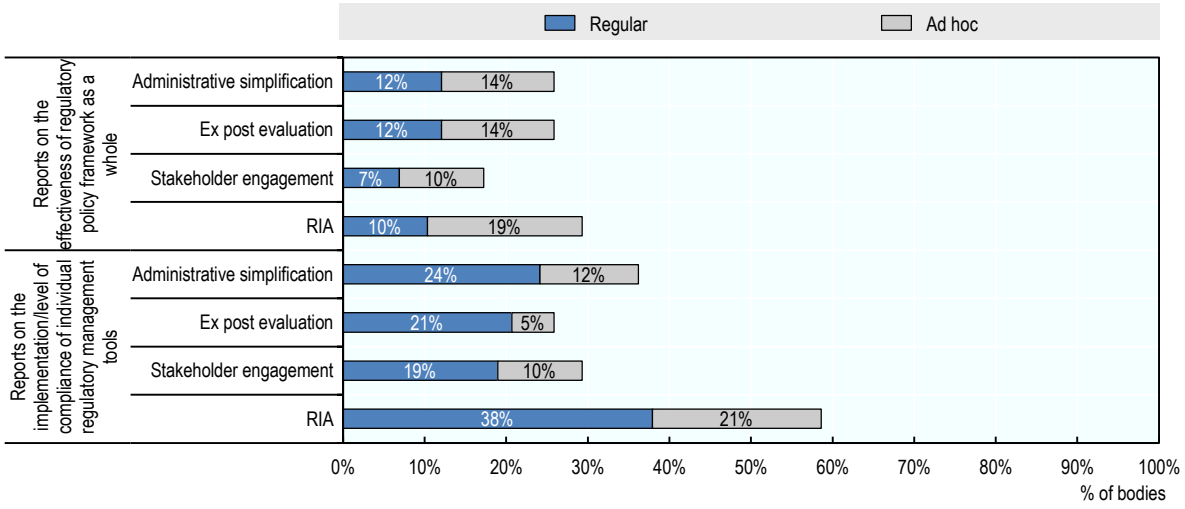


Note: This figure is based on information available for 58 bodies out of 76 bodies reported in the survey that are responsible for the evaluation of regulatory policy.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814958

In many jurisdictions, evaluation efforts are not regular. Almost half of evaluation reports are prepared on an ad hoc basis (Figure 3.20). This is true for reports on compliance with formal requirements as well as reports on the effectiveness of the regulatory policy framework as a whole. The exceptions are reports on the implementation of RIA and administrative simplification programmes, which are conducted regularly in two out of three cases.

Figure 3.20. Frequency of evaluation reports



Note: This figure is based on information available for 58 bodies out of 76 bodies reported in the survey that are responsible for the evaluation of regulatory policy.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933814977

Notes

[1] This function is also frequently referred to as gatekeeping function or challenging function.

[2] Or an *ex post* evaluation from being finalised respectively.

[3] These are the following bodies: Bodies reporting a sanctioning function that cannot be overturned for all three regulatory management tools include the Korean Regulatory Reform Committee, Poland's RIA Department at the Chancellery of the Prime Minister and the US Office of Information and Regulatory Affairs. The Latvian State Chancellery reports a sanctioning function that cannot be overturned for RIA and stakeholder engagement, and the Mexican COFEMER for stakeholder engagement and *ex post* evaluation. The Australian Office of Best Practice Regulation, Costa Rica's Directorate for Better Regulation and the Korean Institute of Public Administration report such a function for RIA. The French *Conseil d'État* reports this function for stakeholder engagement, and the Italian Department of Legal and Legislative Affairs as well as the Italian Court of Auditors for *ex post* evaluation.

References

OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en. [4]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en. [1]

OECD (Forthcoming), *Case Studies of RegWatchEurope regulatory oversight bodies and of the European Union Regulatory Scrutiny Board*, OECD, Paris. [3]

Renda, A. and R. Castro (Forthcoming), *Defining and Contextualising Regulatory oversight and Co-ordination*, OECD Publishing, Paris. [2]

Chapter 4. Improving the governance of regulators and regulatory enforcement

Ensuring effective compliance with and implementation of rules and regulations is an important factor in creating a well-functioning society and trust in government. Developing and applying regulatory delivery policies, tools and institutions that help achieve the best possible outcomes through the highest possible levels of compliance, while keeping the costs and burden as low as possible, should therefore be an important part of governments' regulatory policies. This chapter discusses regulatory delivery, concentrating on regulatory and enforcement agencies that oversee the implementation of regulation, promote compliance and, in some cases, design secondary regulations. It proposes a way forward for the better regulation agenda to include cross-governmental considerations linked to improved delivery of regulations, better co-ordination, governance and performance of bodies involved in regulatory delivery, improved targeting of regulatory enforcement activities and improving regulatory compliance.

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

An increasing number of OECD countries recognise the importance of the implementation phase of the regulatory governance cycle in ensuring the quality and effectiveness of regulatory policy and meeting the goals of regulations. Regulatory delivery also represents an important opportunity to reduce the overall level of regulatory burdens imposed on businesses and citizens while saving public resources and protecting health and security of citizens as well as the environment.

For many stakeholders, the manner in which laws and regulations are implemented and delivered is at least as important as the quality of their design. Organisational culture and behaviours of inspection agencies together with a governance framework that support accountability, a focus on potential and actual risks and output and outcome measurements are key for the effectiveness of inspection authorities.

Regulators and inspection authorities hold unique insights into the performance, successes and failures of policies and their implementation. Governments should create genuine opportunities for regulators and inspection authorities to feed their knowledge back into the review and design of policies and regulations. This feedback could contribute significantly to the overall effectiveness of state action.

Sound governance structures are necessary to support regulators and inspection authorities in the effective delivery of their functions. This includes considerations such as the agency's legal remit, goals and powers, how it is funded and held to account, and how it co-ordinates and communicates with stakeholders. A transparent, predictable and well-functioning regulator-legislature accountability relationship builds overall confidence in democratic institutions and raises the profile of the regulator as an independent and accountable agency.

The context of rapidly evolving and changing markets, new technologies and uncertainty directly and significantly affects regulators' objectives, functions, powers and capacities, creating a need for flexible and autonomous operating models. This includes funding and human resource strategies that respond to needs, perhaps going beyond regular government schemes, as well as new policy tools for more effective intervention such as the use of behavioural insights.

There is a need for effective co-ordination and collaboration between different agencies. Avoiding the proliferation of different institutions responsible for implementing and enforcing regulations, ensuring clarity and coherence, preventing the emergence of areas of conflicting competence are essential.

Regulatory agencies need to build and sustain a strong and institutionally proactive culture of independence that will inform their daily practice and behaviour. Independence comes in two forms: *de jure* independence refers to the formal independence granted by law, whereas *de facto* independence promotes practical independence as shown by actions, decisions and behaviours. Sustaining both forms is crucial.

The resource frameworks of regulators and inspection agencies are instrumental in defining their autonomy and flexibility. Much of the financing for regulators and inspection authorities still comes from the state budget, although some of the bodies gradually move towards obtaining necessary funding from regulated subjects, based on cost recovery principles. Financing of inspection authorities should not depend on the number of violations nor the levels of fines.

Appropriate capacity for data management and analysis is key. How data is analysed and turned into evidence and information that is in turn used to inform decisions and communicate on performance are crucial questions. Technological advancements and the use of big data have the potential to change the way regulations are being enforced, making regulatory delivery more risk-based, predicting potential threats in real time and preventing them more effectively.

A good inspection and enforcement system should simultaneously aim at delivering the best possible outcomes in terms of risk prevention or mitigation and public welfare, without exceedingly increasing costs for the state and burden for duty holders. Alternatives to state-led enforcement should be considered as part of these processes. To target enforcement activities effectively, they must be based on risk assessment and risk management. Enforcement should be based on "responsive regulation" principles – where the culture is based on promoting compliance and not on finding violations and punishment. Regulatory enforcement agencies should engage with regulated entities and strive whenever possible and appropriate to establish a co-operative approach. To implement such changes, governments need to have an official vision, strategy and/or legal framework for regulatory delivery, setting goals and objectives for the reform.

Introduction

The 2015 *Regulatory Policy Outlook* identifies regulatory delivery as the weakest link in regulatory governance and underlines that "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". In response to this challenge, this chapter discusses the policies, tools and institutions responsible for regulatory delivery, essentially concentrating on regulatory and enforcement agencies that oversee the implementation of regulation, promote compliance and, in some cases, design secondary regulations. It proposes a way forward for the better regulation agenda to include cross-governmental considerations linked to improved delivery of regulations, better co-ordination, governance and performance of bodies involved in regulatory delivery, improved targeting of regulatory enforcement activities and improving regulatory compliance.

The analysis builds on a series of work carried out by the OECD Regulatory Policy Committee (RPC) and its subsidiary body, the Network of Economic Regulators (NER), established in 2013. This work draws from the seminal publication of:

- *OECD Best Practice Principles on Regulatory Policy: the Governance of Regulators* (OECD, 2014[1]) that identifies seven main principles for the governance of regulators produced with the inputs and based on the experiences of regulators in OECD and non OECD countries; and
- *OECD Best Practice Principles on Regulatory Enforcement and Inspections* (OECD, 2014[2]), which address the design of the policies, institutions and tools to promote effective compliance – and the process of reforming inspection services to achieve results.

Further work was carried out by the NER on the independence of regulators, through the implementation of a survey seeking to better understand the practical implications of independence in the (OECD, 2017[3])day to day work of regulators. The results of the survey were published in the report *Being an Independent Regulator* (OECD, 2016[4]) and some of the data is cited in this chapter. Survey findings guided the formulation of

Creating a Culture of Independence: Practical Guidance against Undue Influence (OECD, 2017[5]), that lays out a practical checklist for basic and aspirational characteristics and governance arrangements for independent regulators. NER delegates also responded to a survey on the role of economic regulators in the governance of infrastructure, the results of which were published in 2016 (OECD, 2017[6]). Finally, the seven principles of the governance of regulators informed the creation of a comprehensive governance framework supporting the organisational performance of regulators (Performance Assessment Framework of Economic Regulators, PAFER) that has been used to carry out peer reviews of economic and technical regulatory agencies since 2015. Qualitative evidence from these reviews has also informed the analysis in this chapter.[1] Based on this body of work, carried out with over 60 economic and technical regulators, including some with inspection functions, this chapter puts forward areas that have been identified as drivers of performance of regulatory agencies. Some of these lessons learnt in terms of organisational governance, performance and behaviour could be applied more largely to other government agencies such as those with enforcement but no regulatory powers (inspection agencies), as well as other public bodies.

The analysis in this chapter also builds on the results of the OECD Conference on Regulatory Enforcement and Inspections organised in Paris on 9 November[2] gathering policy makers and experts responsible for the "better regulation" agenda with practitioners involved in regulatory enforcement and inspections and enabling the exchange of experience among them to share approaches to inspections and their reforms. One of the outcomes of the conference will also be the publication of the *OECD Toolkit on Regulatory Enforcement and Inspections*.

While recognising the specificity of economic and technical regulators and inspection authorities, this chapter highlights the common challenges that they often face and the importance of governance and organisational behaviour for the effective delivery of regulation.

Regulatory delivery is a crucial element of regulatory policy

Ensuring effective compliance with and implementation of rules and regulations is an important factor in creating a well-functioning society and trust in government. Developing and applying regulatory delivery policies, tools and institutions that help achieve the best possible outcomes through the highest possible levels of compliance, while keeping the costs and burden as low as possible, should therefore be an important part of governments' regulatory policies. An increasing number of OECD countries recognise the importance of the implementation phase of the regulatory governance cycle in ensuring the quality and effectiveness of regulatory policy. It also represents an important opportunity to reduce the overall level of regulatory burdens imposed on businesses and citizens while saving public resources and protecting health and security of citizens as well as the environment.

For many stakeholders, the way laws and regulations are implemented and delivered is at least as important as their quality itself. As one of the entrepreneurs in the United Kingdom put it, "As a small retailer I have to comply with thousands of regulations across a dozen themes. Scrapping two or three burdensome regulations here and there is great, but it does not make a great difference to me. What makes a difference is the attitude of inspectors. Being able to sleep at night because I know I have got it right and don't fear an inspector knocking on the door".[3] Organisational culture and behaviours of inspection agencies together with a governance framework that support accountability, a

focus on potential and actual risks and output and outcome measurements are key for the effectiveness of inspection authorities (see the example of the Brazilian Electricity Regulatory Agency in Box 4.1).

Box 4.1. Enforcement Reforms at the Brazilian Electricity Regulatory Agency – ANEEL

ANEEL redesigned its enforcement strategy based on the OECD Best Practice Principles on Enforcement and Inspections in 2014-17. ANEEL built an enforcement framework based on four pillars: "detect, prevent, promote and act".

A mix between preventive actions, such as posting of guidelines on the Agency's website, alerts sent by email, reports to the market, and hotline support has increased by 20% the success ratio of on time and on format information reported to the Agency among generation companies in 2017. In the same period, traditional tools, like notifications and fines were responsible for an increase of only 4% in the same type of information delivery.

From 2014 to 2016, improvement plans signed by the ANEEL enforcement staff and 64 transmission companies were responsible for a 41% decrease in faults from unknown causes in the transmission system as a whole.

Improvement plans were also used to increase the quality of service offered by distribution companies to consumers. As an example, we can point to the performances delivered by two companies, one being a private distribution company and the other being state owned. The private company increased the quality of its service (in terms of frequency and duration of interruptions) in 20%, and the state-owned company achieved a gain of 24%.

Source: www.linkedin.com/pulse/enforcement-reforms-brazilian-electricity-regulatory-agency-rossi/.

Having effective and efficient enforcement systems can also contribute significantly to the reduction of regulatory burdens. Evidence shows that most burdensome inspections are often the least effective (Blanc, 2018[7]). Experience has shown that it is possible to significantly reduce administrative burdens by 25% or more (Lithuania, the Netherlands) without worsening regulatory outcomes and increasing risks, sometimes while actually improving them.

Regulators and inspection authorities are ideally positioned to close the regulatory policy cycle

Regulators and inspection authorities hold unique insights into policy delivery with the potential for closing the regulatory policy cycle. Indeed, the activity of regulatory agencies and inspection authorities mostly takes place in the implementation and enforcement stage of the regulatory cycle (Table 4.1). These activities, including those of agencies that are arms-length and independent, take place in a policy framework set by the government, via one or several line ministries, depending on the authority's sectoral responsibilities. Some economic and technical regulators are entrusted in law with advisory functions whereby they can be requested on an *ad hoc* basis or as part of a continuous conversation to provide inputs to policy formulation, but this may not always be the case.

Table 4.1. The reported actors at each stage of the regulatory cycle

	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

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, 2015[8]), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en.

Given their active position on the forefront of policy implementation, regulators and inspection authorities withhold unique insights into the performance and successes and failures of policies and their implementation. This is particularly true if the regulators implement systematic *ex post* evaluation of their regulatory activities and when they count with robust performance assessment mechanisms that include indicators to track results and impact on the sector/market (for the latter, see for example Box 4.2).

Regulators also receive and analyse unique data on market performance and trends, which can allow them to fulfil a unique strategic foresight function for market evolutions. Some of them are also responsible for carrying out inspections and designing and enforcing safety regulation in the sectors they oversee. The creation of legitimate opportunities for regulators and other government entities involved in the implementation of policy to feed their knowledge of policy implementation, compliance and sector evolutions back into the review and design of policies could contribute to the overall effectiveness of government action.

In addition to building adequate feedback loops from implementation into policy evaluation and design, the "how" of regulatory delivery deserves to be fully examined in the phase of developing regulations, ideally as part of regulatory impact assessment and through stakeholder engagement. It needs to be decided already at that stage which institution(s) will be responsible for enforcing regulations with what kind of competences and resources. This is especially relevant in cases where sub-national levels of government are responsible for enforcing regulations. Many state/local-level governments complain about an increasing number of responsibilities while the resources for executing these powers are in fact decreasing.

Box 4.2. Performance Assessment: the Outputs Monitoring Group of the Scottish government

The Outputs Monitoring Group (OMG) is chaired by the Scottish government and comprises senior (executive level) representatives from the Drinking Water Quality Regulator, the Scottish Environmental Protection Agency, the Water Industry Commission (the economic regulator), Consumer Futures Unit (the customer representative body) and Scottish Water.

The primary function of the group, which meets quarterly, is to oversee the delivery of the investment objectives set by Scottish Ministers for the regulatory period. These objectives set out high-level outcomes for the industry: such as meeting defined drinking water quality standards, environmental performance targets and customer service standards.

As part of the regulatory process, these high-level objectives have been translated, prior to the start of the regulatory period, into an agreed set of programme outputs; for example, the 'number of water treatment works to be improved' or 'environmental performance assessments to be carried out'. In turn, these output programmes are linked to an agreed list of projects – termed 'the Technical Expression' – which details the investment works and studies that will deliver the output programmes. This provides the OMG with clarity on the projects that will deliver the output programmes and the ministerial objectives.

Going into the regulatory period, Scottish Water provide a baseline delivery plan for the regulatory period, which details the expected profile of completion of these output programmes. This then allows the OMG to monitor output delivery performance against Scottish Waters' planned delivery profile.

The OMG owns and maintains this agreed baseline of outputs: ensuring that any changes arising from study outputs or new information during the period are incorporated into the baseline in a controlled and transparent way. This is achieved through a well-defined change mechanism, which requires regulatory sign-off of changes.

The preparation of reports and information for the OMG is carried out by the OMG working group (OMGWG), which comprises senior representatives from the same set of stakeholders as OMG. The OMGWG also meets quarterly, a month ahead of the OMG meeting, and focusses on the preparation of accurate reports for the OMG, as well as overseeing the change mechanism.

At the OMG meetings, based on the information provided by the OMGWG, output delivery progress across the investment programme is discussed and any shortfalls against the targets are highlighted. The OMG reviews progress at five key delivery milestones – such as 'financial approval' and "regulatory sign-off of output delivery". Scottish Water is required to provide explanations in respect of any shortfall against a milestone target: highlighting what corrective action is underway. This provides a high degree of transparency in respect of the delivery of the outputs for which customers have paid.

The OMG produces a quarterly report on progress which is published on the Scottish Government web-site. At the end of the regulatory control period, the group also provides a final report that details progress with the delivery of the agreed set of outputs and the Ministerial Objectives.

Source: (OECD, 2017[9]), *Driving Performance of Mexico's Energy Regulators*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264267848-en. Based on information provided by the Water Industry Commission of Scotland in October 2016.

The importance of sound governance structures

Economic and technical regulators protect market neutrality, foster competition, and help ensure access to, quality and safety of public utilities. They are at the point of interface between regulatory regimes and citizens and businesses. To fulfil their functions, regulators need to make and implement impartial, objective and evidence-based decisions that will provide predictability to the regulatory regime, inspire trust in public institutions and encourage investment. Sound governance structures are therefore necessary to support regulators and inspection authorities in the effective delivery of their functions.

As highlighted in the 2012 Recommendation and the subsequent OECD Best Practice Principles on the Governance of Regulators (OECD, 2014[1]) and on Regulatory Inspections and Enforcement (OECD, 2014[2]), the governance arrangements of a regulator as well as of an inspection authority are critical to the delivery of its functions and its performance. This includes considerations such as the agency's legal remit, goals and powers, how it is funded and held to account, and how it co-ordinates and communicates with stakeholders; these considerations and more can be understood under the dimensions of an agency's internal and external governance (Table 4.2).

Table 4.2. Internal and external governance of regulators

External governance (looking out from the government agency)	Internal governance (looking into the government agency)
The roles, relationships and distribution of powers and responsibilities between the legislature, the Minister, the Ministry, other sector regulators, the agency's governing body and supervised entities.	The agency's organisational structures, standards of behaviour and roles and responsibilities, compliance and accountability measures, oversight of business processes, financial reporting and performance management.

Source: Based on (OECD, 2014[1]), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209015-en.

Even though the seven best practice principles for the governance of regulators (Box 4.3) were developed specifically for economic regulators, most of them can be, with modifications, applied also to enforcement and inspections authorities.

Box 4.3. Seven OECD Best Practice Principles for the Governance of Regulators

1. **Role clarity**. An effective regulator must have clear objectives, with clear and linked functions and the mechanisms to co-ordinate with other relevant bodies to achieve desired regulatory outcomes.
2. **Preventing undue influence and maintaining trust**. Regulatory decisions and functions must be conducted with the upmost integrity to ensure that there is confidence in the regulatory regime. There need to be safeguards to protect regulators from undue influence.
3. **Decision making and governing body structure**. Regulators require governance and decision making mechanisms that ensure their effective functioning, preserve their regulatory integrity and deliver the regulatory objectives of their mandate.

4. **Accountability and transparency**. Business and citizens expect the delivery of regulatory outcomes from government and regulatory agencies, and the proper use of public authority and resources to achieve them. Regulators are generally accountable to three groups of stakeholders: i) ministers and the legislature; ii) regulated entities; and iii) the public.
5. **Engagement**. Good regulators have established mechanisms for engagement with stakeholders as part of achieving their objectives. The knowledge of regulated sectors and the businesses and citizens affected by regulatory schemes assists to regulate effectively.
6. **Funding**. The amount and source of funding for a regulator will determine its organisation and operations. It should not influence the regulatory decisions and the regulator should be enabled to be impartial and efficient to carry out its work.
7. **Performance assessment**. It is important that regulators are aware of the impacts of their regulatory actions and decisions. This helps drive improvements and enhance systems and processes internally. It also demonstrates the effectiveness of the regulator to whom it is accountable and helps build confidence in the regulatory system.

Source: (OECD, 2014[11]), *The Governance of Regulators, Best Practice Principles for Regulatory Policy*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209015-en.

The need for flexibility in a changing context

The agencies responsible for regulatory delivery increasingly face rapidly evolving and changing markets, new technologies and uncertainty, which directly and significantly affect their objectives, functions, powers and capacities. For example, disruptive technologies are breaking down barriers between traditional sectors, or they are blurring the line between producers and consumers. Likewise, of the 64 sectors surveyed, 63% respondents to the OECD Network of Economic Regulators Survey on the Governance of Infrastructure indicated that their role with regard to the governance of infrastructure has changed over the past five years (88% in communications, 79% in energy, 47% in transport, and 100% in water). Common sources of this change were the impact of technological change on scope of the required regulatory role in some sectors, and new functions and responsibilities placed on economic regulators by governments (OECD, 2017[6]).

In this context, there is a need for flexible and autonomous functioning and management, including for funding and human resource strategies that respond to needs as well as new tools for more effective intervention. Forms should follow functions and the objectives that the agency or authority is expected to deliver for citizens. In the same spirit, enforcement and compliance methodologies should increasingly put users at the centre, be they individuals or organisations. These methods would for example include the use of new approaches to the design and implementation of regulation, such as using behavioural insights to achieve regulatory goals and increasing compliance that would factor in behavioural barriers to compliance (see Chapter 5).

Co-ordination among regulatory delivery institutions

Avoiding the proliferation of different institutions responsible for implementing and enforcing regulations, ensuring clarity and coherence, preventing the emergence of areas of conflicting competence are all essential. Duplication of functions should be avoided and mandates and responsibilities clear (between different institutions and also between national and local levels). Different implementation and enforcement structures share information and records, participate in joint alert systems, co-ordinate "on the ground" – particularly in related regulatory areas.

The policy context in which regulators and inspection agencies operate, makes the need for effective co-ordination between different agencies more acute today. For example, this is the case across different regulatory authorities including economic, technical and competition authorities that intervene in markets that are becoming increasingly inter-connected or are overlapping.

Co-ordination among agencies might take different forms from more formalised ones (see the example of Mexico, Box 4.4), to informal ones, such as the Inspection Council in the Netherlands.

Box 4.4. The establishment of an integrated system of energy regulators in Mexico

Mexico's energy reform (2013-14) that opened the oil and gas sector to private investment also enhanced the institutional set-up of the existing sector regulators: the upstream regulator, the National Commission for Hydrocarbons (*Comisión Nacional de Hidrocarburos*, CNH) and the downstream regulator, the Commission for Energy Regulation (*Comisión Reguladora de Energía*, CRE). The reform also created a new cross-cutting technical regulator to oversee safety and environmental protection throughout the whole hydrocarbon value chain: the Agency for Safety, Energy and Environment (*Agencia de Seguridad, Energía y Ambiente*, ASEA).

In September 2017, the three regulators joined forces, and via a formal Co-operation Agreement created the System of Energy Regulators that aims to regulate and supervise sector activities in a reliable and co-ordinated manner in order to promote productive investments and the energy sector's efficient and sustainable performance for the benefit of Mexico. The Group structures its work around four main objectives: 1. Planning: to share a common vision of the future and plan accordingly 2. Operational co-ordination: to address operating priorities in a timely manner 3. Resources: to address common necessities concerning talent attraction and retention and financial autonomy 4. Conflict resolution: to address and resolve conflicts between regulators.

A number of joint initiatives, including the opening of the one-stop-shop Coordinated Assistance Office of the Energy Sector (ODAC) that provides information to sector stakeholders in areas that involve more than one regulator in February 2018, have already been carried out by the co-ordination body.

Source: https://cnh.gob.mx/Informacion/ (accessed 21 March 2018).

Relationship with the legislature and trust

Arms-length regulatory agencies are generally accountable to the legislature, both with regard to their regulatory activities (in general, standing parliamentary committees for the sector(s) that the regulator oversees) and their finances (in general, the finance or budget parliamentary committee that will review financial reporting). However, the relationship with parliament on the regulator's substantive work is rarely perceived as optimal by either party. While regulators submit their annual reports to parliament, there is no structured or systematic discussion around the results of their activities and sector performance on this occasion; instead, representatives may be summoned to appear on an ad hoc basis and in response to problematic situations.

There may be scope to stabilise this relationship by building in scheduled meetings around specific moments in the regulator's planning and reporting lifecycle, such as the finalisation of its strategic plan and its annual work plans (which could be presented to parliament to raise awareness of the regulator's objectives and activities) and annual reports (to discuss results of activities). This could contribute to instating the regulator as a trusted go-to partner for technical expertise rather than just an entity to be summoned in crisis situations. A transparent, predictable and well-functioning regulator-parliament accountability relationship would build overall confidence in democratic institutions and raise the profile of the regulator as an independent but accountable arms-length agency.

Creating a culture of independence

The opening of key markets to competition in many countries has led to the creation of independent arms-length regulatory agencies that oversee markets in a manner that is deemed more objective and impartial. *De jure* independence refers to the grounding of a regulator's independence in law and is necessary to formally protect regulator's structural independence against undue influence. It can be expressed for example by provisions on budgetary independence, the conditions and process for the appointment and dismissal of the members or head of the regulatory agency, as well as whether the executive withholds powers to set tariffs or prices and review or approve contract terms with the regulated entities. However, this formal independence needs to be accompanied by de facto independence in the regulator's day to day work, which is more difficult to map out.

Practical independence is not a static characteristic acquired once and for all, but rather one that is frequently under stress as the regulator engages with stakeholders throughout the different phases of the regulatory cycle. This engagement presents "pinch points" where there might be potential for greater undue influence include agency finances, staff behaviour, the appointment and removal of leadership, and how the agency intersects with political cycles. For example, in the case of regulators that answered the OECD Survey on Being an Independent Regulator, the executive nominates and appoints the board/head of the regulatory agency, rather than the process taking place through mixed selection committees or with the participation of the legislature (Figure 4.2 and Figure 4.3).

In order to navigate these powerful headwinds, regulatory agencies need to build and sustain a strong and institutionally proactive *culture of independence* that will inform their daily practice and behaviour. The OECD has published practical guidelines to support regulatory agencies in this quest (Box 4.5) that may also be applicable to other public entities.

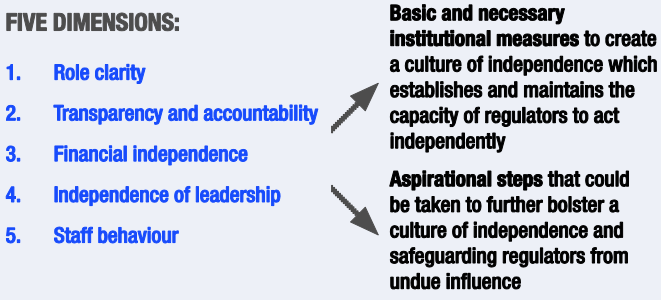
Box 4.5. Creating a culture of independence: Practical guidance against undue influence

OECD (2017) explores how to establish and implement independence with regulators. Independence comes in two forms: de jure independence refers to the formal independence granted by law, whereas de facto independence promotes practical independence as shown by actions, decisions and behaviours.

The guidance is structured into five sections (see below Five dimensions of independence) developed in response to "pinch points" that can occur throughout the life cycle of a regulator where there is potential for greater undue influence. These dimensions cover issues linked to external and internal governance of the regulatory agency that are understood as:

- External governance: the roles, relationships and distribution of powers and responsibilities between the legislature, the Minister, the Ministry, the regulator's governing body and regulated entities. The effective management of these relationships is critical to having an independent regulator.
- Internal governance: the regulator's organisational structures, standards of behaviour, compliance and accountability measures, oversight of business processes, financial reporting and performance management. A key determinant of independence lies in equipping the regulator with adequate resources and processes to carry out its duties.

Figure 4.1. Five dimensions of independence



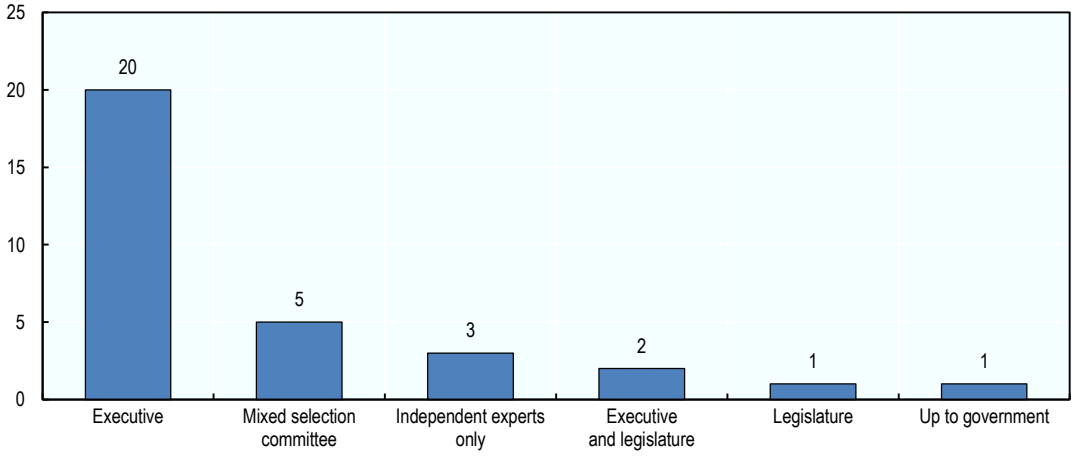
Source: OECD, www.oecd.org/gov/regulatory-policy/independence-of-regulators.htm.

Each of the five dimensions includes practical guidelines that can be considered as the basic and necessary institutional measures to create a culture of independence which establishes and maintains the capacity of regulators to act independently, based on an analysis of regulators' institutional processes and practices within the OECD Network of Economic Regulators (NER). The guidelines also include a set of aspirational steps that could be taken to bolster a culture of independence and safeguarding regulators from undue influence.

These guidelines may also have wider applicability. They could be used for the institutional and organisational design of arms-length bodies, corporate governance, anti-corruption and integrity programmes and in any context where the nuances of building trust and managing competing, and sometimes undue, pressures are present.

Source: (OECD, 2017[5]), *Creating a Culture of Independence: Practical Guidance against Undue Influence;* (OECD, 2014[1]), *The Governance of Regulators*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264274198-en.

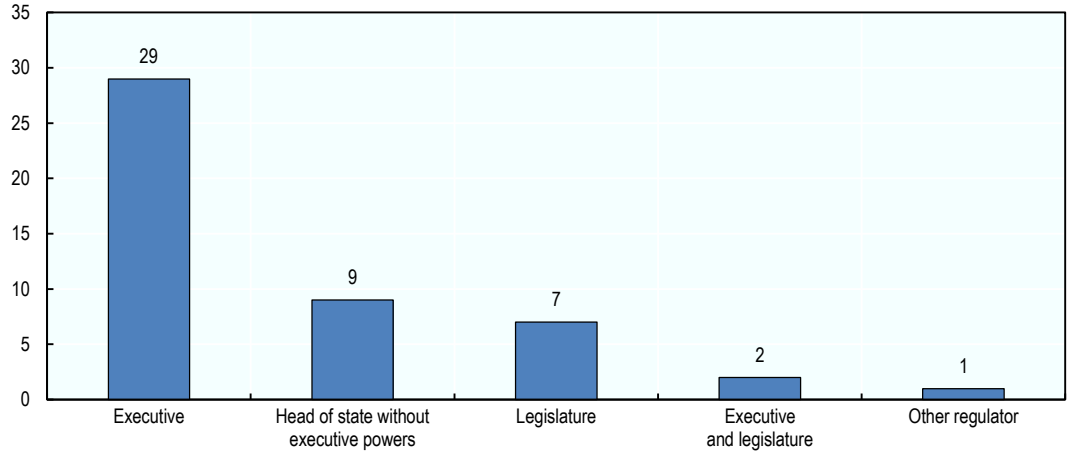
Figure 4.2. Authority nominating the regulator board/head



Notes: No information was received on the nominating authority for 13 regulators; for two regulators the nomination of some board members is made by the executive and some by the legislature.
Source: (OECD, 2016[41]), *Being an Independent Regulator*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255401-en.

StatLink https://doi.org/10.1787/888933814996

Figure 4.3. Authority appointing the regulator board/head



Source: (OECD, 2016[41]), *Being an Independent Regulator*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255401-en.

StatLink https://doi.org/10.1787/888933815015

Autonomous resource frameworks

The resource frameworks of regulators and inspection agencies are instrumental in defining their autonomy and flexibility. Most of the financing for regulators and inspection authorities still comes from the state budget, although some of the bodies gradually move towards obtaining necessary funding from regulated subjects, based on costs recovery principles. Regarding regulatory enforcement, financing of inspection authorities should not depend on the number of violations nor the levels of fines. This could certainly provide perverse incentives for regulators to focus on looking for violations rather than promoting compliance. Instead, governments should consider differentiation of the charges for regulated subjects to make them more risk-based (i.e. regulatees presenting higher risks would contribute more), compliance-based (i.e. regulatees with a record of compliance would contribute less) and complexity-based (i.e. regulators would be compensated for more complex or repeated inspections) (OECD, 2018[10]; UK Government Office, 2017[11]).

Given their role overseeing key sectors of the economy, regulators are expected to carry out their functions with high level of technical expertise and professionalism. They need to attract the best available human resources to carry out these functions. Yet, regulators compete directly with regulated entities, many of whom include leading global firms, for qualified human resources. A common challenge highlighted by regulators is the ability to attract and retain staff at all professional levels, when competing with the private sector and at the same time being bound by government frameworks, such as salary scales, levels at appointment, rigid performance-related or other bonus-type schemes, etc. Similar challenges can exist with regard to the management of financial resources, from caps from the executive on annual budgets, although in some jurisdictions economic regulators enjoy full autonomy in terms of setting their annual budgets, securing funding for the budget from regulated entities, and managing their financial resources.

In this context, there is a need for flexible and autonomous management, including for setting human resource strategies that respond to needs and in certain cases go beyond regular government schemes.

Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. This means not only technical competence in the fields relevant to the type(s) of risk(s) addressed, but also generic inspection skills (or "core inspection skills") relating to how to conduct inspections effectively and promote compliance, ethical standards of behaviour, risk management, inter agency co-operation – and operational management. Performance management policies for staff need to reflect the overall aims of enforcement activities and the specific goals of each agency, and in particular the performance indicators for the agency.

Appropriate capacity for data management and analysis

Appropriate capacity for data management and analysis is key for regulators and inspection authorities to achieve their potential for policy delivery. Economic regulators and inspections generally hold powers to request a variety of information and data from the industry on sector performance. This provides them with the opportunity to bridge information asymmetries, while presenting the challenge of managing a wealth of data. How data is analysed and turned into evidence and information that is in turn used to inform decisions and communicate on performance are key questions.

Data collection, management and analysis also highlight an opportunity for collaboration with other regulators or enforcement agencies intervening in the same sector(s). Working with other government agencies can help streamline data management systems, alleviate burden on the regulated industry, and pool resources and capacity for data analysis.

Digital registration of individual decisions concerning a regulatee is of particular importance, to make inspection and enforcement actions more predictable and the application of regulatory frameworks more legally certain. Businesses then would be able to compare decisions taken in their particular case to decisions taken in similar cases and to question differences.

The technological advancements and use of big data might change the way regulations are being enforced, making regulatory delivery more risk-based, predicting potential threats in real time and preventing them more effectively. This is still an understudied area and OECD plans to investigate the issue more in the next biennium.

Changing the way of enforcing regulations and promoting compliance

A good inspection and enforcement system should simultaneously aim at delivering the best possible outcomes in terms of risk prevention or mitigation and public welfare, without exceedingly increasing costs for the state and burden for duty holders. It should ensure trust and satisfaction from different stakeholders, whose perspectives are often conflicting (businesses, civil society organisations etc.). The main elements of a modern regulatory enforcement and inspection regime are summarised in the OECD Best Practice Principles (Box 4.6) as well as in the *OECD Regulatory Enforcement and Inspections Toolkit* (OECD, 2018[10]).

To create a culture of effective enforcement, enforcement and inspection aspects must be taken into account when developing new regulations using regulatory impact assessment and effective stakeholder engagement as well as during *ex post* reviews of regulations. Alternatives to state-led enforcement should be considered as part of these processes. To target enforcement activities effectively, they must be based on risk assessment and risk management. Enforcement should be based on "responsive regulation" principles – the culture has to change from finding violation and punishment to promoting compliance. To do this, governments should engage in providing assistance, advice and guidance to the regulated subjects which, however, must not diverge from the path set out by the overlaying regulatory framework. Guidance, toolkits and check-lists must not constitute over-implementation (gold-plating) of the overlaying regulatory framework.

Evidence shows that deterrence does not, in most cases, drive behaviour of regulated subjects. Understanding their motivation and reasons for non-compliance using behavioural insights is an area to be further explored (Hodges, 2016[12]).

An overly strict regulatory environment can signal distrust, crowd out intrinsic motivation and open the door for unethical behaviour. In turn, balanced and proportionate regulations supporting goals and individual responsibility strengthen ethical decision making. Overcomplicated or unnecessary rules may also undermine the ethical compass of individuals, creating frustration and incentives to cut corners. Regulations may also need to clearly assign responsibility and liability, as unclear or shared responsibility can lead to diffusion of responsibility, leaving the door open for unethical behaviour (OECD, 2018[13]).

To implement such changes, governments need to have an official vision, strategy and/or legal framework for regulatory delivery, setting goals and objectives for the reform. Some countries (Lithuania, Netherlands, United Kingdom) have adopted such strategies but in most countries regulatory delivery is still not a firm part of the cross-cutting regulatory policy.

Regulatory enforcement agencies should engage with regulatees and strive whenever possible and appropriate to establish a co-operative approach, because only stakeholders themselves can ensure consistent, sustained compliance in their operations (see (OECD, Forthcoming[14]). Nonetheless, regulatory "capture" can also be a real danger, whereby some agencies become exceedingly close to regulated business operators, and end up being too lenient in the face of major violations or hazards, or possibly create an uneven playing field in favour of some operators. To avoid such problems, governments should make sure that governance systems for regulatory enforcement agencies ensure that stakeholders that stand to benefit from the regulation (e.g. workers, consumers etc.) are also represented, and that performance targets are strictly set and monitored that ensure that "regulatory capture", if it were to happen, would be promptly identified and addressed.

Box 4.6. OECD Best Practice Principles on Regulatory Enforcement and Inspections

1. **Evidence-based enforcement**. 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.
2. **Selectivity**. Promoting compliance and enforcing rules should be left to market forces, private sector and civil society actions wherever possible: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulatory objectives.
3. **Risk focus and proportionality**. 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.
4. **Responsive regulation**. Enforcement should be based on "responsive regulation" principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.
5. **Long term vision**. Governments should adopt policies and institutional mechanisms on regulatory enforcement and inspections with clear objectives and a long-term road-map.
6. **Co-ordination and consolidation**. 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.
7. **Transparent governance**. 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.

8. **Information integration**. Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.
9. **Clear and fair process**. Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.
10. **Compliance promotion**. Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
11. **Professionalism**. Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: (OECD, 2014[2]), *Regulatory Enforcement and Inspections*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264208117-en.

Notes

[1] As at November 2017, PAFER reviews of the following regulators have been carried out: Colombia's Communications Regulator (OECD, 2015[15]), Latvia's Public Utilities Commission (OECD, 2016[16]), Mexico's Agency for Safety, Energy and Environment (OECD, 2017[17]), Mexico's National Hydrocarbons Commission (OECD, 2017[3]), Mexico's Energy Regulatory Commission (OECD, 2017[18]), and Ireland's Commission for the Regulation of Utilities (OECD, 2018[19]).

[2] www.oecd.org/gov/regulatory-policy/oecd-conference-on-enforcement-and-inspections.htm.

[3] Presentation of Graham Russell at the OECD Regulatory Enforcement and Inspections Conference, 9 November 2017.

References

Blanc, F. (2018), *From Chasing Violations to Managing Risks: Origins, Challenges and Evolutions in Regulatory Inspections*, Edward Elagar Publishing. [7]

Hodges, C. (2016), "Ethical Business Regulation: Understanding the Evidence", Better Regulation Delivery Office, London, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497539/16-113-ethical-business-regulation.pdf. [12]

OECD (2018), *Behavioural Insights for Public Integrity: Harnessing the Human Factor to Counter Corruption*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264297067-en. [13]

OECD (2018), *Driving Performance at Ireland's Commission for Regulation of Utilities*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264190061-en. [19]

OECD (2018), *OECD Regulatory Enforcement and Inspections Toolkit*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264303959-en. [10]

OECD (2017), *Creating a Culture of Independence: Practical Guidance against Undue Influence*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264274198-en. [5]

OECD (2017), *Driving Performance at Mexico's Agency for Safety, Energy and Environment*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264280458-en. [17]

OECD (2017), *Driving Performance at Mexico's Energy Regulatory Commission*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264280830-en. [18]

OECD (2017), *Driving Performance at Mexico's National Hydrocarbons Commission*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264280748-en. [3]

OECD (2017), *Driving Performance of Mexico's Energy Regulators*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264267848-en. [9]

OECD (2017), *The Role of Economic Regulators in the Governance of Infrastructure*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264272804-en. [6]

OECD (2016), *Being an Independent Regulator*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255401-en. [4]

OECD (2016), *Driving Performance at Latvia's Public Utilities Commission*, The Governance of Regulators, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264257962-en. [16]

OECD (2015), *Driving Performance at Colombia's Communications Regulator*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264232945-en. [15]

OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en. [8]

OECD (2014), *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264208117-en. [2]

OECD (2014), *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209015-en. [1]

OECD (Forthcoming), *Best Practice Principles on Stakeholder Engagement in Regulatory Policy*, OECD Publishing, Paris. [14]

UK Government Office (2017), "Regulatory Futures Review", https://www.gov.uk/government/publications/regulatory-futures-review. [11]

Chapter 5. Fostering better rules through international regulatory co-operation

New opportunities and changes brought by the growing interconnectedness of economies and technologies present policy makers and regulators with challenges that cannot be dealt with in isolation. Increasingly, co-ordination is needed on regulatory matters to tackle the challenges that cross borders and achieve a coherent and effective regulatory response at least costs for business and citizens. This chapter documents and analyses the various jurisdictions' practices in accounting for the international environment in domestic rule-making. It reviews how international considerations are reflected in traditional regulatory management tools and the interface between domestic and international rule-making. The chapter builds on answers to dedicated questions embedded in the 2017 OECD survey of Regulatory Policy and Governance, as well as to a survey carried out in 2015 to 50 international organisations.

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

With the fundamental shift in the regulatory culture that it implies, international regulatory co-operation (IRC) may be perceived as a key governance challenge (Hoekman, 2015[1]; Hoekman, 2015[2]; Hoekman and Mavroidis, 2015[3]). However, it is also increasingly seen as a necessary "means for helping governments achieve policy goals and minimise costs on society" (OECD, 2016[4]), to address the challenges and benefit from the many opportunities offered by the growing interconnectedness of economies highlighted in Chapter 1. The *2012 Recommendation of the Council on Regulatory Policy and Governance* recognises the importance of IRC to ensure the quality and effectiveness of regulation in a globalised world. Principle 12 emphasises in particular the need for policy makers and regulators to consider relevant international standards and frameworks for co-operation, and the likely effects of regulation on parties outside the jurisdiction.

In order to highlight IRC practices across jurisdictions, the 2017 OECD Survey of Regulatory Policy and Governance embedded a number of questions on how regulators were required to account for the international environment in domestic rule-making. The results show that despite increasing awareness, implementation of IRC by domestic regulators remains quite new, with the most progress observed in the adoption of international instruments – in line with international commitment under the WTO agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS) – and the consideration of international impacts in RIA processes.

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

Legal requirements to consider international instruments when developing new laws and regulations are quite widespread – in line with obligation to adopt/transpose EU acquis and other international obligations. However, surprisingly, the practices are still far from systematic and the tools and approaches to support regulators in this endeavour (specific guidance, database of instruments…) are yet to be fully developed in most countries. Often, regulators face a formal requirement in this area with little means or understanding of how to implement it in practice. Where they exist, these requirements also address mainly technical regulations (which carry the most likely impacts on trade) and do not inform more broadly the legislative and regulatory agenda of the country, foregoing the benefits of broader consistency with international instruments and the possibility for regulators to benefit from the international expertise in their own field.

The consideration of the international impacts of a domestic regulation remains limited. The *ex ante* practice is largely focused on trade impacts and does not seem to be deepening or spreading across jurisdictions over time. The *ex post* practice is confined to a small subset of countries but seems to be slightly improving. Again, the limiting factor may be a lack of understanding on the part of regulators of what they could do in this area.

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

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

The evidence also points to ample opportunities to bridge the gap between domestic regulatory practices and international attempts to develop a more transparent and evidence based culture of international norms and standards. Be it with stakeholder engagement or impact assessment, the expertise and evidence collected at the domestic level could be of use to the international one. Conversely, the adoption by international organisations (beyond the European Commission) of practices and disciplines such as those promoted by the 2012 Recommendation at domestic level could go a long way to provide greater confidence to domestic regulators, policy makers and the public at large, in the quality of international norms and standards.

Introduction: What is IRC and what does it mean for regulators?

Based on (OECD, 2013[5]), IRC can be defined as any step taken by countries (or jurisdictions), formal or informal, unilaterally, bilaterally or multilaterally, to promote some form of co-ordination / coherence in the design, monitoring, enforcement, or *ex post* management of regulation. IRC has become a critical dimension of regulatory quality and effectiveness, as illustrated by the inclusion of a principle on IRC in the 2012 Recommendation (Box 5.1).

This inclusion reflects the recognition that regulating in isolation, i.e. without considering the international environment, is no longer an option. Well informed IRC is a critical driver of regulatory performance and societal benefits, such as improved safety and strengthened environmental sustainability; of administrative efficiency gains and cost savings for government, business, and citizens; and of increased trade and investment flows and economic growth (through reduced inconsistencies and uncertainty) (OECD, 2013[5]).

A recently published study by the International Federation of Accountants (IFAC) and the Business and Industry Advisory Committee (BIAC) on regulatory divergence in the financial sector[1] shows for example that regulatory divergences cost financial institutions around 5-10% of their annual global turnover (some USD 780 billion per year), and unduly affect the financial performance of smaller organisations. The study underlines the importance of regulatory co-operation to address these costs.

IRC has important implications for the activities of regulators and of their oversight bodies. It requires a change in the regulatory culture towards greater consideration of the international environment in the rule-making process. This involves both the more systematic review and consideration of foreign and international regulatory frameworks of relevance when regulating and the continuous assessment of how regulatory measures

will impact and fit into the broader cross-border management of the issue to address. In this perspective, the regulatory management tools provide important entry points in the rule-making process to consider the international environment in the development and revision of laws and regulations. In particular, discussions in the OECD Regulatory Policy Committee[2] and further analytical work (Basedow and Kauffmann, 2016[6]) identified the following four key practices in the implementation of Principle 12.

- Practice 1: In developing regulation, systematically consider international instruments, in particular technical standards and document the rationale for departing from them in the RIA process
- Practice 2: Open consultation to foreign parties
- Practice 3: Embed consistency with international standards as a key principle driving the review process in *ex post* evaluation
- Practice 4: Establish a co-ordination mechanism in government on IRC activities to centralise relevant information on IRC practices and activities and to build a consensus and common language

This chapter maps legal requirements and regulators' practices across jurisdictions in relation to these four key practices, building on new survey data gathered through the 2017 OECD survey of Regulatory Policy and Governance (iREG). It also identifies opportunities for improving the quality of international norms and standards through a more systematic use of stakeholder engagement and evaluation by international organisations, relying on the survey of international organisations carried out in 2015 (OECD, 2016[4]).

Box 5.1. IRC Principle in the 2012 Recommendation

Principle 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."

Principle 12 is further elaborated around the following key aspects:

- Take into account relevant international regulatory settings when formulating regulatory proposals to foster global coherence.
- Act in accordance with their international treaty obligations.
- Co-operate with other countries to promote the development and diffusion of good practices and innovations in regulatory policy and governance.
- Contribute to international fora which support greater International Regulatory Co-operation.
- Avoid the duplication of efforts in regulatory activity in cases where recognition of existing regulations and standards would achieve the same public interest objective at lower costs.
- Open consultation on regulatory proposals to receiving submissions from foreign interests.

Source: (OECD, 2012[7]), *2012 Recommendation on Regulatory Policy and Governance*, OECD Publishing, Paris.

Observed IRC practices of domestic regulators

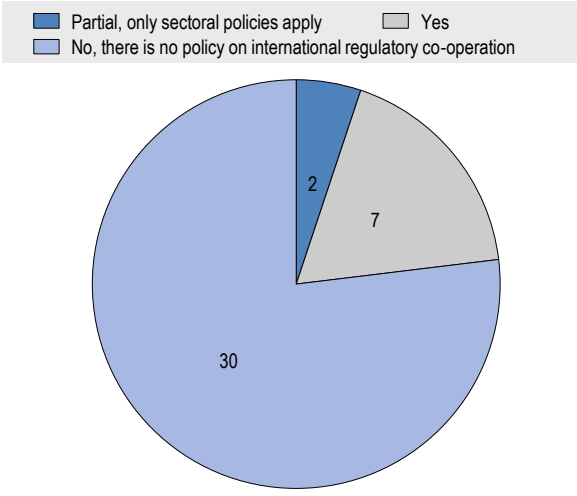
Despite recognition of the potential benefits of IRC, systematic evidence on domestic regulators' IRC practices remains scant. The 2017 survey seeks to address this gap through a series of questions on IRC practices in line with the 2012 Recommendation and related practices. This section provides a preliminary overview of domestic regulators' implementation of IRC based on the responses to this questionnaire. It shows that while there are signs of more systematic embedding of IRC considerations in rule-making, practices remain far from systematic and consistent among OECD countries.

Organisation and governance of IRC

An IRC policy or legal basis can be defined as a systematic, national-level, whole-of-government policy promoting international regulatory co-operation. Based on such definition, and despite engaging in a variety of IRC approaches, no country has so far developed a cross-cutting framework for IRC. Nevertheless, the survey data show that a number of jurisdictions have, in line with Principle 12 of the 2012 Recommendation, developed policies or legal basis that codify domestic regulators' commitment to consider international standards and relevant international regulatory frameworks in their area of activity, and/or support systematic co-operation with their peers in foreign jurisdictions, and/or promote co-operation on good regulatory practices across borders (Figure 5.1 and Table 5.1).

Figure 5.1. Number of jurisdictions with an explicit, published policy or a legal basis on IRC

39 respondents



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815034

Table 5.1. Examples of domestic IRC policies

Australia	Canada	Mexico	United States	EC	EU countries
Ministerial Directive on International standards and risk assessments	Cabinet Directive on Regulatory Management	Federal Law of Administrative Procedure (LFPA) and the Federal Law of Metrology and Standardisation (LFMN)	Executive Order 13609 (Promoting International Regulatory Co-operation)	Better Regulation guidelines and toolbox	Various legal frameworks and policies involved by EU membership

Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

These include most prominently Canada, through its new Cabinet Directive on Regulation (Box 5.2) and the United States through Executive Order 13609 (Promoting International Regulatory Co-operation). In Mexico, a variety of legal and policy instruments frame regulators' consideration of international standards and of trade impacts and co-operation across countries on regulatory policy (OECD, 2018[8]). In Australia, a ministerial Directive and specific guidelines frame regulators consideration of international frameworks. Countries of the European Union have established a range of legal provisions and policies to frame their participation in the EU, the most ambitious regional regulatory co-operation framework involving supra-national regulatory powers. Under the Treaty on the Functioning of the European Union, member States have empowered the EU institutions to adopt legal instruments (regulations, directives and decisions), which take precedence over national law and are binding on national authorities.

Box 5.2. IRC policy framework in Canada

The Cabinet Directive on Regulation (CDR) establishes the requirements that Canadian regulators must meet when developing and implementing regulation. The Directive requires departments and agencies to examine the regulatory systems of relevant jurisdictions to identify potential areas for alignment and co-operation, including a review of work undertaken by international standard development organisations for possible incorporation by reference. Where differences are required, departments and agencies must provide a rationale for a Canada-specific approach.

Regulatory co-operation is defined as a process for finding efficiencies across jurisdictions, reducing unnecessary regulatory differences, and achieving domestic policy goals, while aiming to facilitate trade and investment, promote economic growth and job creation, and increase consumer choice. A central pillar of Canada's approach to regulatory co-operation is the maintenance or enhancement of standards of public health and safety and environmental protection.

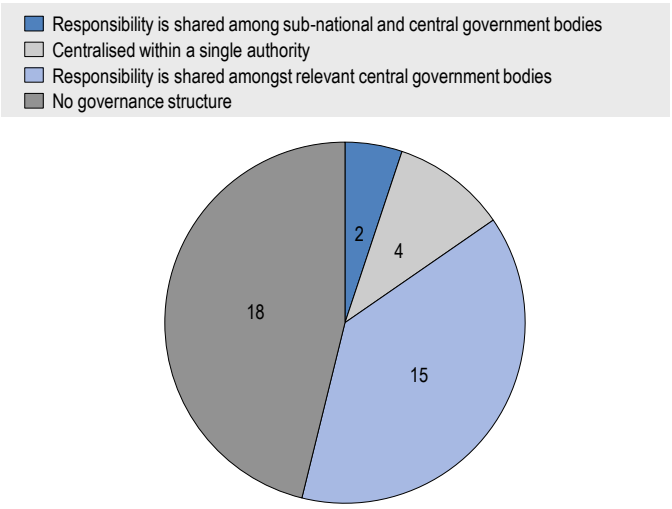
Source: www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulation.html (accessed 11 July 2018).

The institutional arrangement for oversight of IRC varies across OECD countries, but fragmentation of IRC responsibilities prevails (Figure 5.2). Among respondents, the most common governance structure is the sharing of responsibility among relevant central government bodies. However, it is notable that almost half of the respondents do not have a governance structure in place for specifically overseeing IRC activities. In only a handful of cases oversight of IRC is reported as centralised in a single authority. It is in

particular the case of Canada (where this responsibility is vested with the Treasury Board Secretariat) and the United States (where this responsibility is carried out by OIRA). This fragmented governance is not surprising given the piecemeal approach to IRC across all countries.

Figure 5.2. Organisation of oversight of IRC practices or activities

39 respondents

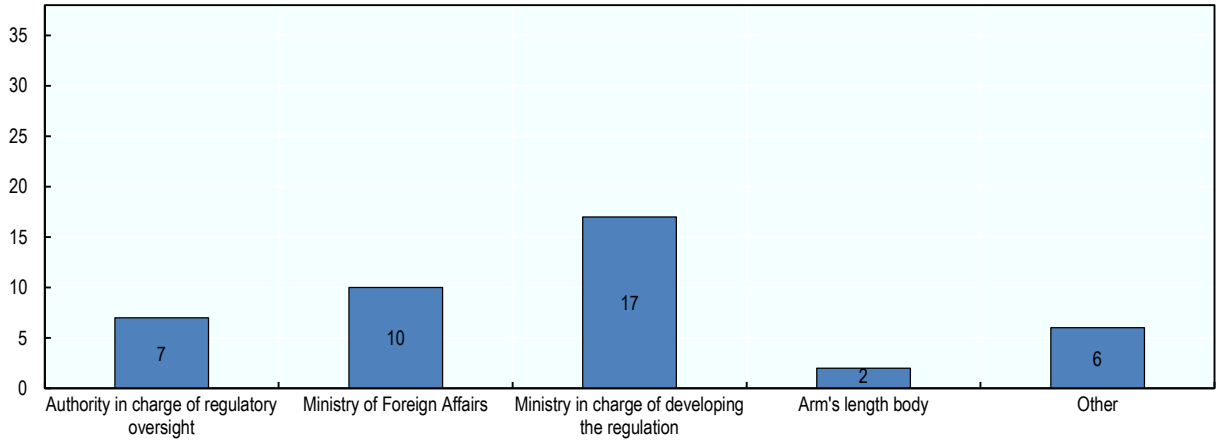


Notes: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815053

Figure 5.3. Authorities charged with overseeing the systematic consideration of international instruments

39 respondents



Notes: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815072

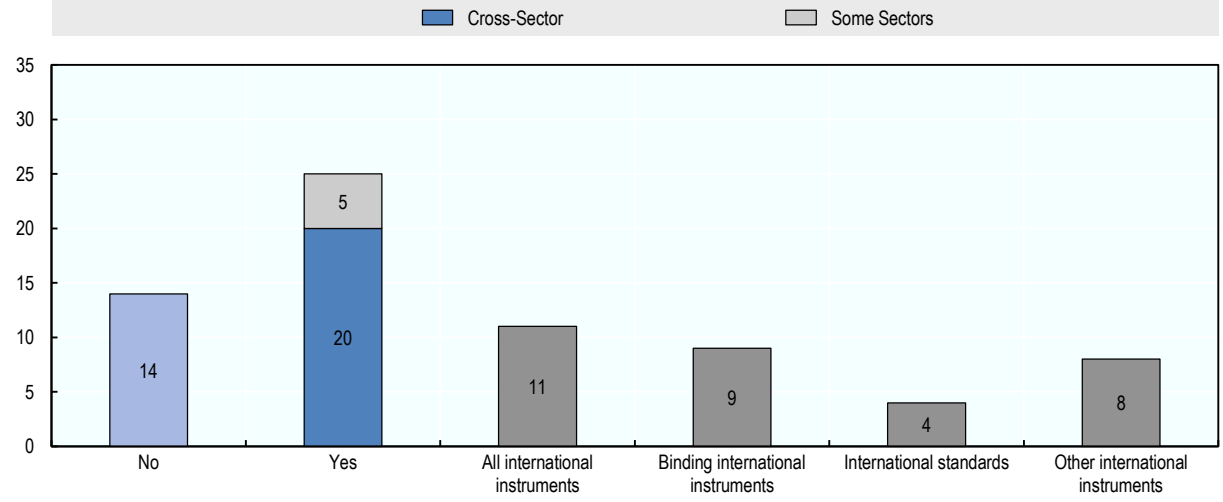
Nevertheless, it is worth noting that when breaking down IRC in its various components, some more structured governance patterns emerge across countries. For example, half of the surveyed jurisdictions report an authority in charge of ensuring that international instruments are systematically considered in the development of regulation (20 over 39). For reference, they are 25 reporting a formal requirement to consider international instruments when developing or revising regulation (see next section). In a majority of these cases, the ministry in charge of developing the regulation has a core responsibility in this matter. In 15 jurisdictions, i.e. 60% of those reporting a legal requirement, at least one other body oversees this process. In a majority of cases, the Ministry of Foreign Affairs is involved. In almost half the cases, the regulatory oversight body also is. Among other bodies volunteered by countries, ministries responsible for trade policy play a role (Figure 5.3).

Incorporation of international instruments

Incorporation of international instruments into domestic regulations is a key driver of regulatory harmonisation (OECD, 2013[5]; OECD, Forthcoming[9]). According to the 2017 survey, 25 jurisdictions report a formal requirement to consider recognition and incorporation of international instruments when developing new domestic regulations or revising existing ones (20 as a cross sectoral one and 5 for some sectors) (Figure 5.4). Of those countries, 11 of them require consideration of all international instruments. Beyond these cases, in 9 additional jurisdictions, a requirement mandates the consideration of binding international instruments. Therefore, overall, 20 countries report a formal requirement to consider recognition and incorporation of binding instruments in their regulatory process. In a number of EU jurisdictions or neighbouring countries (Norway), this requirement applies to EU legislation – captured in part by the category "other" in Figure 5.4.

Figure 5.4. Number of jurisdictions with a formal requirement to consider international instruments in rulemaking (left) and the types of instruments considered (right)

39 respondents



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

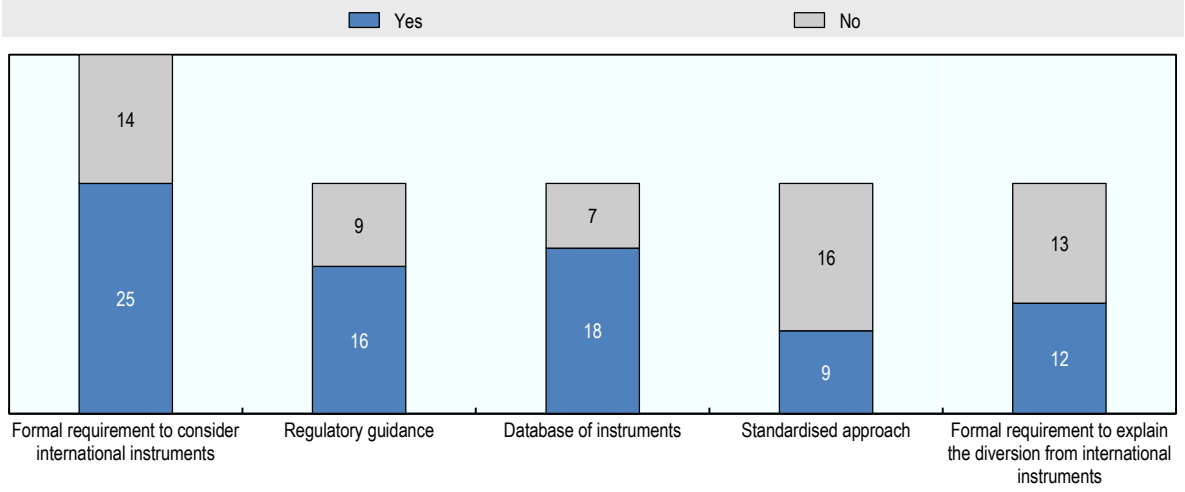
StatLink https://doi.org/10.1787/888933815091

Four countries report having requirements covering international standards – implying that 16 countries mandate the consideration of international standards directly or through a broader requirement. It is significant given the voluntary nature of international standards, and may be traced back to the incentive provided by the 1994 WTO agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS) to adopt international standards when developing national technical regulations and standards. Signatory governments have committed to base regulatory measures covered by these agreements on relevant international standards, guides and recommendations where they exist and to the extent that they are determined appropriate to limit unnecessary trade frictions.

However, of the 25 countries with a formal requirement to consider international instruments, only 12 have a formal requirement to explain the rationale for diverting from international instruments when country-specific rules are proposed (Figure 5.5). This seems surprising given countries' commitment to international binding instruments and the TBT and SPS Agreements requirement to justify deviations from international standards (art 2.4 TBT Agreement; art. 3.3 SPS Agreement).

Figure 5.5. Number of jurisdictions with a formal requirement to consider international instruments in rulemaking (left) and supporting measures (right)

39 respondents



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815110

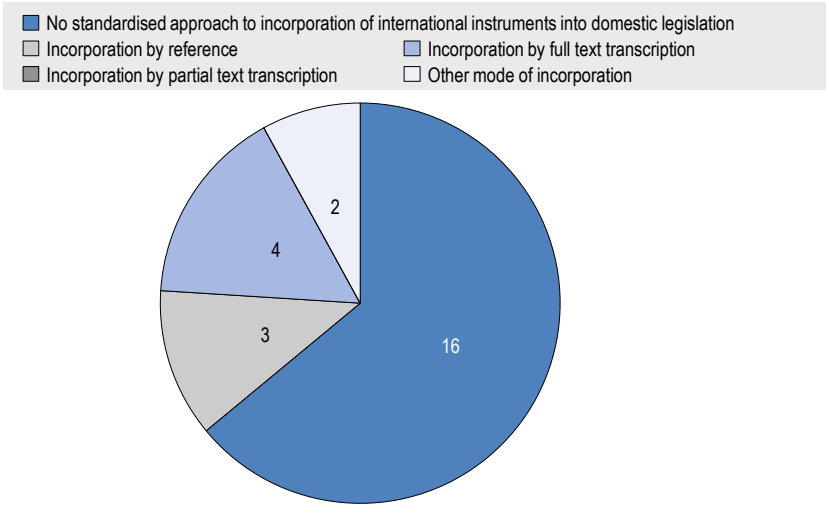
While the lack of a formal requirement to consider international instruments in domestic rule-making is not proof that international instruments are not in practice applied at the domestic level, it is still a reflection of a certain disconnect between the national and international legal systems. Without such a policy, the incentive for regulators to systematically consider international instruments remains weak. At this stage, however, this result may also reflect issues with the reporting of existing relevant requirements. In particular, such a requirement may be part of a different set of policies and legal requirements rather than those falling under the regulatory policy agenda. In particular, it could be the case if the domestic regulatory policy agenda was not fully developed yet or

if these requirements to consider international standards applied only to a subset of regulatory instruments which are not in the scope of regulatory policy (for example technical regulations).

The 2017 survey responses further indicate that a majority (16) of the 25 jurisdictions with a requirement to consider recognition and incorporation of international instruments provide guidance to regulators to facilitate the consideration of existing international instruments in the development and revision of regulation (examples are provided in Box 5.3). Nearly three-fourths make a database of international instruments accessible to regulators to facilitate consideration of relevant instruments. In most cases, this database is nevertheless partial – covering only certain instruments (for 14 jurisdictions) or certain sectors (2 cases).

Figure 5.6. Number of jurisdictions with standardised approaches to incorporation of international instruments into domestic legislation

25 respondents



Notes: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries. Data for this question restricted to the 25 countries that reported to have a formal requirement to consider international instruments.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815129

Only a third of countries indicate having a standardised approach to incorporation of international instruments into domestic legislation. Among those countries with a standardised approach, three incorporate by reference and four by full text transcription (Figure 5.6). This limited systematic use of incorporation by reference or text may suggest a missed opportunity to promote regulatory harmonisation via the incorporation of international instruments. It may also reflect a perceived lack of appropriateness of international instruments to specific country situations and the limited confidence of domestic regulators that these instruments may (without alteration) help them achieve their policy objectives. Hence the importance of strengthening the mechanisms and disciplines likely to reassure domestic regulators and legislators on the quality of international rules and support greater uptake of good quality international instruments in national legislation. This is the focus of the second part of this chapter.

Box 5.3. How is the need to consider international standards and other relevant regulatory frameworks conveyed in Australia and the United States

In **Australia**, there is a cross-sectoral requirement to consider "consistency with Australia's international obligations and relevant international accepted standards and practices" (COAG Best Practice Regulation). Wherever possible, regulatory measures or standards are required to be compatible with relevant international or internationally accepted standards or practices in order to minimise impediments to trade. National regulations or mandatory standards should also be consistent with Australia's international obligations, including the GATT Technical Barriers to Trade Agreement (TBT Standards Code) and the World Trade Organization's Sanitary and Phytosanitary Measures (SPS) Code. Regulators may refer to the Standards Code relating to ISO's Code of Good Practice for the Preparation, Adoption and Application of Standards. However, (OECD, Forthcoming[9]) reports that to support greater consistency of practices, the Australian government has developed a Best Practice Guide to Using Standards and Risk Assessments in Policy and Regulation and is considering an information base on standards (both domestic and international) referenced in regulation at the national and sub-national level.

In the **United States**, the guidance of the Office of Management and Budget (OMB) on the use of voluntary consensus standards states that "in the interests of promoting trade and implementing the provisions of international treaty agreements, your agency should consider international standards in procurement and regulatory applications". In addition, the Executive Order 13609 on Promoting International Regulatory Co-operation states that agencies shall, "for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory co-operation council work plan." The scope of this requirement is limited to the sectoral work plans that the United States has agreed to in Regulatory Co-operation Councils. There are currently only two such Councils, one with Mexico and the other with Canada.

Source: Australia COAG Best Practice Regulation Guide: www.finance.gov.au/obpr/docs/COAG_best_practice_guide_2007.pdf and Best Practice Guide to Using Standards and Risk Assessments in Policy and Regulation: https://industry.gov.au/industry/IndustryInitiatives/PortfolioRegulationReform/Using-Standards-and-Risk-Assessments-in-Policy-Regulation/Pages/default.aspx; US OMB Circular A 119: www.whitehouse.gov/omb/circulars_a119; and US Executive Order 13609: www.whitehouse.gov/thepress-office/2012/05/01/executive-order-promoting-international-regulatory-cooperation.

Evaluation of IRC impacts

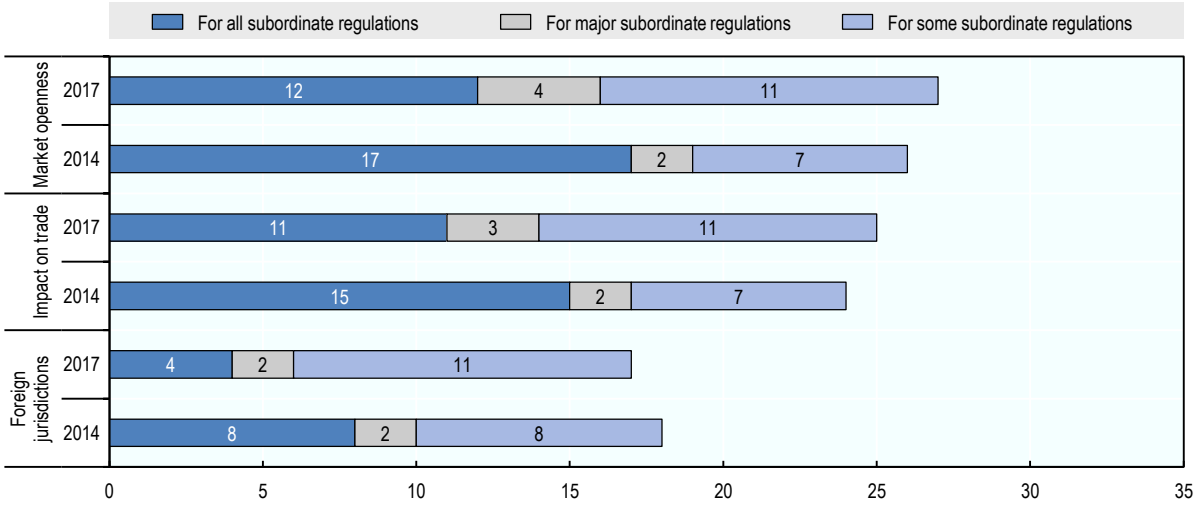
Accounting for international impacts in ex ante *regulatory impact assessment*

In addition to incorporating international instruments in their rulemaking, countries may also promote IRC through the more systematic consideration of international impacts into RIA processes. As Figure 5.7 depicts, countries report, both in 2014 and 2017, that a range of impacts related to IRC are included in RIA. For example, around three quarters of countries consider impacts on markets openness and on trade, and half of countries

consider impacts on foreign jurisdictions, a relatively stable trend since 2014. Nevertheless, it seems that the consideration of these impacts is less systematically done – the share of countries considering these impacts for some regulations, compared to for all regulations has increased substantially. At this stage, it is difficult to infer whether this trend reflects a more proportionate approach to RIA or a decrease in the practice.

Figure 5.7. Number of jurisdictions with requirements for consideration of impacts on foreign jurisdictions, market openness, or trade as part of RIA

35 respondents

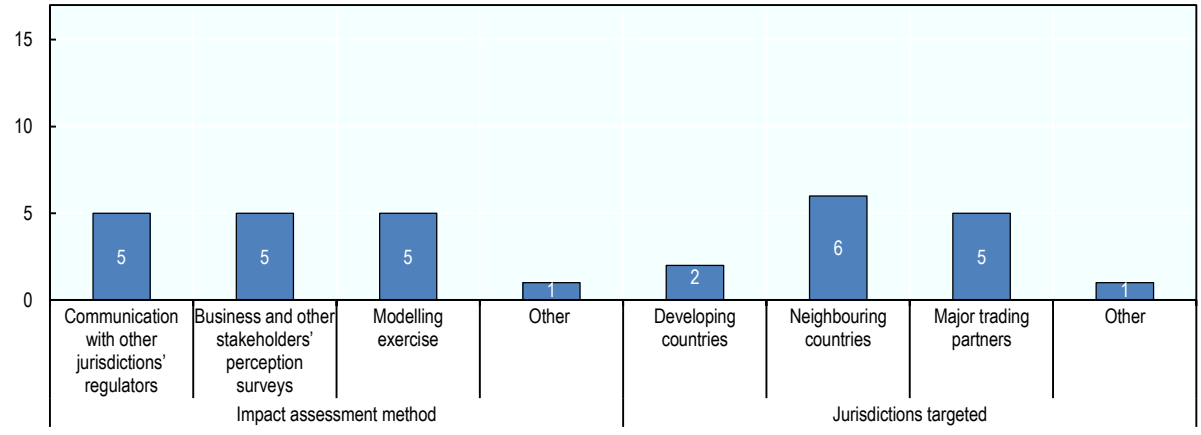


Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815148

Figure 5.8. Approaches to assessing impacts on foreign jurisdictions and to targeting jurisdictions for assessment for subordinate regulations

17 respondents



Note: The sample is restricted to the 17 countries that reported assessing impacts on foreign jurisdictions.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815167

Among the 17 countries that report considering impacts on foreign jurisdictions, the most commonly targeted jurisdictions are neighbouring countries and major trading partners (Figure 5.8). Countries report using a mix of approaches to assessing impacts, involving communication with the other jurisdictions' regulators, use of perception surveys to business and other stakeholders and more theoretical modelling exercises.

Despite these results showing some assessment of the international impacts of regulation, there may be disconnects between policies and implementation practices. Indeed, (Basedow and Kauffmann, 2016[6]) finds that only a few jurisdictions – i.e., Austria, Canada and the European Commission – formally provide guidance on how to consider the international regulatory environment as part of their RIA guidelines casting a doubt on how it is done in practice in jurisdictions where regulators do not benefit from such support.

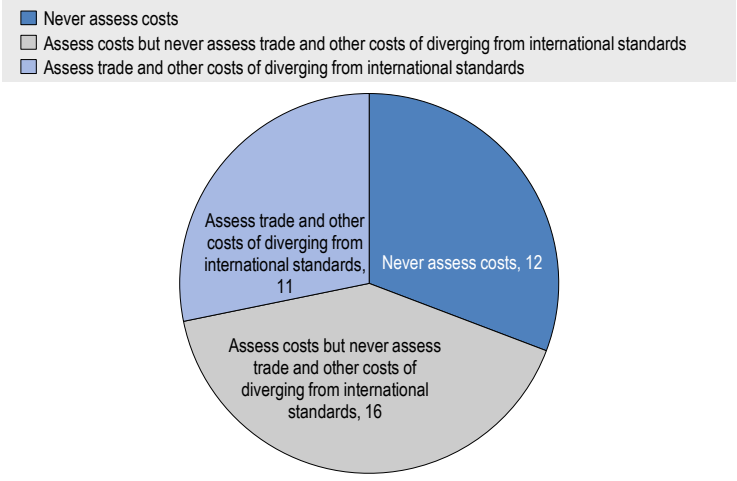
Assessing the consequences of regulatory divergence through ex post impact assessment

The full extent of the impacts of a regulatory measure is only known after its implementation. Therefore, *ex post* evaluation provides a critical opportunity to identify the potential divergence with international frameworks as well as the trade and other IRC impacts of laws and regulations (Basedow and Kauffmann, 2016[6]).

While *ex post* impact assessment related to IRC is relatively nascent for most countries in practice, data shows progress since 2014. For example, in the 2017 survey, almost three times as many countries indicate having completed an assessment of consistency with comparable international standards and rules as part of *ex post* reviews in the last 12 years than were reported in 2014 (from 3 to 8). However, this represents only a subset of OECD countries – around one over 5.

Figure 5.9. Number of jurisdictions that assess costs in *ex post* evaluations of primary laws or secondary regulations, including trade and other costs of diverging from international standards

39 respondents



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

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Furthermore, these practices are far from being systematic. Indeed, countries rarely consider the unintended consequences related to diverging from existing international instruments in *ex post* evaluation. When they do, it is on an ad hoc basis (for some *ex post* evaluations). Similarly, among those countries that assess costs in *ex post* evaluations of primary laws or secondary jurisdictions (27), only around a third (10) report including assessments of trade and other costs of diverging from international standards (Figure 5.9).

Engaging foreign stakeholders in regulatory processes

Engagement of foreign stakeholders in regulatory processes may raise awareness for regulatory approaches in other jurisdictions or provide information about unintended impacts for third parties of maintaining the same or different regulatory approaches (Basedow and Kauffmann, 2016[6]). Only about a third of surveyed countries report pursuing specific efforts to engage foreign stakeholders when developing laws and regulations. Even in these cases, for the vast majority, it is done for some regulations and not all or major ones.

In practice, most countries do not have specific procedures in place for involving foreign stakeholders and rely on an open, non-discriminatory procedure domestically, for example via an open-access internet platform accessible to all, including foreign stakeholders. Only a handful of countries pursue targeted foreign stakeholder engagement, for example through the translation of draft regulations (in 4 cases), dissemination of information through business portals (in 5 cases) or specific workshops with foreign stakeholders (in 6 cases). Given the absence of specific mechanisms and that countries do not usually track the participation of foreign stakeholders, the occurrence and impact of foreign stakeholder engagement is difficult to appraise.

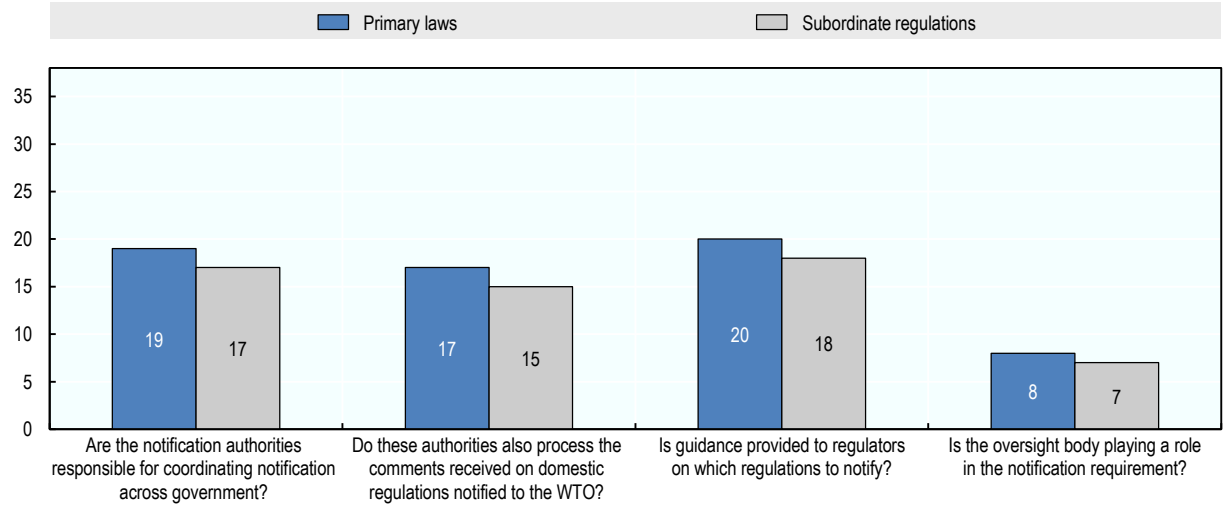
Compulsory notification of draft regulations to international fora provides potentially an important means by which to alert and draw inputs from foreign stakeholders. From the survey answers, these opportunities arise mainly in connection to trade agreements. Under the WTO TBT and SPS Agreements, for example, countries are required to establish a single central government authority responsible for notifications to the WTO to ensure transparency of domestic measures which are not based on international standards and have a significant effect on trade.[3]

In the EU, a notification procedure allows the European Commission and EU countries to examine new technical regulations for products and online services that they intend to introduce, with a view to prevent the creation of new technical barriers to trade. According to this procedure, EU countries must inform the Commission of any draft technical regulation before its adoption and allow a three-month period to enable the Commission and other EU countries to examine the proposed text and respond.[4] Non EU countries also report notification obligations to trade partners under a number of free trade agreements.

The authorities in charge of notification are also generally involved in processing comments received (Figure 5.10). This notification process may complement the regulatory policy disciplines by allowing an additional opportunity for comments on draft regulation, namely from foreign stakeholders who gain awareness of draft measures through the WTO notification portal.

Figure 5.10. Domestic procedures for compliance with WTO agreements on Technical Barriers to Trade and on the Application of Sanitary and Phytosanitary Measures

38 respondents for primary laws and 39 respondents for subordinate regulations



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries. The question is not applicable for primary legislation in the United States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815205

However, the survey answers point to a disconnect between the WTO notification process and the regulatory policy agenda. While the transparency disciplines related to notification in trade fora have been thoroughly developed by the trade community, including related guidance, they appear to be largely self-contained and have limited interface with the regulatory policy agenda. As an illustration, only 8 countries report that their regulatory oversight bodies play a role in the notification requirement for primary laws and 7 for subordinate regulations. Arguably, the competence has been delegated to other bodies in a number of jurisdictions – including EU members. However, there is clearly an opportunity to bridge good regulatory practices across the two policy communities that remain largely untapped so far. From this perspective, Mexico provides a unique example connecting domestic regulatory policy procedures to the WTO notifications. Indeed, through a new procedure set up in 2016, the Mexican central oversight body on regulatory policy (COFEMER) leverages RIAs to identify regulatory drafts with an effect on trade and ensure that all such drafts get notified to the WTO (Box 5.4).

Box 5.4. Mexico's regulatory impact assessment on foreign trade

In 2016, Mexico introduced a specific procedure to take into account systematically, and when relevant, the trade impacts of regulation in its *ex ante* regulatory impact assessment. This procedure allows namely to ensure automatic co-ordination among relevant authorities to ensure notifications of regulations with trade impacts to the WTO, or FTA partners. The trade impacts are first estimated during the impact calculator. The results to this calculator may launch notification procedures to the WTO or other FTA partners, as well as a Foreign Trade RIA procedure.

The actual RIA process in Mexico is launched with a "regulatory impact calculator", which allows regulators to identify potential impacts of their draft regulation, and thus determine which type of RIA to prepare. This calculator comprises three verification filters: i) foreign trade impacts, ii) risk, iii) competition.

When regulators answer positively to the trade filter, COFEMER forwards the draft proposal to the Directorate on International Trade Rules (*Direccion General de Reglas de Comercio Internacional*, DGRCI), in charge of verifying the consistency of the drafts with Free Trade Agreement (FTA) and WTO obligations, and particularly the Agreements on Technical Barriers to Trade (TBT) or Sanitary and Phytosanitary measures (SPS). If DGRCI determines that the measure falls under the notification obligations, namely because it has a significant trade impact and deviates from international standards, it then sends an official letter to the regulating agency, with COFEMER on copy, requesting them to contact Mexico's General Bureau of Standards (*Dirección General de Normas*, DGN), the notification authority and enquiry point for the SPS and TBT Agreements.

In parallel to notification to the WTO, the result of the impact calculator lead the regulator to answer specific questions on the impact of the regulation, which entail consideration namely of its effects on international trade and the existing international or foreign standards in the field.

Source: (OECD, 2018[8]), *Review of International Regulatory Co-operation of Mexico*, OECD Publishing, Paris, https://doi.org/10.1787/9789264305748-en.

Observed normative activity of international organisations and the connection between domestic and international IRC efforts

Results from the 2017 iReg survey show that consideration of international instruments in domestic rule-making has become a significant aspect of domestic regulators' implementation of IRC. This finding is in line with (OECD, 2013[5]), which highlights the growing role of international organisations (IOs) — both treaty-based IOs and the more recent development of trans-governmental networks of regulators (OECD, Forthcoming[9]) – as standard setters and supporters of IRC. Therefore, the relationship between international rule- and standard-setting processes and domestic implementation of such rules and standards has become a critical component of IRC.

In particular, while regulators need to more systematically consider international instruments when developing and applying domestic regulatory frameworks, they also need assurance that these instruments are of high quality, widely and easily accessible, and fit to achieve public interest in their own jurisdiction. Lessons learnt from the systematic application of regulatory policy at the domestic level can usefully inform the development of rules and standards at the international level, in particular by identifying the good practices in evidence-based, transparent rule-making. Greater monitoring and more regular evaluation of the application of international instruments would help make the case for their use and inform domestic regulators of their expected and realised impacts.

(OECD, 2016[4]) underlines that IOs have increasingly developed processes and practices to support the quality of their rule- and standard-setting, including stakeholder consultation and impact evaluation. It provides evidence on the practices pursued at the

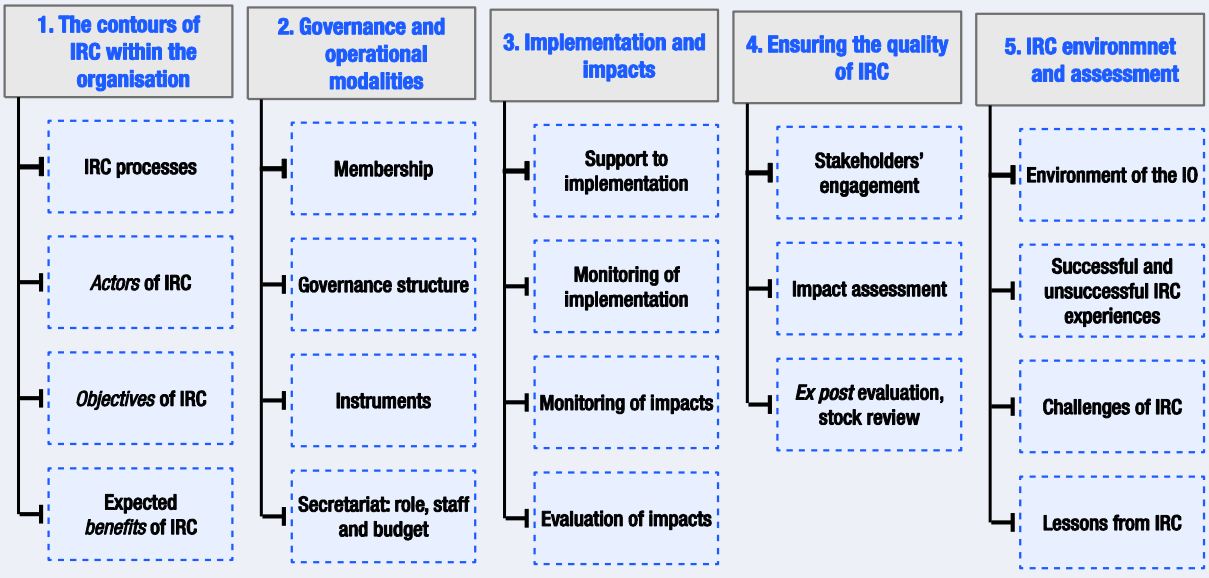
international level to foster the quality of norms and standards, drawing on a survey of 50 IOs (Box 5.5). This section highlights findings from the survey and draws on the iREG results to understand the connections between domestic and international rule-making processes and the potential for improvement.

Box 5.5. 2015 OECD Survey of international organisations

In order to collect systematic evidence on the organisation and practices of normative IOs, the OECD developed a survey structured in five parts (see Figure 5.11).

- The first part sought to outline the specific processes in support of IRC within IOs, the actors involved in these processes and the objectives and benefits pursued.
- The second part focused both on aspects of governance (membership and the internal structure of the organisation, the organs of the organisation involved in IRC, etc.) and on the operational modalities to promote IRC (legal or policy instruments, role of the secretariat, etc.).
- The third part aimed to collect information on the procedures adopted to supervise and encourage implementation of IO instruments (i.e. the forms of assistance provided, the mechanisms used to track information on implementation, etc.) and to monitor their impacts.
- The fourth part focused on the use of specific tools/procedures to ensure the quality of standard-setting activities, including the use of impact assessment, consultation, *ex post* and stock review.
- The fifth part surveyed the context in which IRC takes place (i.e. the presence of different international organisations in the same area of IRC) and the main lessons learnt related to IRC in terms of success factors and challenges.

Figure 5.11. Scope and structure of the 2015 OECD Survey of International Organisations



The survey was carried out in 2015 to a sample of 50 IOs. Among them, 32 were inter-governmental organisations (IGOs), 5 were international private standard setting organisations, 4 were secretariats of international conventions and 9 were trans-governmental networks of regulators (TGNs).

Source: (OECD, 2016[4]), *International Regulatory Co-operation: The Role of International Organisations in Fostering Better Rules of Globalisation*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264244047-en.

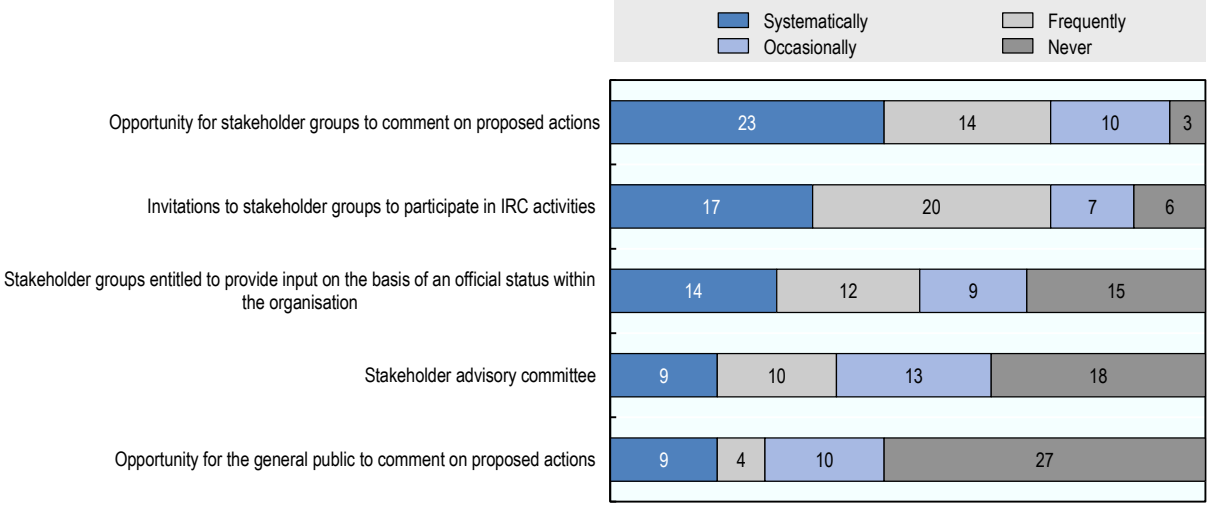
Stakeholder engagement and evaluation practices of international organisations

Stakeholder engagement has become a common practice among IOs (Figure 5.12). Most of them have set up specific standing bodies or processes to engage stakeholders (in a non-decisional manner) at key moments of the development of their instruments. IOs frequently manage their stakeholders by inviting specific groups to participate in their normative activities. By contrast, only a minority of them open comments more broadly to the public.

By contrast, evaluation, both *ex ante* and *ex post*, is not well institutionalised among IOs (Figure 5.13). When it is done, it is mostly *ex post* (after the adoption of the instrument). Half of the surveyed IOs report carrying out *ex post* evaluations of their instruments' implementation and impacts systematically or frequently. By contrast, only 16 IOs undertake *ex ante* regulatory impact assessment systematically or frequently.

Figure 5.12. IO stakeholder engagement practices for standard-setting and other IRC activities

50 respondents



Source: OECD (2016), based on the 2015 OECD Survey of International Organisations.

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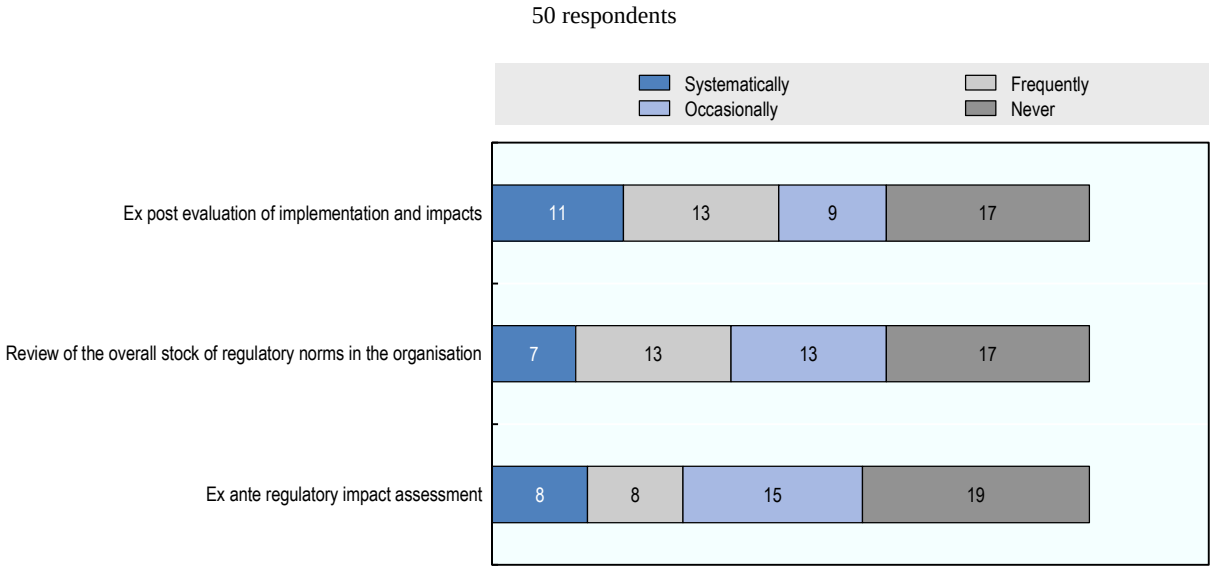
Figure 5.13. IO evaluation practices for standard-setting and other IRC activities



Source: OECD (2016), based on the 2015 OECD Survey of International Organisations.

StatLink https://doi.org/10.1787/888933815243

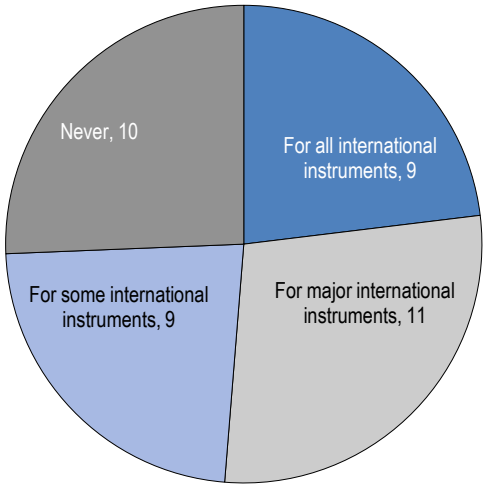
Disconnect between domestic regulatory and international practices to ensure the quality of rules

The limited use of *ex ante* impact assessment by IOs contrasts with domestic practices. As illustrated in Chapter 2, RIA is well embedded in the rule-making process of OECD countries. It is also noteworthy that some three quarters of countries also report conducting RIA prior to adopting or transposing international instruments into domestic legislation (Figure 5.14). In most jurisdictions, this reflects the fact that when international instruments are not directly applicable, they need to be transposed in national legislation. Therefore, they fall under the systematic regulatory policy requirements faced by any domestic legislation, including RIA and stakeholder engagement. In a couple of jurisdictions though, transposing international commitment provides grounds for avoiding RIA.

These findings suggest that there may be opportunities for transfer of expertise from the domestic to the international level to support more systematic *ex ante* assessment of impacts of international instruments. They also point to a potential for greater connection between the impact assessment carried out at domestic level and the international level. Indeed there seems to be lost opportunities to build better evidence base across countries and IOs to inform the development of normative instruments. For instance, if impact assessments were conducted more systematically at the international level, they could usefully inform the adoption of international instruments in domestic jurisdictions and provide useful evidence that domestic regulators could use in their own RIAs. Reciprocally, impact assessment of international organisations could usefully rely on evidence gathered by domestic jurisdictions, including on past RIAs carried out in the same field.

Figure 5.14. Number of jurisdictions with RIA requirements when adopting or transposing international instruments in domestic legislation

39 respondents



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

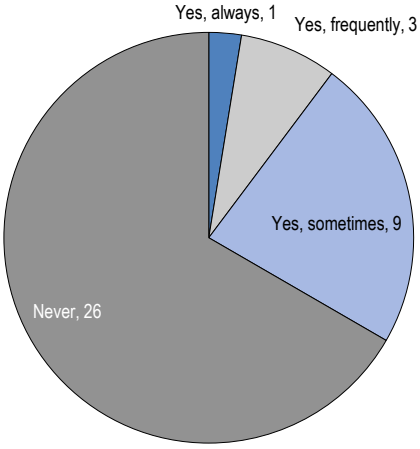
StatLink https://doi.org/10.1787/888933815262

While two-thirds of IOs report conducting at least some *ex post* evaluations of their instruments' implementation and impacts, the evidence suggests that IOs may lack control of, and information about, domestic implementation, monitoring, and enforcement of international instruments (OECD, 2016[4]). Therefore, more systematic integration of international and domestic *ex post* evaluations of international instruments may promote more effective evaluation practices at both levels. However, results from the 2017 iReg survey suggest that this potential to bridge the gap between domestic and international *ex post* assessment has not yet been realised: less than a third of countries report reviewing the implementation of international instruments to which they adhere (Figure 2.15). Of those, six report sharing the results of these evaluations with the relevant IOs – including in some instances by simply making these results available on a website.

Similarly, while stakeholder engagement has become a common component of IO standard-setting and rule-making processes, less than half of OECD countries require stakeholder engagement prior to the adoption or transposition of international instruments into their domestic legislation (Figure 5.16). It is not clear if these processes converge, suggesting an opportunity to promote IRC through more deliberate integration of stakeholder engagement practices at the domestic and international levels.

Figure 5.15. Number of jurisdictions that review the implementation of the international instruments to which they adhere

39 respondents

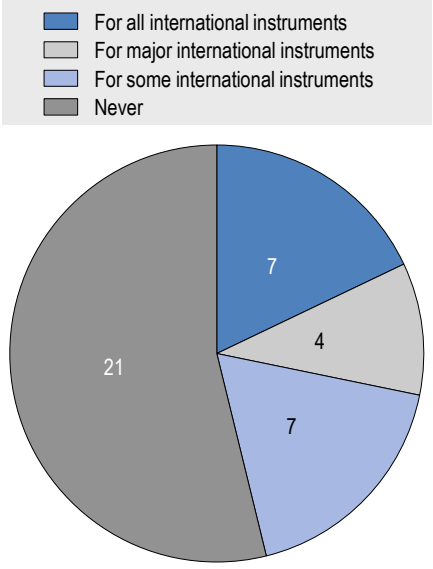


Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815281

Figure 5.16. Number of jurisdictions with a requirement to conduct stakeholder engagement prior to the adoption/transposition of international instruments in domestic legislation

39 respondents



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815300

Notes

[1] http://biac.org/wp-content/uploads/2018/04/ifac-oecd_regulatory-divergence_v9_singles.pdf.

[2] 5th expert workshop on Assessing Progress in the Implementation of the 2012 Recommendation of the OECD Council on Regulatory Policy and Governance (www.oecd.org/gov/regulatory-policy/stockholm-workshop.htm) and "Key Practices for Drafting Survey Questions on the Implementation of the Recommendation: Results of Consultation With RPC Delegates", Room Document 2, 10th meeting of the Regulatory Policy Committee.

[3] It is worth noting that in the EU SPS notification is harmonised to a very large extent: there is one central EU SPS Notification Authority and Enquiry Point located within the European Commission, which act on behalf of the EU and the 28 EU Member States. EU countries have not designated SPS notification authorities. They nevertheless have established enquiry points tasked with processing comments. For TBT there is no distinction between notification authorities and enquiry points and all countries have designated such authority (TBT enquiry points). De facto, while the EU notifies a large number of measures –1504 TBT notifications and 1196 SPS notifications, EU Member States also submit SPS and TBT notifications on their own behalf. E.g. Germany has submitted a total of 25 TBT notifications and 17 SPS notifications. France has 17 SPS notifications and 251 TBT notifications.

[4] https://ec.europa.eu/growth/single-market/barriers-to-trade/tris_en.

References

Basedow, R. and C. Kauffmann (2016), "International Trade and Good Regulatory Practices: Assessing The Trade Impacts of Regulation", *OECD Regulatory Policy Working Papers*, No. 4, OECD Publishing, Paris, http://dx.doi.org/10.1787/5jlv59hdgtf5-en. [6]

Hoekman, B. (2015), "Fostering Transatlantic Regulatory Cooperation and Gradual Multilateralization", *Journal of International Economic Law*, Vol. 18/3, pp. 609-624, http://dx.doi.org/10.1093/jiel/jgv028. [2]

Hoekman, B. (2015), "Trade agreements and international regulatory cooperation in a supply chain world", *RSCAS Working Papers*, http://cadmus.eui.eu/handle/1814/34207. [1]

Hoekman, B. and P. Mavroidis (2015), "Regulatory Spillovers and the Trading System: From Coherence to Cooperation", *E15 Task Force on Regulatory Systems Coherence*, http://e15initiative.org/wp-content/uploads/2015/04/E15-Regulatory-OP-Hoekman-and-Mavroidis-FINAL.pdf. [3]

OECD (2018), *Review of International Regulatory Co-operation of Mexico*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264305748-en. [8]

OECD (2016), *International Regulatory Co-operation: The Role of International Organisations in Fostering Better Rules of Globalisation*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264244047-en. [4]

OECD (2013), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en. [5]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en. [7]

OECD (Forthcoming), *The contribution of trans-governmental networks of regulators to international regulatory co-operation*, OECD Publishing, Paris. [9]

Chapter 6. Improving regulation and outcomes through behavioural insights

Behavioural insights have become increasingly entrenched in governments around the world as a tool to improve the effectiveness of public policy. This chapter presents an overview of the current state of play for behavioural insights globally, based on OECD research conducted since 2013. This includes an overview of the findings of a recent survey of 60 nudge units from 23 countries and two international institutions, as well as a collection of over 100 case studies on the application of behavioural insights to policy in 11 policy sectors. It particularly focuses on the institution composition and key challenges for governments applying behavioural insights. The chapter also discusses new frontiers for the practice of behavioural insights, which includes embedding the tool throughout the regulatory policy cycle and applying behavioural insights to changing organisational behaviour.

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

Behavioural insights have become increasingly entrenched in governments around the world as a tool to improve the effectiveness of public policy. This chapter presents an overview of the current state of play for behavioural insights globally, based on OECD research that has been conducted since 2013. This includes an overview of the findings of a recent survey of 60 nudge units from 23 countries and two international institutions, as well as a collection of over 100 case studies on the application of behavioural insights to policy in 11 policy sectors. It particularly focuses on the institution composition and key challenges for governments applying behavioural insights. The chapter also discusses new frontiers for the practice of behavioural insights, which includes embedding the tool throughout the regulatory policy cycle and applying behavioural insights to changing organisational behaviour.

Within the context of public sector efficiency and demands from citizens for effective, easy-to-access and responsive public services, behavioural insights (BI) has steadily risen as an effective tool to improve policy outcomes. (OECD, 2017[1]) demonstrates that BI is no longer a fad and has become increasingly entrenched in the work of governments around the world.

OECD research shows strong support for behavioural insights amongst senior leadership in governments who see the tool as means for supporting better regulatory design and delivery, as well as broader reform agendas. Leadership support includes elected officials, agency heads and senior management that often pair their support for BI with a commitment to set up institutional capacity to apply behavioural insights in government.

This institutional support has resulted in a variety of structures used by governments, often combining different models or evolving the mix of structures over time. Establishing a unit or capacity in the Centre of Government is one way governments have institutionalised behavioural insights. Other models for applying behavioural insights have been used and co-exist in countries across the world. This includes specialised units established in departments or agencies, as well as project-based applications where BI is used for specific projects and initiatives. Equally important are the partnerships between government institutions and specialised institutions outside government. These institutions have supported specialised teams and units inside government and in some instances provided the knowledge and expertise to identify behavioural issues, design and conduct experiments, and pinpoint behaviourally-informed solutions for policy-makers.

The ethical application of behavioural insights remains an important topic amongst the behavioural community of government officials, academic practitioners, and private sector advisors. The use of academic partners who work in institutions with established codes of ethics and the use of existing ethic codes within the public sector (which are not necessarily adapted to experimental approaches) have so far helped address possible ethical concerns. Nonetheless, the behavioural community has identified the need to establish a code of ethics for behavioural practitioners that promotes the responsible application of behavioural tools and adheres those working in the field to certain standards when designing and running experiments in a public sector context, and reporting on experiments by governments.

The next frontier for behavioural practitioners and policymakers is to expand the use of the tool to have broader and deeper effects on policy. Behavioural insights have mostly been applied at the late-design and implementation phases of the policy cycle to changing individual behaviour. The use of behavioural insights can be expanded by embedding it throughout the regulatory policy cycle to have wider effects as a tool for obtaining and using evidence in the *ex ante* (RIA) and *ex post* phases of the policy cycle.

Behavioural insights can also be leveraged to change the behaviour of organisations, such as institutions, regulators and regulated entities. Organisations are made of individuals and there are transferrable behavioural insights that can be applied to influencing organisational behaviour, such as in promoting a culture of compliance in business, citizens and regulated companies, from tax or administrative procedures or occupational health and safety. Organisational issues are also at the heart of more complex policy problems, such as inclusive green growth, sustainable development and promoting lifestyles that support a more sustainable use of resources from energy to transport services to food consumption. Discovering how behaviourally-informed policies can effectively change the behaviour of organisations has the potential for large impacts.

Introduction

What is "behavioural insights" and how is it used in practice?

Behavioural insights are lessons derived from the behavioural and social sciences, including decision making, psychology, cognitive science, neuroscience, organisational and group behaviour. These insights are being applied at an increasing pace by public bodies around the world with the aim of making public policies work better (OECD, 2017[1]).

Behavioural insights takes an inductive approach to policy-making that is driven by experimentation and piloting, which challenges established assumptions of what is thought to be rational behaviour of citizens and businesses. This methodology informs decision makers with evidence of what are the "actual" behaviours driving economic or societal outcomes. This enables policy makers to develop innovative approaches to designing and implementing policies, while not substituting their role or competence to make decisions. Likewise, through experimentation and trialling, behavioural insights offer a cost-effective way of testing multiple policy responses at once on a smaller scale to determine the best course of action. This limits the risk of committing resources to the full implementation of a given policy solution, which may have to be revisited at a later date. Box 6.1 provides some examples of BI in practice.

The OECD has been at the forefront of researching and analysing the practical solutions offered by BI that has given rise to its importance as a tool to improve policy making. (OECD, 2017[1])[1] demonstrates that behavioural insights has become entrenched in the daily activities of government through a survey of 60 "nudge units" around the world and a collection of over 100 case studies on the application of behavioural insights to public policy across 11 policy domains. Research by (Sunstein, Reisch and Rauber, 2017[2]) further supports these findings, estimating that over 150 governments make use of "nudges" to influence consumer behavior and consumer choices. This is in addition to the research institutions outside government testing behavioural solutions to problems that could one day be used by policy makers.

Box 6.1. Behavioural insights and regulatory policy

Italy: Improving energy efficiency with better consumption data

The Italian energy, water and waste regulator (ARERA) conducted experiments to discover how individuals react to different types of feedback on their energy use. They found that continuous feedback was extremely useful, and that feedback should show energy consumption in terms of financial cost and not a scientific measure (e.g. British Thermal Units, or BTUs). Furthermore, highlighting the costs of inefficient use was also helpful. As a result, ARERA changed the design of energy bills to display consumption data more simply and clearly.

Costa Rica: Reducing water consumption

Belén, Costa Rica tested the effects of social norms as well as plan-making as motivations to reduce water consumption in nearly 6 000 homes. Results showed that residents who were shown a comparison of their consumption against their neighbourhood and prompted to make a plan to reduce consumption reduced their water consumption by 4% to 5%. If extended city wide, this would translate to the equivalent of 188 000 showers saved per month.

United Kingdom: Maximising survey response rates

Surveying businesses for data is an important element of evidence-driven regulatory policy. In the United Kingdom, the Department for Business, Energy & Industry Strategy (BEIS) sought out to improve the low response rate for a survey evaluating the impacts of the Growth Vouchers programme for small businesses. Testing four different messages with 7 000 small businesses, BEIS was able to discover that behaviourally-informed messages increased the survey response rate by five percentage points over the standard message.

Source: (OECD, 2017[1]), *Behavioural Insights and Public Policy: Lessons from Around the World*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264270480-en.

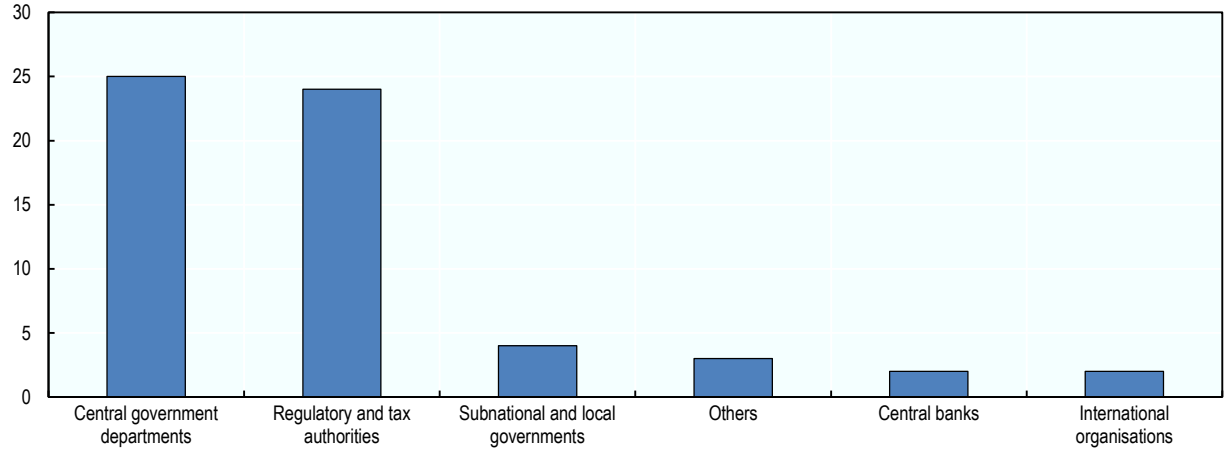
Past OECD work complements these findings by mapping the application of behavioural insights to regulatory policy (Lunn, 2014[3]) and applying that knowledge to helping the Colombian Communications Regulator (CRC) overhaul their consumer protection regime (Box 6.3). More broadly, OECD work has highlighted the importance of behavioural insights to specific policy fields. Work has been completed on topics related to public sector integrity (OECD, 2018[4]), environment (OECD, 2017[5]; Shogren, 2012[6]; Brown et al., 2012[7]; Brown, Alvarez and Johnstone, 2015[8]; Vringer et al., 2015[9]), firm behaviour (Armstrong and Huck, 2010[10]), anti-trust (Stucke, 2012[11]), consumer protection (OECD, 2010[12]); 2012b), tax systems (Tapia and Yermo, 2007[13]), financial education programmes (OECD, 2013[14]), and obesity (OECD, 2010[15]). Forthcoming work will explore frontier-thinking and experimental applications on issues related to sustainable energy use, cartel behaviour, organisational safety culture, and online disclosures. Outside the OECD, the *World Development Report* (World Bank, 2015[16]) and European Commission *Behavioural Insights Applied to Policy* (Sousa Lourenço et al., 2016[17]) have also addressed the use of the behavioural approach to policy making.

How are countries using behavioural insights?

Institutional arrangements

OECD 2017a shows that the majority of current users of behavioural insights are central government departments and regulatory and tax authorities, roughly evenly split between the two (Figure 6.1). Government departments include a wide variety of policy fields, including health and social affairs to finance and economy. Regulators were strongly focused in the financial sector, but also included telecommunication, energy, and competition authorities.

Figure 6.1. Which institutions responded the OECD Behavioural Insights survey?



Notes: Others include government programmes or bodies set up with a highly specialised purpose. Sixty institutions responded to the survey.
Source: OECD 2016 Behavioural Insights Case Study Dataset.

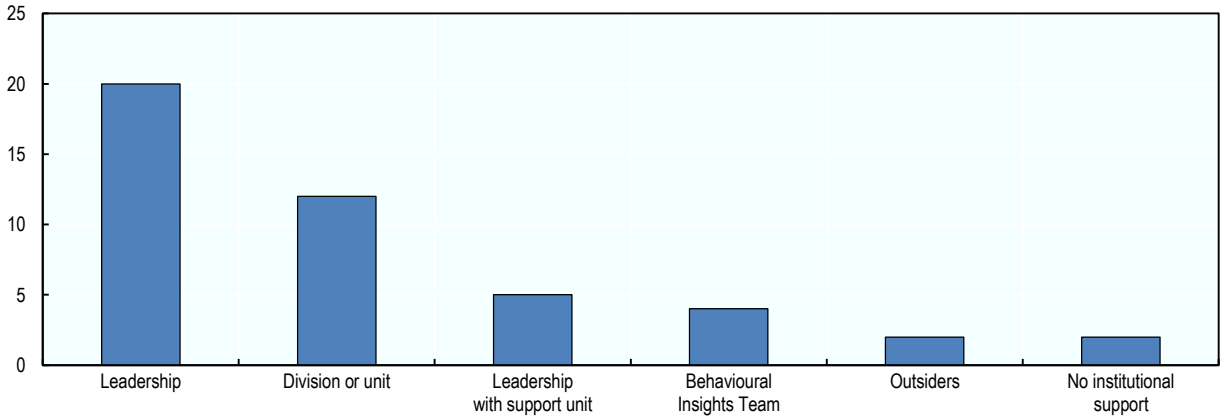
StatLink https://doi.org/10.1787/888933815319

Central government departments are largely represented by "nudge" units, such as the Behavioural Insights Team (BIT) in the United Kingdom (originally created as part of the UK Cabinet Office and currently a social purpose company jointly owned by the UK Cabinet Office, the innovation foundation Nesta and BIT employees), the former Social and Behavioural Sciences Team in the United States (created by executive order 13707 and placed under the National Science and Technology Council), and the Behavioural Economics Team of the Australian Government (BETA, housed inside the Prime Minister's Office). Central government departments at the sub-national level also contributed, such as from the Western Cape Government Office of the Premier and Mayor's Offices in both the City of Philadelphia and the City of Boston.

The survey also demonstrates the drive from high-level leadership to use behavioural insights to improve policy making (Figure 6.2). This is often with the support of partnerships with academic or non-profit institutions that can lend capacity and capabilities within the government, such as with ideas42 (a non-profit, United States), Behavioural Insights in Action at Rotman (BEAR, University of Toronto), the Behavioural Insights Group (BIG) at Harvard University, iNudgeyou in Denmark and the PRICE Lab of the Economic and Social Research Institute (ESRI) in Ireland. In 20 institutions, this support can come from agency heads and senior management or

directly from ministers. BI applications can also be driven by units or divisions within the institution, often dedicated to economic analysis and statistics (12 institutions), or a combination of leadership's commitment paired with some push from a unit or division. For four institutions, applications have been driven by a dedicated BI or innovation unit. Where there has been no leadership or particularly strong institutional support (four institutions), applications have been driven by individual initiatives or some external support (usually in the form of external funding).

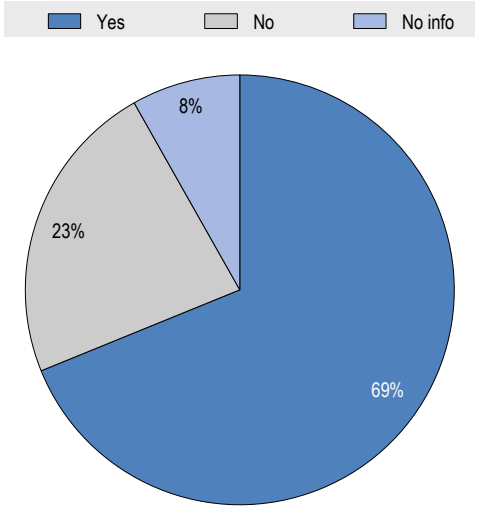
Figure 6.2. Who have been the main institutional supporters of the use of behavioural insights?



Notes: Out of 44 institutions which are applying behavioural insights and responded to the question; no response for 6 institutions; 9 institutions declared that they are not yet applying behavioural insights. Sixty institutions in total responded to the survey.
Source: OECD 2016 Behavioural Insights Case Study Survey Dataset.

StatLink https://doi.org/10.1787/888933815338

Figure 6.3. Is the application of BI related to any other organisational priority, changes, reform, or agenda?



Note: Sixty institutions in total responded to the survey.
Source: OECD 2016 Behavioural Insights Case Study Survey Dataset.

StatLink https://doi.org/10.1787/888933815357

In the majority of organisations, BI application was part of a wider organisational reform (Figure 6.3), especially in the current context whereby governments have fewer resources and citizens demand greater attention to their own needs and expectations. Government policy and regulation based solely on the traditional model of a "rational" actor needed to be enhanced to include missing behavioural biases that lead individuals to make decisions that deviate from those predicted by traditional assumptions.

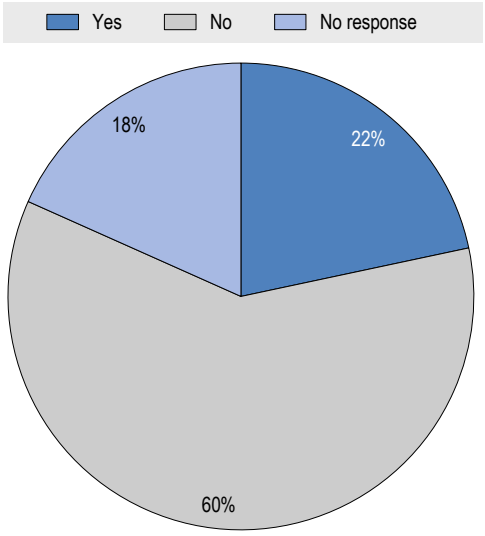
The survey also confirmed that countries have been experimenting with different institutional models to apply BI. Across the case study collection, three institutional models seem to emerge:

- ***Central steering model***: specialised units usually within the Centre of Government (for example, chancellery, president's office, prime minister's or cabinet office) focusing fully or in part on applying, supporting and advocating the use of BI across government; functions that are usually paired with BI are strategic foresight and planning and fostering innovation across the public sector.
- ***Specialised model***: existing units within a department or specialised agency at the central government or local government level applying BI.
- ***Project model***: BI are used for specific projects and initiatives through specialised teams

These models are not mutually exclusive. They co-exist, evolve over time and develop patterns of co-ordination (both formal and informal) between the different models. For example, the United Kingdom appears to have evolved from a central steering model established with BIT in Cabinet Office in 2010, to a more diffuse model when BIT was moved partly outside of government and providing support to government departments and agencies that have their own BI units or specialised teams. Australia has moved in the opposite direction, starting with diffuse teams in various departments and agencies to a diffuse-plus-central-steering model when different departments came together to resource the BETA unit in the Department of the Prime Minister. Other models include Canada, which has central, diffuse and project models at both the federal and provincial levels, as well as Singapore who has a network of practitioners who support and co-ordinate activities or Germany and the European Commission where behavioural insights is part of strategic foresight within the Chancellery and the Commission's Joint Research Centre, respectively.

The effects of 'mainstreaming' behavioural insights became clear as well through the data. While there were anecdotal stories of some original scepticism and opposition to BI in the early days of units applying it to policy, the survey shows that the majority of respondents identify no opposition or criticism, leaving only a small resistance to applying BI (Figure 6.4). When asked about the types of opposition or criticism received, 8 of 11 responses identified internal resistance to change or concerns about the effectiveness of the tool and its ability to address complex problems. Only two cases reported external opposition and criticism from media and concerned stakeholders. This may suggest an organisational environment ready for mainstreaming the use of behavioural insights, and has likely helped in the swift rise of BI applications around the world.

Figure 6.4. Has there been any opposition/criticism about the application of behavioural insights?



Note: Sixty institutions in total responded to the survey.
Source: OECD 2016 Behavioural Insights Case Study Survey Dataset.

StatLink https://doi.org/10.1787/888933815376

Ethical issues

Early criticisms of the behavioural insights methodology focused on the ethics of government using psychology and small-trial testing on its population. Critiques have questioned the legitimacy of governments deciding what is best for its citizens, as well as the issue of providing a possible benefit to a small group of people during trial testing (or a possible negative experience, if the trial is unsuccessful).

Surprisingly, ethical issues were not highlighted as a concern for survey respondents. Of the 60 respondents to the question "Did ethical issues arise?" when applying behavioural insights, 62% of respondents answered "no" while only 11% answered "yes". A further 27% provided no response. This positive response may be due to a variety of factors. Having senior leadership and political support helps provide legitimacy to the application of BI. As part of gaining this support, government officials might have already addressed a number of these ethical issues to anticipate negative reactions and ensure no ethical issues arise. Ensuring that ethical standards are followed may have been accomplished by relying on the broader ethical frameworks in place in public bodies and in the research institutions working with government. Alternatively, some institutions developed specific mechanisms and guidelines to address future ethical concerns. Nevertheless, ensuring appropriate frameworks are in place is still an important issues (Box 6.2).

Box 6.2. OECD work on responsibility framework for BI

In May 2017, the OECD hosted more than 150 behavioural practitioners from government, academia, private sector and international organisations to discuss how behavioural science can be expanded to new frontiers and major policy agendas – such as delivering on the COP 21 agreements, Sustainable Development Goals, and inclusive green growth – and to ensure that the science is applied responsibly.

The meeting discussed the need for a "responsibility framework" of ethics for policymakers, behavioural scientists and the private sector. Attendees agreed that behavioural practitioners need to understand and adhere to certain standards when identifying behavioural issues and possible applications, as well as when making recommendations or decisions, and to ensure that conclusions derived from experiments are clearly presented and based on a variety of behavioural approaches.

The community embraced ideas for developing guidelines or structures that could be put in place to help keep actors "nudging for good," as 2017 Nobel Laureate Richard Thaler commonly remarks. The OECD is supporting this effort by developing a set of ethical guidelines and toolkit for behavioural practitioners.

Source: (OECD, 2017[18]), "Behavioural Insights in Public Policy: Key Messages and Summary from OECD International Events, May 2017", OECD, Paris, www.oecd.org/governance/regulatory-policy/OECD-events-behavioural-insights-summary-may-2017.pdf.

Designing and delivering better regulatory policy

Initial work by the OECD has focused on how governments can use the power of behavioural insights more often in the policy-making process to design and deliver interventions that more effectively hit the intended target (Box 6.4). In regards to regulatory design, (Lunn, 2014[3]) finds that behavioural insights can be used to design better regulations in four ways:

1. ***Simplifying information***: Designing regulations either to simplify the presentation of information or otherwise limit the number or complexity of options within the available choice-set, based on the assumption that such simplification will promote better decision making.
2. ***Setting defaults and promoting convenience***: Decision makers are drawn towards default options. Regulatory policy has the power to determine defaults, thus having potentially large effects on decisions.
3. ***Increasing salience and attention***: Decision makers can only consider a limited number of options at a time. Therefore, designing regulations to highlight, or make salient, certain information or options can impact decision making.
4. ***Debiasing and improving decision quality***: Biases inherent in all decision makers can lead to suboptimal decisions, even if the information is simply displayed and salient. Designing regulations to counteract these biases can similarly improve decision making.

Box 6.3. Protecting Consumers through Behavioural Insights: Regulating the Communications Market in Colombia

In 2016, the OECD worked with the Colombian Communications Regulatory Commission (*Comisión de Regulación de Comunicaciones*, CRC) to help them strengthen the consumer protection regime in the Colombian communications market. The CRC worked with the School of Psychology at the Konrad Lorenz University Foundation to conduct 25 consumer psychology exercises between 2013 and 2014 across 17 regions in Colombia in four cities (Bogotá, Medellín, Barranquilla, and Cali).

The OECD assembled a team of international experts to examine the data and provide recommendations for improving consumer decision making and welfare. The report (OECD, 2016[19]) recommends using a mix of behaviourally-informed regulation and non-regulatory tools to shape incentives in four areas" information provision, customer service, managing consumer consumption and bundled services.

The CRC took the recommendations and conducted further qualitative and quantitative research and experiments on various policy designs with users of mobile telephone, fixed telephone, and TV services in the same four cities. (OECD, 2017[20]) provides full details of these experiments, which include qualitative surveys with 53 people via in-depth interviews, 2 mini-group sessions, and 21 eye-tracking sessions to see users visual path through bills, as well as 11 104 quantitative exercises and 100 responses to a survey.

These experiments resulted in a new behaviourally-informed consumer protection regime, which came into force on 1 September 2017.

Source: (OECD, 2016[19]), *Protecting Consumers through Behavioural Insights: Regulating the Communications Market in Colombia*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255463-en; (OECD, 2017[20]), *Impact Update: What Happened Next? Protecting Consumer Through Behavioural Insights: Regulating the Communications market in Colombia*, OECD, www.oecd.org/gov/regulatory-policy/colombia-update-what-happened-next.htm.

As discussed in Chapter 3, regulatory delivery through enforcement and inspection remain the weakest link the in regulatory policy cycle. For regulations to be effective, good design needs to be met with proper enforcement to ensure the regulation achieves its intended goals. BI provides governments and regulators with important new approaches for regulatory delivery, namely that compliance can be improved without necessarily needing to resort to traditional enforcement methods (Box 6.4).

Compliance can be improved by understanding behavioural drivers as well. Behavioural insight has shown that individuals may not comply when they perceive others are doing the same, even when it is against their own financial interests. Similarly, they are generally willing to incur costs for the greater good if they believe others are as well (Lunn, 2014[3]). The psychology of procedural justice has also shown that compliance can be affected by perceptions of process fairness – that is, feeling as though you have been treated fairly creates a sense of inclusion and improves willingness to comply (Lind and Arndt, 2018[21]). As a result, improving the way governments engage with individuals and regulated entities to address biases that drive non-compliance can often improve compliance without needing further enforcement techniques, for instance by promoting more inclusive policy making or demonstrating that most people comply with the

requirements. Evidence of the success of these methods can be found in regards to tax collection, mandatory reporting compliance, and the uptake of government programmes (OECD, 2017[1]).

Box 6.4. Improving regulatory delivery with behavioural insights

Denmark: Securing up-to-date business data

Danish businesses have an obligation to register basic company data and keep it up to date with the Danish Business Register. The Danish Business Authority tested a pop-up that prompted businesses to accept or change their information when they logged into the online portal. Nearly 42% chose the change option, though the researchers found that the process of changing the information afterwards needed further streamlining to be effective.

Singapore: Encouraging on-time payment of levies

The Ministry of Manpower (MOM) requires Foreign Domestic Worker employers to pay a levy, which 96% pay on time. For the remaining 8 000, MOM tested behaviourally-informed changes to the reminder letter to increase the number of business that pay on time. They found that those sent the letters were 5 percentage points more likely to make a full payment and 3 percentage points more likely to make a partial payment, relative to the control groups. MOM estimates that this would result in an annual increase of 3 800 employers making prompt levy payments of about SGD 1.5 million if fully implemented.

Ireland: Increasing compliance amongst SMEs

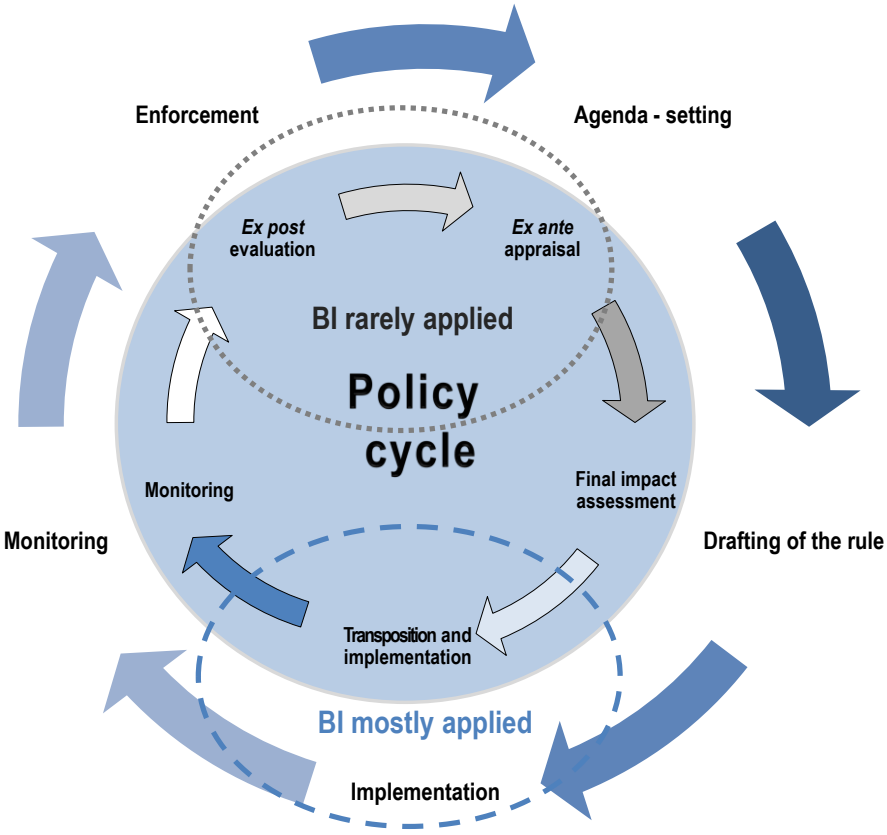
SMEs represent 99.8% of active enterprises in Ireland. Given their economic importance, the Office of the Revenue Commissioners conducted a survey to quantify the issues facing SMEs to improve satisfaction with services, decrease burdens, and improve compliance. Irish Revenue ran a RCT to test the effect of a personalised note on the survey response rate. They found that those receiving the treatment were more than 16 percentage points more likely to respond, relative to the control and nearly double as likely within the first 15 days.

Source: (OECD, 2017[1]), *Behavioural Insights and Public Policy: Lessons from Around the World*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264270480-en.

Looking to the future: What is in store for behavioural insights?

New frontiers exist to expand the use of behavioural insights throughout the policy cycle. So far, evidence shows that behavioural insights appear to be used primarily at a relatively late stage in the policy process, mostly to fine-tune and improve implementation and compliance when a regulation is already in place (Figure 6.5). This is often to fill an implementation gap that is in part created by failing to properly consider implementation challenges in the design and early stages of development of policies and regulation (OECD, 2015[22]).

Figure 6.5. Use of behavioural insights by policy stage



Source: (OECD, 2017[1]), *Behavioural Insights and Public Policy: Lessons from Around the World*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264270480-en.

More can be done to integrate lessons from behavioural insights and digital technology into the *ex ante* appraisal and *ex post* evaluation stages of regulatory policy making. Behavioural insights can help better define the problem at stake and identify the behavioural barriers that can potentially undermine the effectiveness of the policy solutions under consideration from a user perspective. It can provide a powerful tool for collecting data through testing and experiments to understand what works, and what does not, from a user perspective when evaluating implementation.

To a certain degree, the collection of case studies already demonstrates that governments are beginning down this path. A number of case studies reveal that a policy or its implementation has not reached its intended original objectives, and used behavioural insights to evaluate what behavioural barriers may be driving the issue. For example, the European Commission has utilised online lab experiments to test variations of energy labels across multiple EU member states to identify the most effective format. While lab experiments have their limitations, this format allowed the testing of the same policy initiatives across different geographical contexts, and results of which were reflected in the updated regulation (OECD, 2017[1]; OECD, 2017[5])

An important step can also be taken to leverage the use of behavioural insights to diagnose policy problems. Here, data can be generated and used to discover which, if any, behavioural barriers are driving decision making and undermining the effective implementation of policies and regulations, and the achievement of intended policy objectives. If behavioural barriers are present, policy design can incorporate those lessons before deciding on which outcomes are best pursued.

Equally important can be the use of behavioural insights to support *better informed* stakeholder engagement. Surveys and focus groups can provide a broad overview of users' trends and some ideas on preferences. However, they can be fraught with biases originated by, for example, the framing of the questions, their sequencing and the words chosen. Experiments that controls for these biases can provide a better sense of the preferences of users when taking regulatory decisions (OECD, 2016[19]; OECD, 2017[20]; Lunn and Bohacek, 2017[23]).

A new frontier is also looking into the application of BI to changing the behaviour of organisations. The 2017 case studies collection show that behavioural insights have been mostly applied to changing the choice architecture of the individual. However, many policy issues deal with problems of organisational behaviour, such as with institutions, regulators and regulated entities. Incentives in organisational settings are different than individual choice settings, since the interaction between achieving both personal and organisational goals can result in a conflicting set of incentives. For instance, a worker may not report a safety violation required in regulations for fear of punishment or being seen as complaining about a colleague.

Changing organisational behaviour might imply "nudging" organisations through the people within. (OECD, 2017[1]) contains a few examples of nudging organisations, such as Public Health England using behaviourally-informed letters to doctors in 790 practices informing them that they were overprescribing anti-biotics compared to their peers. As a result, 73 406 fewer doses of antibiotics were prescribe over the six month trial. In this case, common individual-level nudges have been employed successfully to a group thus affecting the behaviour of the organisation on a particular service provided by that group.

Moving from the individual, there could be also opportunities to better understand the organisational incentives, leadership behaviour and key decision points that inform the behaviour of the individuals within an organisation. This has the potential for significant effects for regulatory policy, since many policy issues involve providing rules and incentives for organisations to make choices that provide benefits and prevent harms. Assessments of regulatory environments have found that systematic failures to follow regulations in place led significantly to negative consequences. Therefore, discovering effective behaviourally-informed solutions to issues of organisational behaviour can improve the effectiveness of regulatory policy and contribute significantly to preventing these sorts of events from occurring again.

Note

[1] This report presents the results of a global survey of government institutions applying behavioural insights to public policy. In total, the survey received responses from 60 institutions from 23 countries, the UNDP, and the World Bank. The survey also collected details on 159 case studies on the application of behavioural insights to policy. Over 100 cases were chosen for write up and inclusion in the report, based on the quality of information provided. The data provides a comprehensive overview of the institutional arrangements and key challenges facing government applying behavioural insights to public policy.

References

Armstrong, M. and S. Huck (2010), "Behavioral Economics as Applied to Firms: A Primer", *Competition Policy International*, Vol. 6/1, http://else.econ.ucl.ac.uk/papers/uploaded/359.pdf. [10]

Brown, Z., B. Alvarez and N. Johnstone (2015), "Tender instruments: programme participation and impact in australian conservation tenders, grants and volunteer organisations", *OECD Environment Working Papers*, No. 85, OECD Publishing, Paris, http://dx.doi.org/10.1787/5js4k0t30hvc-en. [8]

Brown, Z. et al. (2012), "Testing the Effect of Defaults on the Thermostat Settings of OECD Employees", *OECD Environment Working Papers*, No. 51, OECD Publishing, Paris, http://dx.doi.org/10.1787/5k8xdh41r8jd-en. [7]

Lind, E. and C. Arndt (2018), "Creating Trusted Regulatory Policy", *The Regulatory Review*, https://www.theregreview.org/2018/01/18/lind-arndt-trusted-regulatory-policy/. [21]

Lunn, P. (2014), *Regulatory Policy and Behavioural Economics*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264207851-en. [3]

Lunn, P. and M. Bohacek (2017), "Price transparency in residential electricity: Experiments for regulatory policy", *Journal of Behavioral Economics for Policy*, Vol. 1/2, https://ideas.repec.org/a/beh/jbepv1/v1y2017i2p31-37.html, pp. 31-37. [23]

OECD (2018), *Behavioural Insights for Public Integrity: Harnessing the Human Factor to Counter Corruption*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264297067-en. [4]

OECD (2017), *Behavioural Insights and Public Policy: Lessons from Around the World*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264270480-en. [1]

OECD (2017), *Behavioural Insights in Public Policy: Key Messages and Summary from OECD International Events, May 2017*, OECD, Paris, http://www.oecd.org/governance/regulatory-policy/OECD-events-behavioural-insights-summary-may-2017.pdf. [18]

OECD (2017), *Impact Update: What Happened Next? Protecting Consumer Through Behavioural Insights: Regulating the Communications market in Colombia*, OECD, Paris, http://www.oecd.org/gov/regulatory-policy/colombia-update-what-happened-next.htm (accessed on 11 June 2018). [20]

OECD (2017), *Tackling Environmental Problems with the Help of Behavioural Insights*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264273887-en. [5]

OECD (2016), *Protecting Consumers through Behavioural Insights: Regulating the Communications Market in Colombia*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255463-en. [19]

OECD (2015), "Behavioural insights and new approaches to policy design: The views from the field", *OECD Seminar Summary*, http://www.oecd.org/gov/behavioural-insights-summary-report-2015.pdf. [22]

OECD (2013), "Improving financial education effectiveness through behavioural economics: OECD Key fIndIngs and way forward", https://www.oecd.org/daf/fin/financial-education/TrustFund2013_OECDImproving_Fin_Ed_effectiveness_through_Behavioural_Economics.pdf. [14]

OECD (2010), *Consumer Policy Toolkit*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264079663-en. [12]

OECD (2010), *Obesity and the Economics of Prevention: Fit not Fat*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264084865-en. [15]

Shogren, J. (2012), "Behavioural Economics and Environmental Incentives", *OECD Environment Working Papers*, No. 49, OECD Publishing, Paris, http://dx.doi.org/10.1787/5k8zwbhqs1xn-en. [6]

Sousa Lourenço, J. et al. (2016), *Behavioural insights applied to policy : European report 2016.*, European Commission, Joint Research Centre, EUR 27726 EN, https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/behavioural-insights-applied-policy-european-report-2016. [17]

Stucke, M. (2012), "The Implications of Behavioral Antitrust", *SSRN Electronic Journal*, http://dx.doi.org/10.2139/ssrn.2109713. [11]

Sunstein, C., L. Reisch and J. Rauber (2017), "Behavioral Insights All Over the World? Public Attitudes Toward Nudging in a Multi-Country Study", *SSRN Electronic Journal* , http://dx.doi.org/10.2139/ssrn.2921217. [2]

Tapia, W. and J. Yermo (2007), "Implications of Behavioural Economics for Mandatory Individual Account Pension Systems", *OECD Working Papers on Insurance and Private Pensions*, No. 11, OECD Publishing, Paris, http://dx.doi.org/10.1787/103002825851. [13]

Vringer, K. et al. (2015), "Sustainable consumption dilemmas", *OECD Environment Working Papers*, No. 84, OECD Publishing, Paris, http://dx.doi.org/10.1787/5js4k112t738-en. [9]

World Bank (2015), *Mind, Society, and Behavior: World Development Report 2015*, World Bank, Washington, DC, http://www.worldbank.org/en/publication/wdr2015. [16]

Chapter 7. Country profiles

This chapter provides a two-page profile for all OECD member and accession countries and the European Union. These profiles systematically offer an overview of regulatory practices with key achievements and areas for improvement. It features the situation of the country against the composite indicators for stakeholder engagement, Regulatory Impact Assessment and ex post *evaluation and shows changes in scores compared to 2015. The profiles also include a box that elaborates on the institutional setup for regulatory oversight in each country.*

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 and recent developments

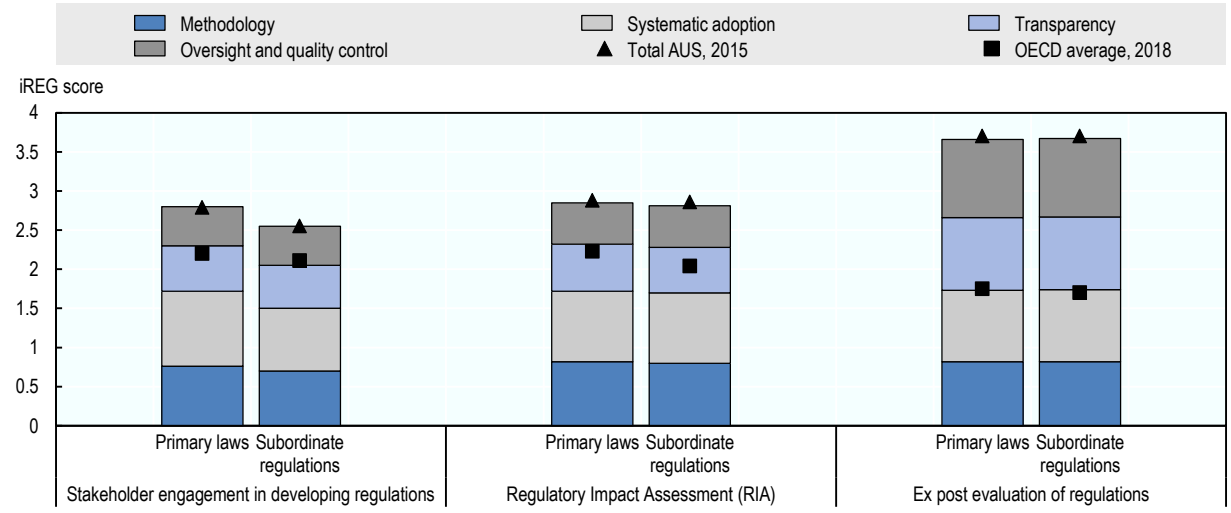
Australia recently released its Annual Regulatory Reform Report: 1 January 2016 – 30 June 2017 which detailed a reduction in net compliance costs of AUD 1.1 billion per year, contributing to a total reduction of AUD 5.9 billion since the introduction of the Deregulation Agenda in 2013. Australia also adopted a Regulator Performance Framework in 2014 under which Federal regulators and departments assess their performance against six key performance indicators. These relate to: reducing regulatory burdens; communication with regulated entities; regulators' actions are proportionate and risk-based; compliance and monitoring procedures are streamlined; regulators are transparent in their actions; and regulators undertake continuous improvement.

Australia continues to have sound regulatory management practices in place, and is working to improve methods that focus on stakeholder engagement and *ex ante* or *ex post* evaluation practices. Australia has permitted regulators more flexibility to offset increased compliance costs for businesses resulting from new regulations. Previously, compliance cost savings needed to be identified with each new regulatory proposal. Australia would benefit from an increased focus on stakeholder engagement prior to a regulatory decision having been made, especially with regards to subordinate regulation.

Institutional setup for regulatory oversight

The **Whole of Government Deregulation Policy team** has been relocated to the Department of Jobs and Small Business following recent government administrative changes. It is responsible for systematic improvement and advocacy across government more generally. The **Office of Best Practice Regulation (OBPR)** at the Department of the Prime Minister and Cabinet reviews the quality of all RIAs and provides advice and guidance during their development. Its final assessment of RIAs is made public on a central register. The OBPR can ask departments to revise RIAs where quality has been deemed inadequate. The **Office of the Parliamentary Counsel** is an independent entity which is responsible for scrutinising the legal quality of regulations. Legal scrutiny is also provided by the **Senate Standing Committee for the Scrutiny of Bills and the Senate Standing Committee on Regulations and Ordinances** for primary laws and subordinate regulations respectively. The **Australian Productivity Commission** is an independent research and advisory body. It has evaluated Australia's regulatory policy system including RIA, regulator performance and *ex post* evaluations. It has undertaken a number of reviews in specific policy areas or sectors such as consumer affairs, the electricity sector, and the labour market.

Indicators of Regulatory Policy and Governance (iREG): Australia, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on RIA for primary laws only cover those initiated by the executive (88% of all primary laws in Australia).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815395

Location of regulatory oversight functions: Australia

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●								
	Stakeholder engagement	●								
	Ex post evaluation	●								
Identifying policy areas where regulation can be made more effective						●				
Systematic improvement of regulatory policy		●				●				
Co-ordination of regulatory policy		●								
Guidance, advice and support		●					●			
Scrutiny of legal quality					●		●			

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Austria

Overview and recent developments

In Austria, RIA has been mandatory for all primary laws and subordinate regulations since 2013. A threshold test introduced in 2015 determines whether a simplified or full RIA has to be conducted for draft regulations. The new threshold limits the requirement for *ex post* evaluations introduced in 2013 to regulations passing the threshold. Assessments of whether underlying policy goals have been achieved, the comparison of actual and predicted impacts, and the identification of costs, benefits and unintended consequences of regulations are part of the standard methodology for *ex post* evaluations.

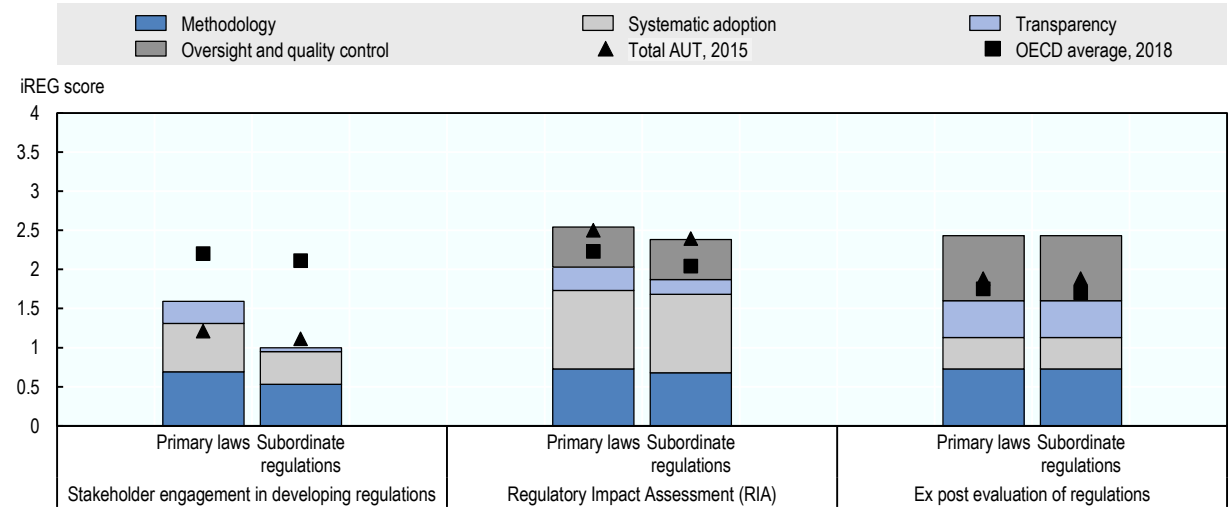
A resolution by the Austrian Parliament has recently triggered an extension of the scope of public consultations on draft primary laws. Since September 2017, all draft primary laws are available on the website of Parliament together with a short description of the legislative project in accessible language, the RIA and other accompanying documents. The public can submit comments on the draft regulation or support comments made by others online. Furthermore, an interactive crowdsourcing platform will be launched in 2018 to provide the public with an opportunity to express their views on planned government reforms prior to important future laws being drafted. This initiative could be a gateway towards establishing a more systematic approach to involving stakeholders earlier in the development of regulations to inform officials about the policy problem and possible solutions. Austria would benefit from extending the scope of public consultations to subordinate regulations, for which no systematic public consultations are conducted.

Institutional setup for regulatory oversight

The **Federal Performance Management Office (FPMO)** at the Federal Ministry for the Civil Service and Sport reviews the quality of all RIAs and *ex post* evaluations and provides advice during their development. The FPMO publishes its opinions on RIAs for primary laws and can ask administrators to revise RIAs if their quality is deemed insufficient. The FPMO also issues guidelines and provides training on RIA and *ex post* evaluation and co-ordinates the use of these tools across government. It also reports annually to Parliament on the implementation of the RIA and *ex post* evaluation system.

The **Ministry of Finance** supports the FPMO's work by reviewing assessments of financial impacts and costs in RIAs and *ex post* evaluations. It is also involved in issuing the guidelines for these tools. The **Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice's Constitutional Service** scrutinises the legal quality of regulation under development and issues formal opinions on legal quality that are published on the website of Parliament.

Indicators of Regulatory Policy and Governance (iREG): Austria, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (78% of all primary laws in Austria).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815414

Location of regulatory oversight functions: Austria

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●	●							
	Stakeholder engagement									
	Ex post evaluation	●	●							
Identifying policy areas where regulation can be made more effective			●							
Systematic improvement of regulatory policy		●	●							
Co-ordination of regulatory policy		●								
Guidance, advice and support		●	●							
Scrutiny of legal quality		●								

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Belgium

Overview and recent developments

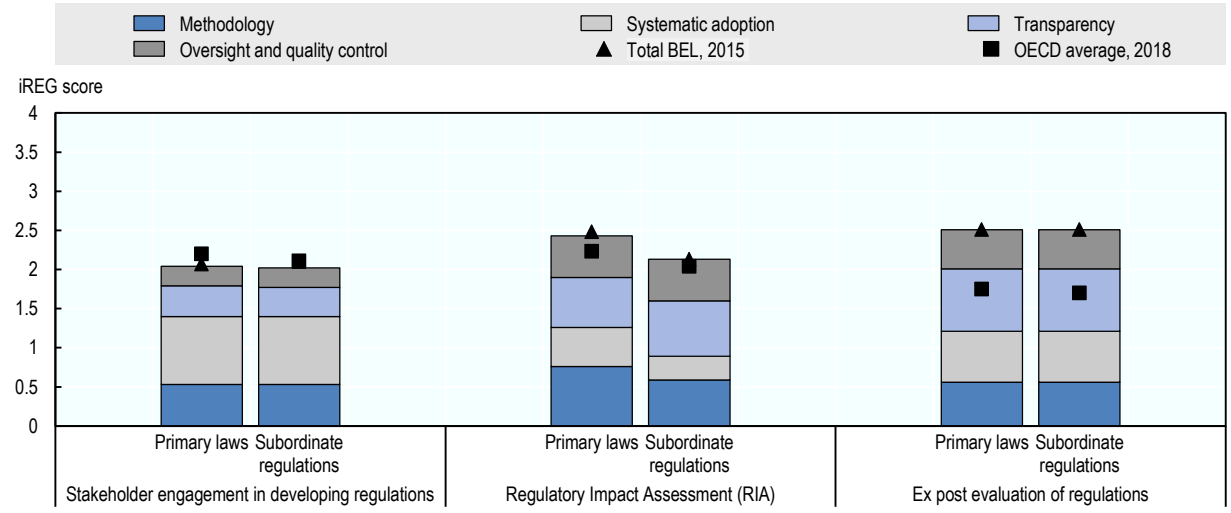
The institutional and policy framework for regulatory quality at the federal level has remained relatively stable since the 2015 Regulatory Policy Outlook. RIA is mandatory for all primary and subordinate legislation submitted to the Cabinet of Ministers at the federal level and is usually shared with social partners as a basis for consultation. Periodic *ex post* review of legislation is mandatory for some legislation and sunsetting clauses are sometimes used. 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 is supported by an Impact Assessment Committee that provides advice on RIA.

Consultation and engagement could be further strengthened. For example, consultation with the general public is not systematic and there is currently no single central government website listing all ongoing consultations. While RIA can be shared with social partners during consultation, it is not released for consultation with the general public. In addition, to further enhance quality checks, the Impact Assessment Committee, which currently reviews RIA only at the request of the proposing ministry, could be also earlier and more systematically involved in the review of RIAs, e.g. by introducing a regulatory agenda listing regulations to be prepared in the following months that identifies which proposals will be reviewed by the Committee. At least high-impact proposals, for instance, could be submitted to the review of the Impact Assessment Committee.

Institutional setup for regulatory oversight

The **Agency for Administrative Simplification (ASA)** within the Prime Minister's Office co-ordinates RIA and steers the implementation of better regulation across the federal government. ASA is supported by an **Impact Assessment Committee (IAC)** that provides advice on RIAs at the request of the responsible ministry and reports annually on the quality of all RIA and the working of the RIA process. The IAC's members are designated by their respective administration and the composition of the board can change without a formal procedure. The **Council of State** also checks the legal quality of draft regulation.

Indicators of Regulatory Policy and Governance (iREG): Belgium, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (79% of all primary laws in Belgium).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815433

Location of regulatory oversight functions: Belgium

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●								
	Stakeholder engagement	●								
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective		●					●			
Systematic improvement of regulatory policy		●								
Co-ordination of regulatory policy										
Guidance, advice and support		●								
Scrutiny of legal quality										●

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Canada

Overview and recent developments

In Canada, the process for developing primary laws (Acts) and subordinate regulations differs significantly. Subordinate regulations typically elaborate on the general principles outlined in Acts, and establish detailed requirements for regulated parties to meet.

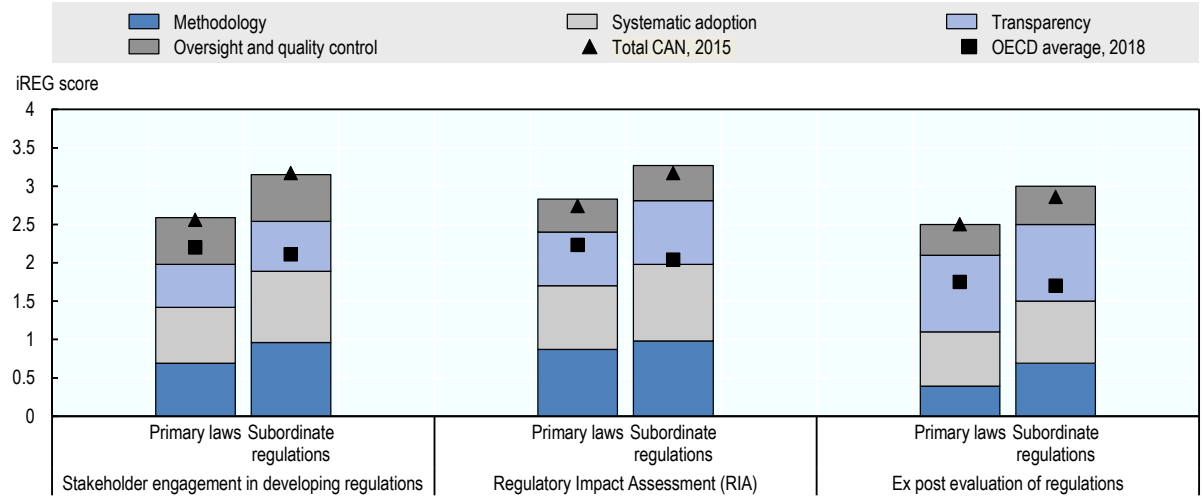
The requirements for developing Acts are outlined in the *Cabinet Directive on Law-making*. Legislative proposals introduced by the government are brought to Cabinet for consideration and ratification, before being drafted and introduced in Parliament. This includes documents relating to the potential impact of the proposal. While Cabinet deliberations and supporting documents are confidential, a legislative proposal is often the end product of broad prior consultation with interested stakeholders.

The *Cabinet Directive on Regulation* (CDR) establishes the requirements for developing subordinate regulations. A RIA is mandatory and made public on a central registry, along with the draft legal text. Open consultation is conducted for all subordinate regulations and regulators must indicate how comments from the public were addressed, unless the proposal is exempted from the standard process. The CDR was adopted in 2018, replacing the previous *Cabinet Directive on Regulatory Management*. The CDR strengthens requirements for departments and agencies to undertake periodic reviews of their regulatory stock to ensure that regulations achieve intended objectives. It also enshrines regulatory co-operation and consultation throughout the regulatory cycle – including engagement with Indigenous peoples – and reinforces requirements for the analysis of environmental and gender-based impacts. Canada could support the CDR and enhance existing oversight by regularly evaluating the quality of the evaluation and consultation practices.

Institutional setup for regulatory oversight

The **Treasury Board of Canada Secretariat (TBS)** oversees subordinate regulations, and provides a review and challenge function to ensure quality RIA, consultation, and regulatory cooperation. TBS supports the **Treasury Board**, a Cabinet committee that considers and approves regulations. The **Community of Federal Regulators** contributes to regulatory development by sharing best practices among the regulatory community. The **Department of Justice** has a statutory obligation to examine all proposed regulations for legality and conformity with drafting standards. The **Standing Joint Committee for the Scrutiny of Regulations** scrutinizes regulations, including legal and drafting issues. For primary laws, the **Privy Council Office** supports Cabinet in its assessment and approval of legislative proposals destined for parliamentary consideration.

Indicators of Regulatory Policy and Governance (iREG): Canada, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (87% of all primary laws in Canada).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815452

Location of regulatory oversight functions: Canada

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●								
	Stakeholder engagement	●								
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective		●			●		●			
Systematic improvement of regulatory policy		●			●					
Co-ordination of regulatory policy		●			●					
Guidance, advice and support		●			●					
Scrutiny of legal quality				●						

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Chile

Overview and recent developments

Chile recently introduced the overarching 2014-18 National Agenda for Productivity, Innovation and Growth which comprises measures for improving regulatory governance and increasing the quality of regulations. Chile also took steps to embed stakeholder engagement and Regulatory Impact Assessment (RIA) into the rule making process.

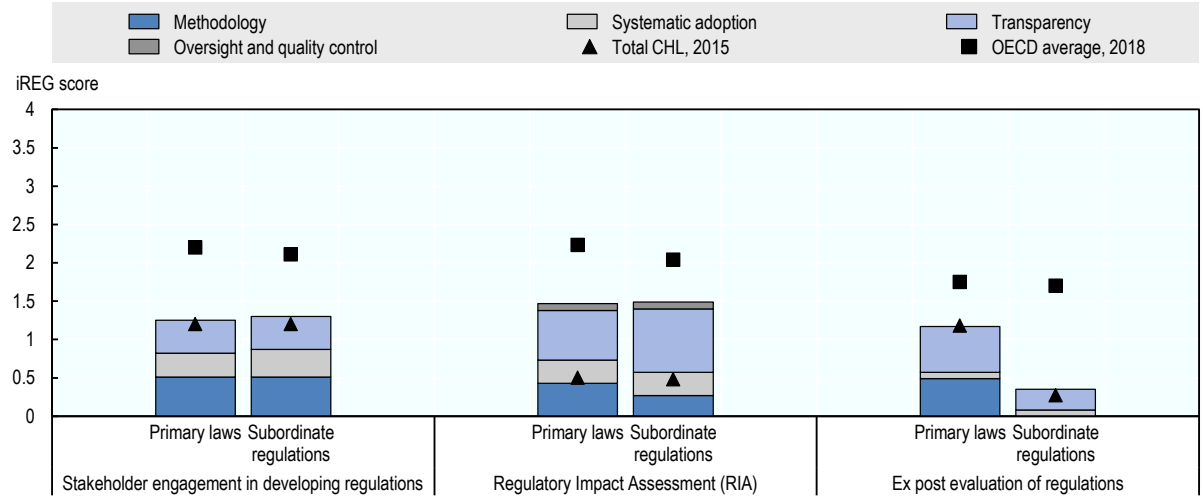
Presidential Instructive No. 2/2016 introduced the obligation to carry out RIA, focusing on productivity, for ministries with portfolios with impact on economic matters. Ministries are obliged to submit a productivity impact assessment to the Ministry of the Presidency (SEGPRES) along draft legislation before introducing it to Congress. In January 2018, the Government introduced a Bill to Congress that would require RIAs for major draft primary laws. At the time of writing, approval of the Bill is pending. Presidential Instructive No. 7/2014 provided voluntary guidelines on consultation mechanisms which were coupled with a webpage (*gobierno abierto*) that serves as a platform to centralise public consultations. Stakeholder engagement is only formally required in the development of certain laws, e.g. concerning indigenous people's rights and certain environmental issues, and securities and insurance for subordinate regulations. Chile could boost regulatory quality by adopting criteria for systematic implementation of consultation practices in the rule-making process more broadly.

Though regulations are not systematically reviewed *ex post*, encouraging initiatives are in place. The Law Evaluation Department of the Chamber of Deputies conducts *ex post* evaluations of selected laws and the National Productivity Commission, when consulted, can advise the government on improvements to the regulatory framework to boost productivity. Chile could benefit from consolidating its current approach via a stronger oversight body in charge of good regulatory practices. This could include strengthening its nascent oversight of RIA and stakeholder engagement, promoting adoption across government and a stronger legal foundation to ensure stability.

Institutional setup for regulatory oversight

Institutional responsibility for regulatory policy is spread amongst several institutions at different stages of the regulatory process. The **SEGPRES** is responsible for legal quality and procedural requirements. The **General Comptroller** and the **Constitutional Court of Chile** are both responsible for providing legal scrutiny of regulations. The **Law Evaluation Department of the Chamber of Deputies** provides *ex post* evaluations of regulations. As part of that role it is also responsible for advocating for changes to the regulatory policy framework.

Indicators of Regulatory Policy and Governance (iREG): Chile, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (85% of all primary laws in Chile).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815490

Location of regulatory oversight functions: Chile

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA									
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective							●			
Systematic improvement of regulatory policy							●			
Co-ordination of regulatory policy		●								
Guidance, advice and support										
Scrutiny of legal quality									●	●

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Colombia

Overview and recent developments

Colombia has gradually embedded the regulatory practices enshrined in the policy document CONPES 3816/2014 and the National Development Plan which set out the regulatory reform agenda. The strategy includes establishing an institutional mechanism to promote regulatory quality, building capacities for RIA, carrying out RIA for subordinate regulation, requiring regulators to consult with stakeholders prior to the issuance of regulation, and reducing administrative burden.

Currently, each Ministry uses their own website to acquire comments from the general public. The consultation mechanisms include consulting with interest groups, having informal sectoral consultations and roundtables at different stages of the regulatory process. Colombia could benefit from consolidating the plans on having a centralised public consultation system (SUCOP) which would aid in systematising the requirement to consult with stakeholders.

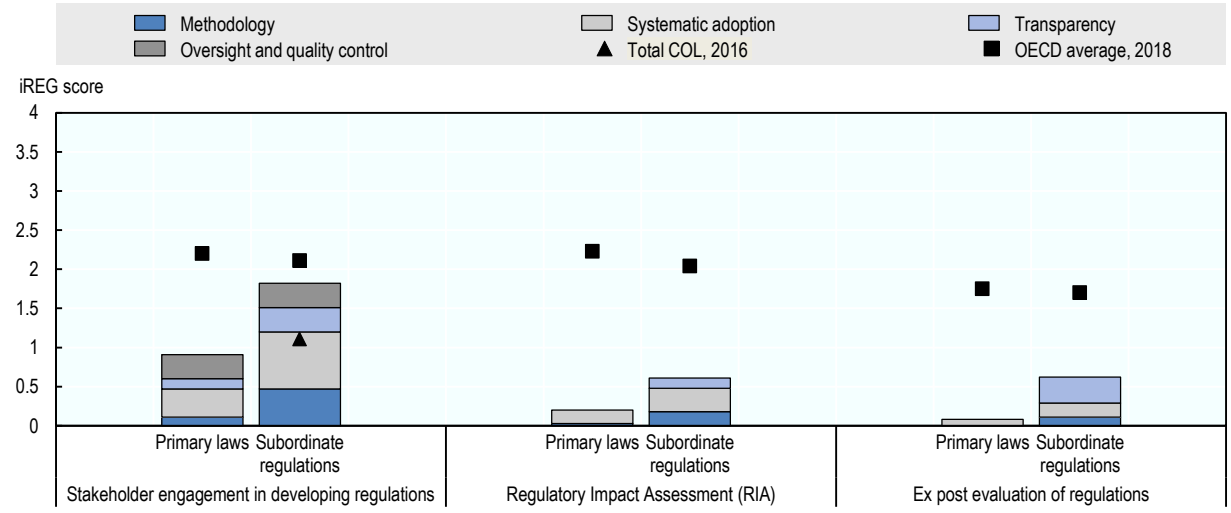
Regarding regulatory impact assessment, the government of Colombia has started its implementation focused on technical regulation with views to expanding it and making it mandatory for subordinate regulation during 2018. *Ex post* evaluation has been gradually implemented by the regulatory agencies in telecommunications, energy and water.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approx. 13% of primary laws in Colombia. There is no requirement in Colombia for conducting RIAs or consultation to inform the development of primary laws initiated by parliament.

Institutional setup for regulatory oversight

The institutional landscape for regulatory policy in Colombia is divided into three oversight institutions: The **National Planning Department (DNP)** is responsible for systematic improvement and advocacy across the government, issuing guidance on regulatory management tools and ensuring co-ordination amongst entities. The mandate of the **Public Function Administrative Department (DAFP)** includes identifying policy areas where there is possibility for reducing red tape. The **Ministry of Trade, Industry and Commerce** is in charge of the National Quality Subsystem that covers the development of technical regulation. It oversees public consultation on technical regulation and, starting in 2018, also *ex ante* evaluations in co-ordination with the guidance of the DNP.

Indicators of Regulatory Policy and Governance (iREG): Colombia, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (13% of all primary laws in Colombia). Data for 2016 are only available for the indicator for stakeholder engagement in developing subordinate regulations.
Source: Indicators of Regulatory Policy and Governance Survey 2017, Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016; http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815509

Location of regulatory oversight functions: Colombia

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA									
	Stakeholder engagement				●					
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective					●					
Systematic improvement of regulatory policy		●			●					
Co-ordination of regulatory policy		●			●					
Guidance, advice and support		●			●					
Scrutiny of legal quality		●								

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Costa Rica

Overview and recent developments

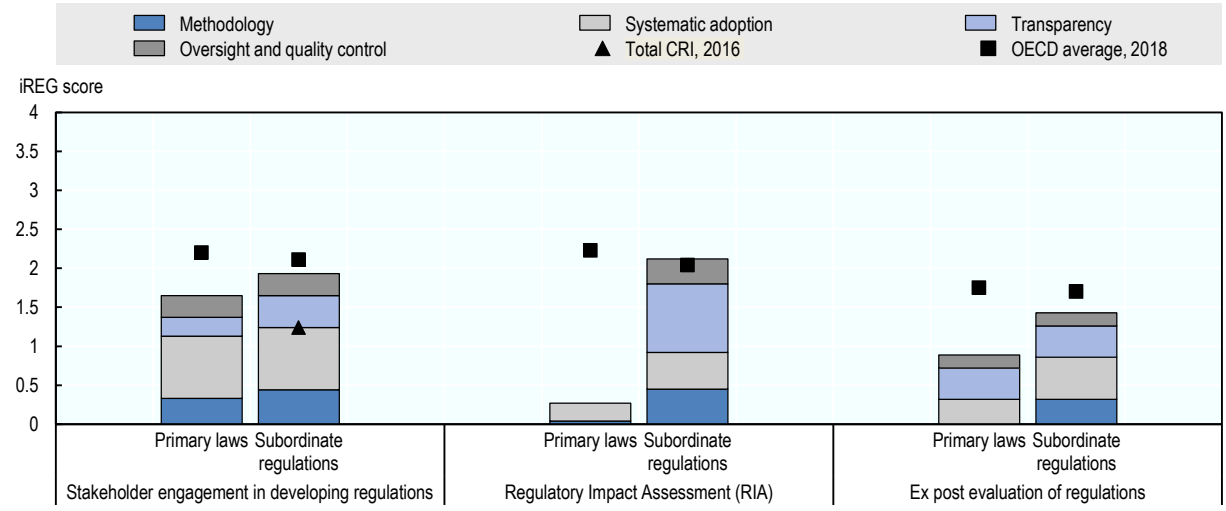
The regulatory policy reform agenda is strongly linked to the National Strategy on Simplification and Better Regulation 2014-2018 (*Estrategia Nacional de Simplificación de Trámites y Mejora Regulatoria*) which chiefly focusses on red tape reduction mechanisms. In this sense, regulatory management tools like stakeholder engagement, RIA and ex *post* evaluation have been established to improve the quality of administrative procedures and reduce red tape. The strategy is tied to the government's efforts to strengthen competitiveness and to foster the functioning of and access to markets. Following a reform of Law 8220 on Protection from the Excess of Requirements and Administrative Procedures in 2016 the Preliminary Control System (SICOPRE) was implemented. The SICOPRE is a centralised webpage (controlprevio.meic.go.cr) that enhances the transparency of RIAs and public consultations by making them publicly available and allowing for comments to which regulators respond. Having set the building blocks, Costa Rica would benefit from broadening the scope of its regulatory policy agenda to go beyond administrative procedures, and communicating with stakeholders on the progress made so far. For example, SICOPRE is a big step forward but could be more user-friendly to engage with a wider range of stakeholders.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approx. 37% of primary laws in Costa Rica. The Legislative Assembly has put in place processes different from those used by the executive by which public consultation is sought and, in the case of some regulation, or by explicit demand of a deputy, they carry out economic and legal impact assessments of law proposals. There is no formal requirement in Costa Rica for conducting RIAs to inform the development of primary laws initiated by parliament**.**

Institutional setup for regulatory oversight

Institutional responsibility for regulatory policy is spread amongst three main units. The central body mandated with promoting the regulatory agenda in Costa Rica is the **Better Regulation Unit**, in charge of overseeing the evaluation of subordinate regulation *ex ante* and *ex post*; and, the **Quality Unit**, mandated with overseeing the process of developing technical regulation. Both are located at the Ministry of Economy, Industry and Trade (MEIC). The third unit in charge of overseeing regulatory management is the **Unit of Laws and Decrees** in the Legislative Assembly which scrutinises laws for legal quality and controls that public hearings are carried out for all primary laws and economic impact assessments for some primary laws.

Indicators of Regulatory Policy and Governance (iREG): Costa Rica, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (37% of all primary laws in Costa Rica). Data for 2016 are only available for the indicator for stakeholder engagement in developing subordinate regulations.
Source: Indicators of Regulatory Policy and Governance Survey 2017, Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016; http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815528

Location of regulatory oversight functions: Costa Rica

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA		●							
	Stakeholder engagement		●							
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective			●							
Systematic improvement of regulatory policy			●							
Co-ordination of regulatory policy			●							
Guidance, advice and support			●							
Scrutiny of legal quality		●	●							

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Czech Republic

Overview and recent developments

The Czech Republic has a well-developed regulatory impact assessment process including mechanisms for quality control through the RIA Board operating at arm's length from the government. All draft primary and secondary legislation prepared by the executive has to be accompanied by a basic impact assessment; a full RIA has to be carried out for those drafts with new and significant impacts. The quality of RIA could be improved especially in terms of quantifications of impacts. RIA is not obligatory for legislative initiatives of the MPs, which represent about 40 % of laws.

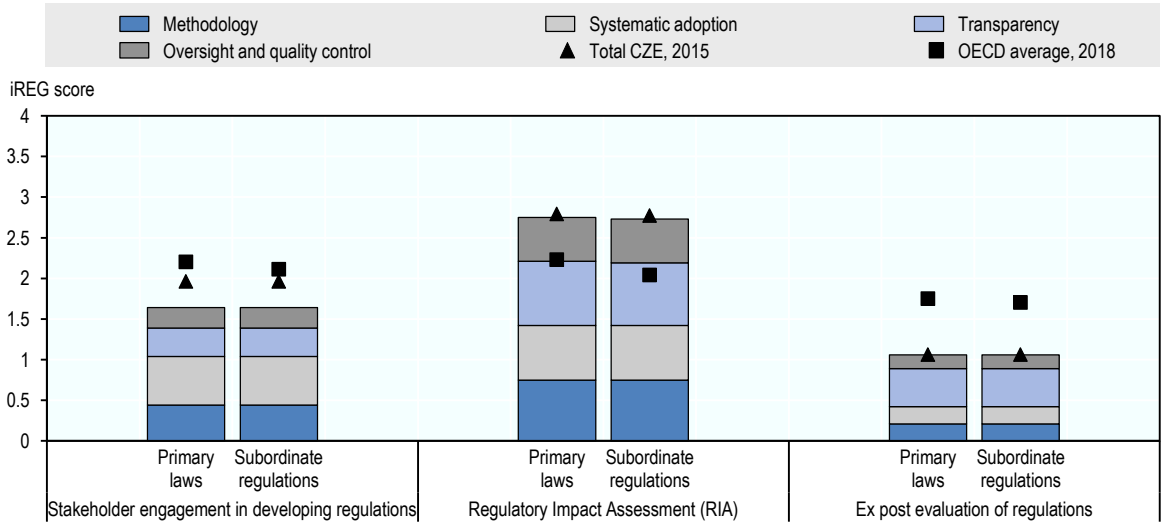
All legislative drafts submitted to the government are published on a government portal accessible by the general public. It is obligatory to conduct consultations within the RIA process and summarise their outcomes in RIA Reports. There are, however, no compulsory rules specifying the length or form of such consultations. The Czech Republic should standardise the public consultation process and stimulate stakeholders including the general public to contribute to consultations.

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 yet 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. The Czech Republic plans to introduce more systematic *ex post* reviews of existing regulations.

Institutional setup for regulatory oversight

The **Government Legislative Council** is an advisory body to the Government overseeing the quality of draft legislation before it is presented to the Government. One of its working commissions, the **RIA Board**, evaluates quality of RIAs and adherence to the procedures as defined in the mandatory RIA Guidelines, provides assistance to drafting authorities if requested, and provides opinions on whether draft legislation should undergo a full RIA. The **Government Legislation Department** of the Office of the Government is responsible for monitoring legal quality of draft legislation as part of the interministerial comments procedure and when draft legislation is submitted to the Government Legislative Council and its working commissions. The **RIA Department** of the Office of the Government coordinates the RIA process within central government, provides methodological assistance and issues guidance materials for the RIA process. Compatibility with EU law is overseen by the **Department for Compatibility** of the Office of the Government.

Indicators of Regulatory Policy and Governance (iREG): Czech Republic, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (59% of all primary laws in the Czech Republic).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815547

Location of regulatory oversight functions: Czech Republic

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●				●				
	Stakeholder engagement	●				●				
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective										
Systematic improvement of regulatory policy		●				●				
Co-ordination of regulatory policy		●								
Guidance, advice and support		●				●				
Scrutiny of legal quality		●				●				

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Denmark

Overview and recent developments

Regulatory reform has been an important feature of the Danish government agenda since the 1980s. The initial focus on competitiveness has been extended to burden reduction and more recently to the promotion of innovation-friendly business regulation. Established in 2012 and 2015 respectively, the Danish Business Forum for Better Regulation monitors the implementation of national regulation, and the EU-Implementation Committee and EU-Implementation Council monitor the implementation of EU business regulation. As from July 2018 all regulations must comply with the newly-introduced principles on agile and digital-proof legislation.

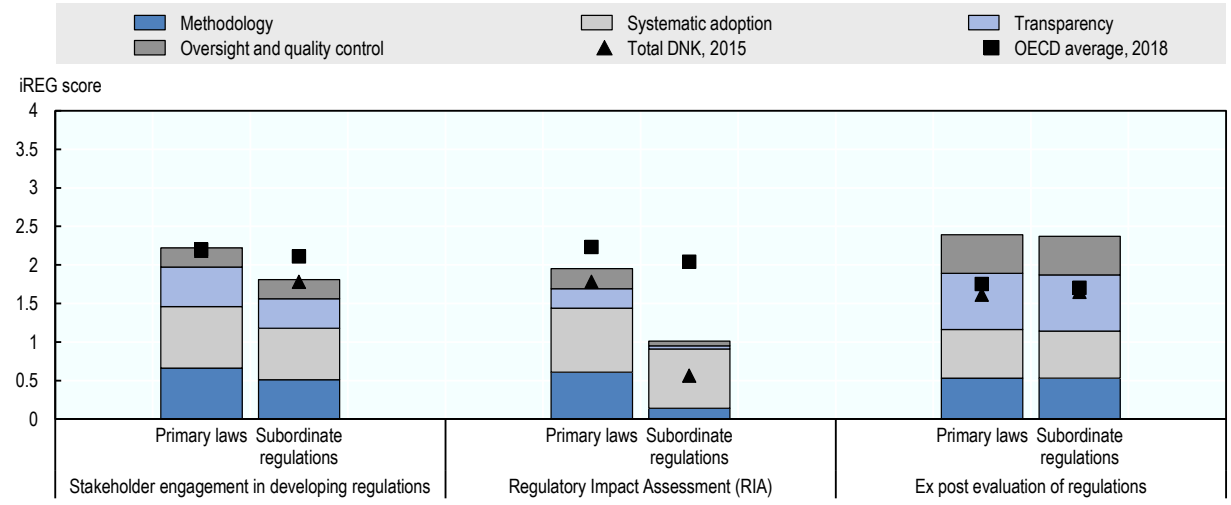
The government periodically reviews existing regulation with significant impacts and the Danish Business Forum conducts in-depth reviews of regulations in different policy areas. In 2015 the RIA methodology for business regulation as well as the net reduction target was updated to include additional costs and to require RIAs to be carried out for both primary and subordinate regulations above certain thresholds. The use of RIA could be further strengthened by the introduction of an oversight function that allows for returning proposed rules for which impact assessments are considered inadequate and which is not limited to regulations affecting business.

Denmark systematically engages with stakeholders and makes use of interactive consultation websites in the later stage of the regulatory process. Transparency could be further strengthened by informing the public in advance that a public consultation or a RIA is due to take place.

Institutional setup for regulatory oversight

The **Team Effective Regulation** at the Danish Business Authority (TER) is responsible for the quality control of RIAs of regulations creating significant burdens for businesses and also provides guidance and training in the use of good regulatory management tools, including RIA. Complementary, the **EU-Implementation Committee** located within the Ministry of Employment checks the quality of implementation of business-oriented EU legislation. Both bodies support systematic improvements across government and identify areas where regulation can be made more effective, the Committee in line with the five principles of EU-oriented business regulation. The **Ministry of Finance** is responsible for the quality control of compliance with the principles on digital-proof legislation and measures the regulatory effect on GDP. The **Ministry of Justice** oversees and enforces the overall judicial quality control of regulation.

Indicators of Regulatory Policy and Governance (iREG): Denmark, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (99% of all primary laws in Denmark).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815585

Location of regulatory oversight functions: Denmark

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA		●		●					
	Stakeholder engagement									
	Ex post evaluation				●					
Identifying policy areas where regulation can be made more effective			●		●	●				
Systematic improvement of regulatory policy			●	●	●					
Co-ordination of regulatory policy					●					
Guidance, advice and support			●	●						
Scrutiny of legal quality				●						

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Estonia

Overview and recent developments

Estonia did not make any major changes to its regulatory framework in the past three years. In line with the "Guidelines for development of legislative policy until 2018" adopted in 2012, preliminary RIAs are prepared for all primary laws and selected subordinate regulations. For regulations with significant impacts, in-depth RIAs are conducted.

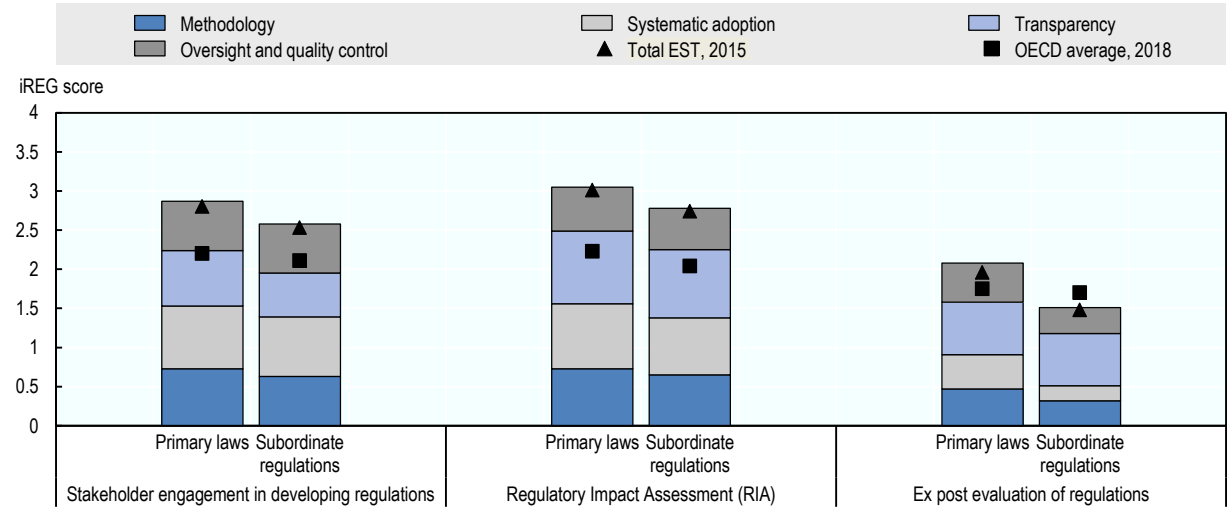
Estonia places a strong focus on accessibility and transparency of regulatory policy by making use of online tools. The online information system EIS tracks all legislative developments and makes available RIAs. Estonia currently works on an improved version of EIS. The interactive central website *osale.ee* displays all ongoing public consultations, but is not widely used and linkages to EIS could be strengthened. Later-stage consultation is conducted for all regulations. Public online consultations to inform officials about the nature of the policy problem and identify policy options are conducted in some cases.

Ex post evaluation is mandatory for some regulations since 2012. The completion of first evaluations is planned for 2018. Estonia could support the implementation of its *ex post* evaluation requirements by embedding stronger capacity to scrutinise the quality of *ex post* evaluations into the existing framework.

Institutional setup for regulatory oversight

The **Legislative Quality Division** of the Ministry of Justice takes the lead role in regulatory oversight in Estonia. It reviews the quality of RIAs and can return them for revision if their quality is deemed inadequate. The Division is also responsible for the systematic improvement and evaluation of regulatory policy. The Minister of Justice reports annually to parliament on the application of Better Regulation principles, including the compliance of RIAs and stakeholder engagement practices with formal requirements. The body also issues guidelines for RIA and scrutinises the legal quality of draft regulations. The **Strategy Unit** at the Government Office of Estonia complements this work by co-ordinating stakeholder engagement in policy making across government. The Legal and Research Department of the Estonian Parliament provides opinions and advice on the legal quality of draft laws at the request of parliamentary committees.

Indicators of Regulatory Policy and Governance (iREG): Estonia, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (86% of all primary laws in Estonia).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815623

Location of regulatory oversight functions: Estonia

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA			●						
	Stakeholder engagement									
	Ex post evaluation			●						
Identifying policy areas where regulation can be made more effective										
Systematic improvement of regulatory policy				●						
Co-ordination of regulatory policy		●		●						
Guidance, advice and support				●						
Scrutiny of legal quality				●			●			

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

European Union

Overview and recent developments

The European Commission (EC) is the executive of the European Union (EU). It proposes new initiatives and legislation, which are adopted by the European Parliament and the Council. With its 2015 Better Regulation Package, the EC has introduced significant changes to its Better Regulation policy, further refined in 2017.

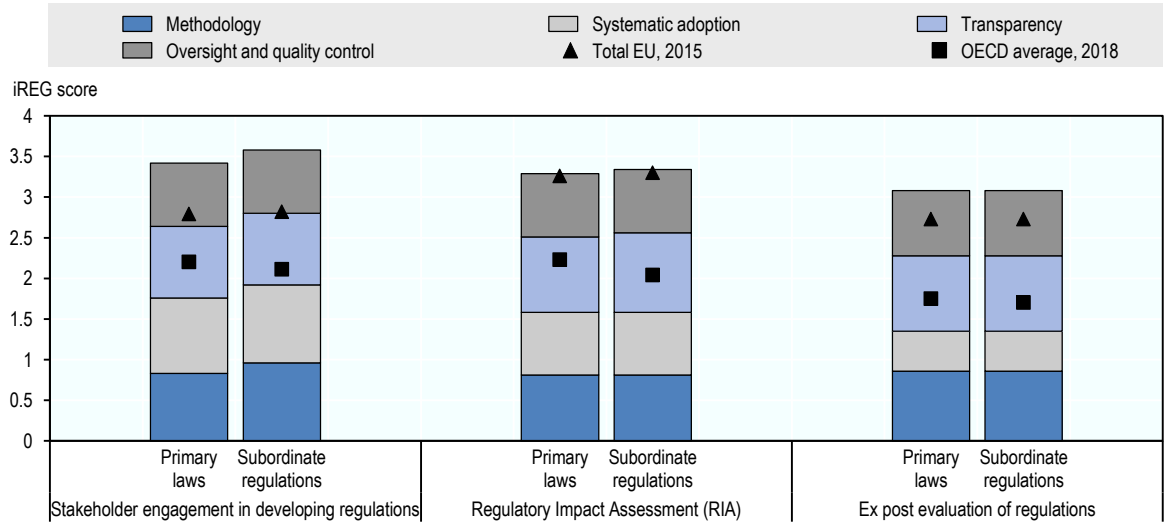
Ex ante impact assessments continue to be carried out for major primary laws and subordinate legislation. Since 2015, Inception Impact Assessments, including an initial assessment of possible impacts and options to be considered, are prepared and consulted on for 4 weeks, before a full RIA is conducted. Following this initial feedback period, the EC conducts public consultations of 12 weeks during the development of initiatives with an impact assessment. Legislative proposals and the accompanying full RIA are then published online for feedback for 8 weeks following approval of the proposal by the College of Commissioners. Draft subordinate legislation is consulted on publicly for 4 weeks. Transparency could be further improved by making RIAs on subordinate legislation available at this stage with the opportunity to comment on the analysis.

The *ex post* evaluation system, combining systematic evaluations of individual regulations with comprehensive "Fitness checks" of policy sectors, has been improved by providing the opportunity to comment on evaluation roadmaps for 4 weeks and on the main elements of all evaluations for 12 weeks. A REFIT Platform brings together representatives of the Commission, Member States and non-government stakeholders, to make suggestions for simplification and review of EU legislation.

Institutional setup for regulatory oversight

The Commission's **Secretariat General (SG)**, the Centre of Government body in charge of the overall coherence of the Commission's work, is responsible for overseeing Better Regulation. The SG reviews RIAs, stakeholder engagement processes and *ex post* evaluations, provides capacity support and makes recommendations for improvements of the system. The SG also serves as the secretariat to the **Regulatory Scrutiny Board (RSB)**, which checks the quality of all impact assessments and major evaluations and fitness checks informing EU legislation. The RSB is composed of three Commission officials and three outside experts and chaired by a Commission's Director General. Outside the Commission, the **European Parliament (EP)'s Directorate for Impact Assessment** also reviews RIAs attached to draft legislation submitted by the Commission and can conduct more in-depth analysis and impact assessments of amendments at the request of EP committees. The **European Court of Auditors**, the EU Supreme Audit Institution, has also conducted performance audits of the regulatory management system.

Indicators of Regulatory Policy and Governance (iREG): European Union, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. 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: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815642

Location of regulatory oversight functions: European Union

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●				●	●			
	Stakeholder engagement	●				●	●			
	Ex post evaluation	●				●				
Identifying policy areas where regulation can be made more effective		●					●			
Systematic improvement of regulatory policy		●				●	●		●	
Co-ordination of regulatory policy		●					●			
Guidance, advice and support		●				●	●			
Scrutiny of legal quality		●							●	

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Finland

Overview and recent developments

There has been a long-standing increase in attention to improving the quality of legislation and regulation in Finland. The current government programme (since 2015) proposes to create enabling regulation, promote deregulation and reduce administrative burdens. Finland has also introduced a pilot stock review (one in one out) in 2016-2017 for two ministries, whereby new compliance or administrative costs for business have to be off-set by corresponding savings. An evaluation of the pilot in 2018 states it has resulted in reduced stock and costs and increased transparency, and recommend the continuation of the pilot. The areas of regulation subject to *ex post* evaluations have increased since 2015, albeit without consistent methodologies.

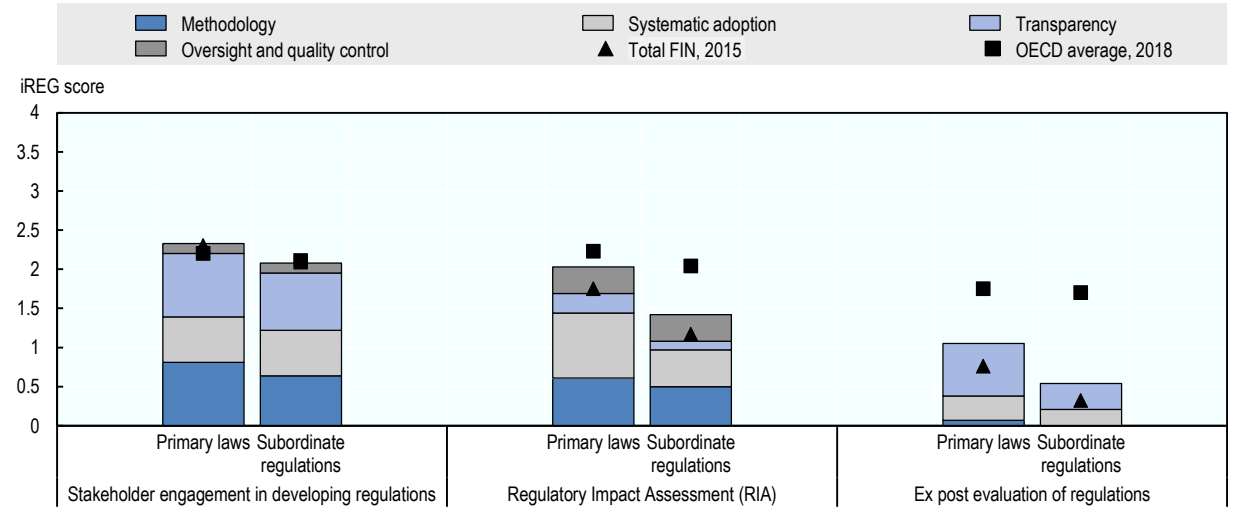
A number of stakeholder engagement platforms exist in Finland to inform the public of current draft legislations and to solicit feedback. These include lausuntopalvelu.fi launched in 2015, as well as the revamped (2017) Governments Registry for Projects and Initiatives (http://valtioneuvosto.fi/hankkeet).

Regulatory Impact Assessment (RIA) is formally required and conducted for all primary laws and for some subordinate regulations In 2016, Finland established the Finnish Council of Regulatory Impact Analysis (FCRIA) with the mandate of improving the quality of bill drafting and, in particular, of the impact assessments of legislative proposals. The review and use of RIA in Finland could be further strengthened by the introduction of an oversight function that allows for returning proposed rules for which impact assessments are deemed inadequate. Furthermore, the results and adequate resourcing of the FCRIA will merit close assessment in its first years of functioning for maximum impact of its activities.

Institutional setup for regulatory oversight

The **Finnish Council of Regulatory Impact Analysis (FCRIA)** is an arms-length body created in 2015. The FCRIA reviews selected RIAs (based on significance and representativeness) before approval of the final version of the regulation and provides advice as well as a formal opinion on the quality of the RIA. The FCRIA has no sanctioning power. The Council also has the mandate review *ex post* assessments of other bodies and plans to carry out a first review in 2018. The **Unit of Legislative Inspection** in the Ministry of Justice and the Chancellor of Justice share responsibilities linked to scrutiny of the legal quality of regulation under development. Observations made during this legislative inspection are taken into account for further versions.

Indicators of Regulatory Policy and Governance (iREG): Finland, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (100% of all primary laws in Finland).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815661

Location of regulatory oversight functions: Finland

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA					●				
	Stakeholder engagement									
	Ex post evaluation					●				
Identifying policy areas where regulation can be made more effective										
Systematic improvement of regulatory policy						●				
Co-ordination of regulatory policy						●				
Guidance, advice and support										
Scrutiny of legal quality				●						

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

France

Overview and recent developments

Since 2013, France has engaged in important simplification efforts. Following waves of simplification measures, the 2017 programme "Action publique 2022" identifies administrative simplification as one of the five priority actions and ministers are tasked to develop simplification plans. France also introduced a "one-in, two-out" regulatory offsetting approach in 2017. When transposing EU legislation, the adoption of requirements going beyond those set by the EU measure is prohibited.

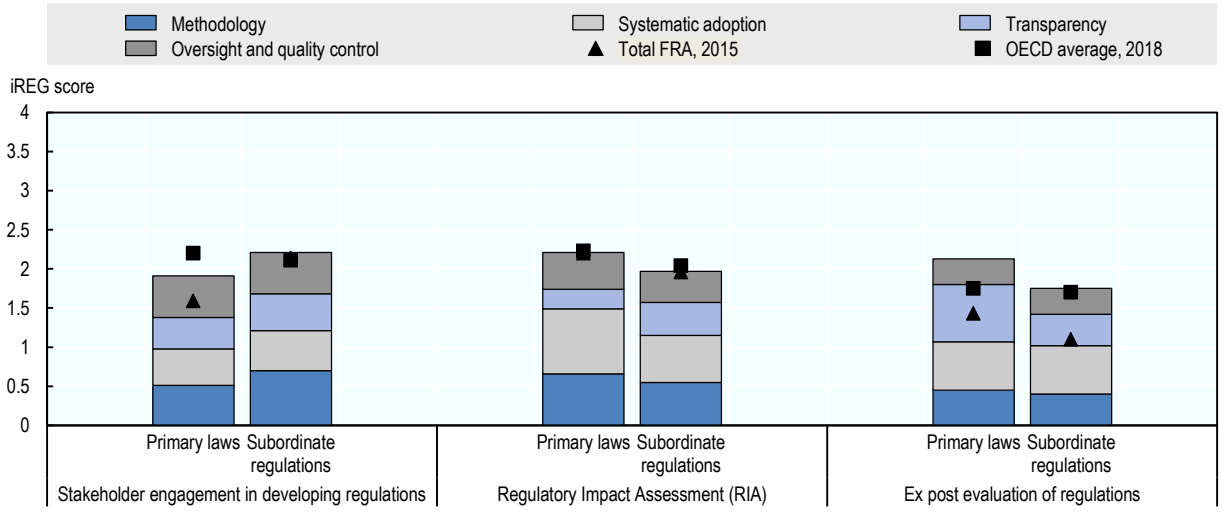
RIAs have to be prepared for all primary laws and major subordinate regulations and are available online. The range of impacts and costs assessed in RIA has been broadened in the past three years. The Sécrétariat Général du Gouvernement (SGG) at the Prime Minister's Office is responsible for reviewing the quality of RIAs and provides advice and expertise on drafting regulation to authorities. For primary laws, it can return RIAs if their quality is considered insufficient. Since mid-2017 the SGG no longer provides a formal opinion on RIAs for subordinate regulations. France's approach to *ex post* evaluation frequently integrates the evaluation of regulations and other policy tools. France Stratégie recently published new guidelines for policy evaluation that establishes standard evaluation techniques.

France does not require stakeholder engagement with the general public for the development of new laws, with the exception of environmental regulation. Informal consultations and consultation through consultative committees are however frequent. France could make public consultations a more cross-sectoral and systematic practice to fully reap the benefits of stakeholder engagement.

Institutional setup for regulatory oversight

The **SGG** ensures compliance with procedures (including with regulatory management tools such as RIA and stakeholder engagement), inter-ministerial coordination, liaison with the Conseil d'État and the Parliament. It provides guidance on how to conduct RIA, and ensures the appropriate publication of the legal text. The **Conseil d'État** also plays a critical role in regulatory policy, both upstream (through its consultative function for the government, including in the area of RIA, and its control of legal quality) and downstream (as the administrative judge of last resort). Contrary to the relative centralisation of the oversight of *ex ante* procedures, the *ex post* evaluation of regulations is fragmented across a range of institutions, including the **Cour des Comptes**, the **Parliament**, the **Conseil national d'évaluation des normes**, the **Direction interministérielle de la transformation publique** (formerly known as the Secrétariat général pour la modernisation de l'action publique) and **France Stratégie**.

Indicators of Regulatory Policy and Governance (iREG): France, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (77% of all primary laws in France).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815680

Location of regulatory oversight functions: France

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●				●				●
	Stakeholder engagement	●				●				●
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective		●				●	●		●	●
Systematic improvement of regulatory policy		●				●	●		●	●
Co-ordination of regulatory policy		●								
Guidance, advice and support		●								●
Scrutiny of legal quality		●				●				●

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Germany

Overview and recent developments

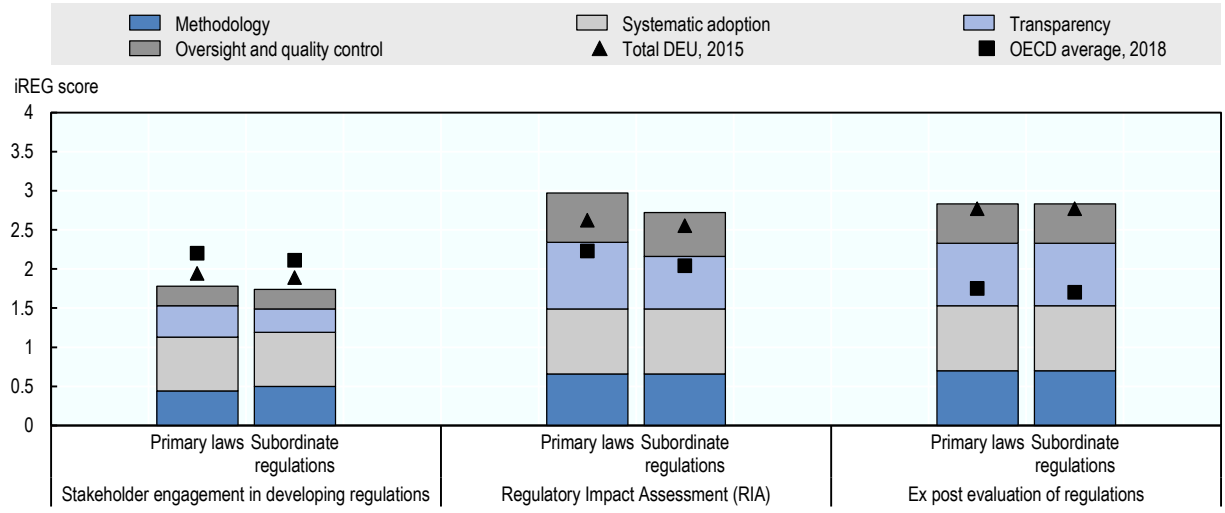
Germany has made several improvements to its regulatory policy system, especially with respect to *ex ante* impact assessments. RIA has been mandatory for all laws and regulations since 2000 and has most recently been extended in 2016 with the introduction of SME-test guidelines to promote SME-friendly policy development. Germany has put a strong emphasis on the reduction of costs of regulation, revising the EU *ex ante* procedure in 2016 to avoid compliance costs stemming from EU legislative acts and introducing the One-In, One-Out rule in 2015. The same year, Germany incorporated a behavioural insights team in the Policy Planning Unit in the Chancellery to act as a service unit for all Federal Ministries to inform legislative and administrative processes.

Since 2017, all draft regulations are available on ministries' websites, together with comments from relevant stakeholders and other accompanying documents. The Ministry for the Environment has launched a website on public participation and Germany also recently made use of green papers, inviting interested parties to participate in the newly introduced network of practitioners in agriculture. These initiatives could be a step towards establishing a more systematic approach to involving stakeholders earlier in the development of regulations. While the system to consult with social partners and experts is well-established, Germany could open consultations more systematically to the general public, release impact assessments for public consultation and systematically publish responses to consultation comments online.

Institutional setup for regulatory oversight

The **National Regulatory Control Council** (NKR) operates at arm's length from government. It reviews the quality of all RIAs and provides advice during all stages of rulemaking and has responsibilities in administrative simplification and burden reduction and *ex post* evaluation. In its annual reports to the Federal Chancellor, the NKR presents the main results of its oversight activity. The **Better Regulation Unit** in the Federal Chancellery is the central co-ordinating and monitoring body for the implementation of the Federal Government's programme on better regulation and bureaucracy reduction. The Federal Government reports to Parliament annually on the progress of the programme. The **Federal Audit Office** and the **Parliamentary Advisory Council on Sustainable Development** are responsible for evaluation of regulatory policy and identifying areas where regulation can be made more effective. Bodies within the Federal Ministries of the Interior and of Justice and Consumer Protection examine the legal quality and comprehensibility of legal drafts and a special unit of linguists provides linguistic advice to all ministries.

Indicators of Regulatory Policy and Governance (iREG): Germany, 2018



Notes: The more regulatory practices as advocated in the *OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (89% of all primary laws in Germany).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815566

Location of regulatory oversight functions: Germany

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●				●	●			
	Stakeholder engagement									
	Ex post evaluation	●								
Identifying policy areas where regulation can be made more effective		●				●			●	
Systematic improvement of regulatory policy		●				●	●		●	
Co-ordination of regulatory policy		●								
Guidance, advice and support		●				●				
Scrutiny of legal quality		●		●						

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Greece

Overview and recent developments

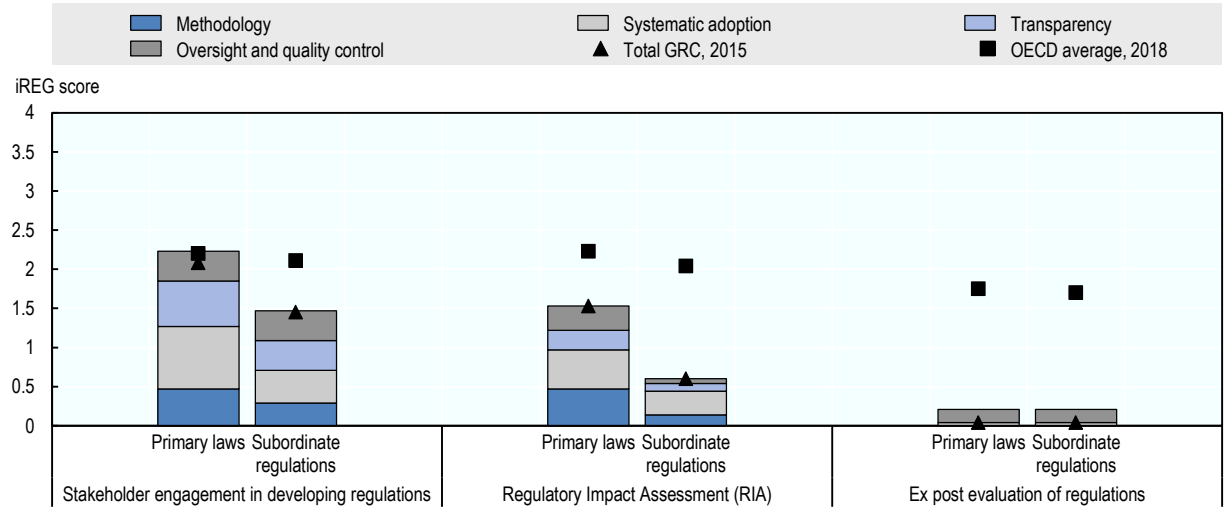
Law 4048 of 2012 sets an obligation for all ministries to apply the principles of Better Regulation to all legislative developments. Major challenges, however, still persist with its implementation. Regulatory impact assessment (RIA) is obligatory for all primary laws; however the quality is poor due to the short time period in which new drafts are developed. Public consultations are required for all primary laws. In practice, consultation usually takes place through exchanges with selected groups. Some draft primary laws and subordinate regulations are published on a consultation portal (www.opengov.gr). While Law 4048 requires that a public consultation report sums up comments received and which comments were taken into account, it is still not fully implemented, so that it is unclear how consultation comments are taken into account to finalise draft regulations.

Greece has been carrying out several reforms of its regulatory framework, including the establishment of a long-term codification plan of the main regulations in 2016 and creation of an electronic portal for the access to regulations as well as simplification of law in selected areas (labour law, VAT) in 2015. Reducing administrative burdens is not as widespread as in other OECD countries though some initiatives are underway. *Ex post* evaluations are not yet part of Greek regulatory management tools. Under the coordination of the Better Regulation Office of the General Secretariat of the Government (BRO) several ministries have initiated plans to carry out ex post evaluations. Better implementation of the requirements set by the law, especially in the area of impact assessment and stakeholder engagement, are advisable as well as further simplification of the regulatory framework.

Institutional setup for regulatory oversight

The **BRO** is responsible for the co-ordination of regulatory policy and oversight of the quality of RIAs as well as guidance and training on regulatory management tools, although the BRO's mandate is not fully implemented in practice. The BRO has no power to prevent draft proposals accompanied with poorly developed RIA from proceeding. In co-ordination with the Ministry of Administrative Reconstruction, it has held seminars on better regulation since 2017, focusing on *ex ante* and *ex post* evaluation of regulations, public consultation and legislative drafting. **The Legal Office of the General Secretariat of the Government** checks legal quality of government regulations and the **Central Law-making Committee** is responsible for issuing guidelines on the legal quality of proposed draft laws. **The National Council for Codification and Reform of the Greek Legislation** oversees the codification process, and identifies areas where regulation can be made more effective.

Indicators of Regulatory Policy and Governance (iREG): Greece, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (100% of all primary laws in Greece).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815718

Location of regulatory oversight functions: Greece

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●								
	Stakeholder engagement	●								
	Ex post evaluation	●								
Identifying policy areas where regulation can be made more effective					●					
Systematic improvement of regulatory policy		●			●					
Co-ordination of regulatory policy		●								
Guidance, advice and support		●								
Scrutiny of legal quality		●								

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Hungary

Overview and recent developments

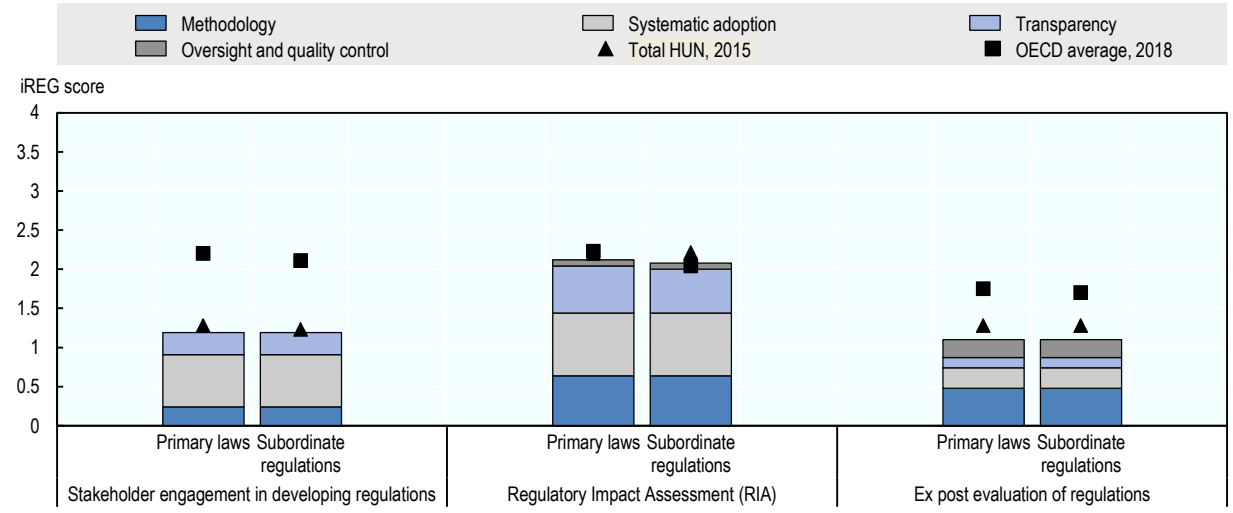
There have been little changes to the institutional and policy framework for regulatory quality in the last years. Stakeholder consultation is required for all primary and subordinate legislation. Draft legislation is posted on the governmental website and comments can be sent by email. No consultation is required in the early phases of the design of legislation. RIA is mandatory for all primary and subordinate legislation. Principle-based reviews on administrative burden were conducted in 2016 and 2017, focusing on reducing the average processing time of administrative procedures for business and citizens.

Within the Prime Minister's Office, the State Secretary in charge of the territorial administration makes proposals for simplifying regulatory burdens on citizens and businesses, but does not exercise quality checks on RIAs or *ex post* reviews. Hungary would benefit from introducing oversight mechanisms to ensure sufficient quality of RIAs, *ex post* evaluations and consultations. Quality checks could be accompanied by greater engagement with the stakeholders in the early phases of developing draft legislation.

Institutional setup for regulatory oversight

The **Government Office** within the Prime Minister's Office is responsible for co-ordinating the different phases of preparation of a regulatory proposal, from the consultation with other administrations once a Ministry has prepared a regulatory proposal and RIA to the meeting of the State Secretaries to the final Government meeting before a proposal is submitted to Parliament. The Government Office can also propose reforms or modifications related to the RIA and *ex post* evaluation framework. The Government Office prepares an annual report on RIA based on feedback from each Ministry, which is not publicly available. The **Office of the State Secretary** in charge of the territorial administration is responsible for reducing administrative burdens, promote a business-friendly environment and promote regulatory quality. The State Secretary reports to Cabinet on progress in implementing the simplification agenda.

Indicators of Regulatory Policy and Governance (iREG): Hungary, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (76% of all primary laws in Hungary).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815737

Location of regulatory oversight functions: Hungary

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA									
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective										
Systematic improvement of regulatory policy		●								
Co-ordination of regulatory policy		●								
Guidance, advice and support		●								
Scrutiny of legal quality		●								

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Iceland

Overview and recent developments

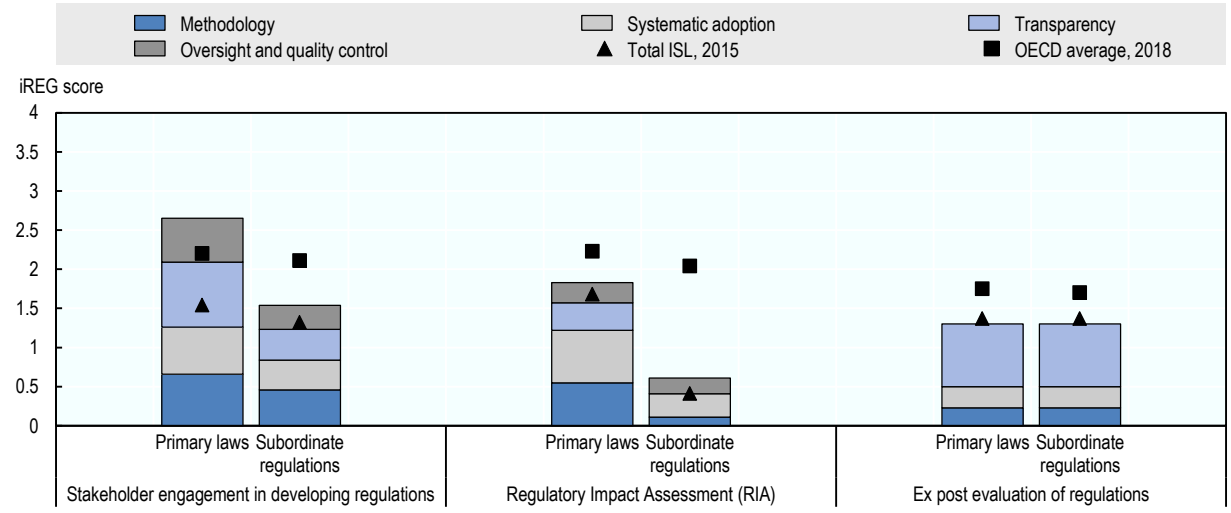
Iceland has made significant efforts over the last few years to improve their systems for RIA and stakeholder engagement. On 1 January 2016, the new Law on Public Finances no. 123/2015 came into force, which establishes the requirement to conduct RIA for all primary laws (Article 66). This provision is reinforced by the Cabinet Resolution of 10 March 2017, which establishes the requirement to draft and circulate a "Legislative Intent" document with preliminary impact assessment to other Ministries for comment prior to drafting a bill. Once the Ministries have commented, the Resolution also requires an early-stage consultation on the same document and preliminary RIA with citizens and stakeholders. The Resolution also calls for public consultation on the full draft bill and full RIA before being presented to Cabinet.

To support engagement efforts, Iceland launched a new public consultation website in February 2018 that provides citizens and stakeholders with a single portal to view all draft laws and provide comments electronically. *Ex post* evaluation continues to be non-mandatory, but is used periodically for some primary laws and subordinate regulations. While the efforts to improve RIA and stakeholder engagement moves Iceland forward, careful attention should be given to fully implementing the new requirements to ensure their intended effect is achieved and to extend the efforts to subordinate regulations.

Institutional setup for regulatory oversight

The **Department of Legislative Affairs (DLA)** in the Prime Minister's Office it the core cabinet-level body for regulatory oversight and is responsible for the systematic improvement and advocacy of good regulatory practices across government. It also has the main responsibility for overseeing stakeholder engagement, evaluating regulatory policy, provide guidance and training regulatory management tools, and scrutinise the legal quality of new legislation. The **Department of Public Finances (DPF)** in the Ministry of Finance and Economic Affairs is responsible for overseeing RIA in accordance with Article 66 of the new Law on Public Finances, specifically concerning impacts on public finances and the economy and developing guidance materials for RIA. **The Consultative Committee on Public Inspection Rules (CCPIR)** is responsible for overseeing elements of *ex post* evaluation, specifically concerning impacts on businesses and administrative burdens. The DLA is responsible for coordinating the activities of all the bodies to ensure the full and proper application of the various tools and harmonise the approaches.

Indicators of Regulatory Policy and Governance (iREG): Iceland, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (80% of all primary laws in Iceland).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815775

Location of regulatory oversight functions: Iceland

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●	●			●				
	Stakeholder engagement	●								
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective						●				
Systematic improvement of regulatory policy		●				●				
Co-ordination of regulatory policy		●								
Guidance, advice and support		●	●							
Scrutiny of legal quality		●				●				

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Ireland

Overview and recent developments

Ireland recently made some improvements to its regulatory policy system, particularly in the areas of consultation and *ex post* evaluation.

A Consultation Principles and Guidance document was issued in 2016, and the government is more broadly promoting open data, citizen participation and greater public governance and accountability via the Open Government Partnership (OGP) National Action Plan. Progress is also underway to consolidate various department consultation notices on a central government website by the end of 2018. Despite these recent improvements, Ireland's consultation practices do not yet operate on a systematic basis across government departments.

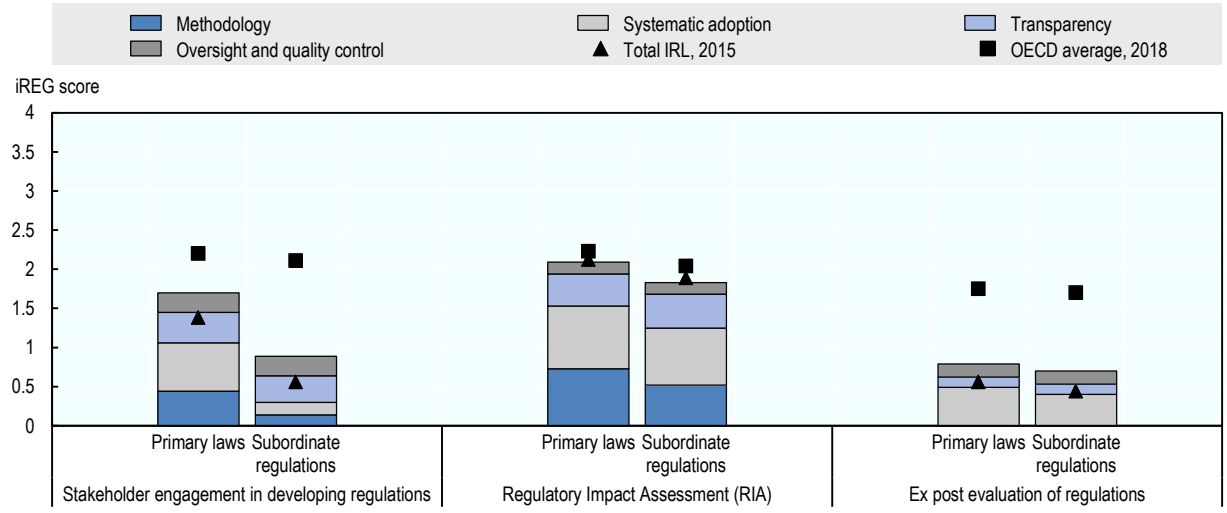
Since June 2016, standing orders from Parliament state that the Minister responsible for implementing a law must provide an *ex post* assessment of its functioning within a year. A number of sectoral Departments have also started to carry out policy and mandate reviews, which are required at least every seven years according to the Policy Statement on Economic Regulation issued in 2013.

Ireland continues to conduct mandatory RIA for all primary laws and major subordinate regulations. In order to more effectively monitor and assess the quality of RIA implementation, Ireland should consider establishing a central oversight body.

Institutional setup for regulatory oversight

The **Department of the Taoiseach** is responsible for the effectiveness of regulators and, together with the **Office of the Attorney General**, ensures the transparency and quality of legislation. It is also responsible for setting the overall government multi-sectoral policy in Ireland. As part of its overarching policy-setting, the Department of the Taoiseach aims to reduce regulatory burden, promote regulatory quality, encourage a business-friendly regulatory environment, and ensure inter-departmental coordination in regulatory development. The Department of the Taoiseach has pioneered the Better Regulation agenda in Ireland in 2004 and issued Ireland's first guidance document on RIA in 2005. The **Department of Public Expenditure and Reform (DPER)** has since taken over responsibilities on RIA guidance. DPER also provides training in various regulatory management tools, including RIA, *ex post* evaluation, and stakeholder engagement. Most recently, DPER issued a Consultation Principles and Guidance document in 2016. However, the implementation of regulatory management tools and oversight of sectoral economic regulators remains the responsibility of the relevant Department(s).

Indicators of Regulatory Policy and Governance (iREG): Ireland, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (98% of all primary laws in Ireland).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815756

Location of regulatory oversight functions: Ireland

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA									
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective						●				
Systematic improvement of regulatory policy		●			●					
Co-ordination of regulatory policy		●								
Guidance, advice and support			●							
Scrutiny of legal quality		●						●		

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Israel

Overview and recent developments

Israel made significant progress in improving its regulatory policy since 2015. The Government Resolution No. 2118 of 22 October 2014, accompanied with stricter rules and RIA guidance in 2016, provides a solid basis for a whole-of government regulatory policy. The focus is mostly on reducing regulatory burdens, both through comprehensive reviews of the existing regulations and through *ex ante* regulatory impact assessment.

As of 2016, conducting RIA is obligatory for all legislative proposals initiated by the executive. This obligation, however, does not concern the over 40% of laws initiated by members of the Knesset. The 2014 Resolution and the guidance issued determine some key analytical steps that a RIA should entail and prescribes forms of stakeholder engagement in the execution of a RIA. Israel would benefit from targeting the RIA efforts in order to allocate most analytical resources where they deliver greatest added value.

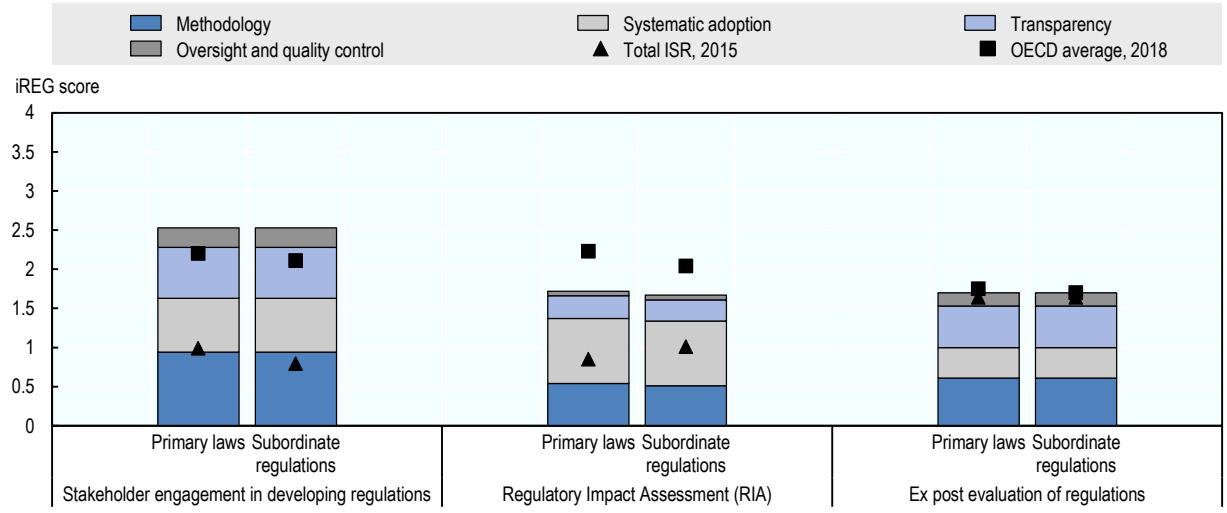
The 2014 Resolution also sets an obligation for each ministry to formulate a five-year plan to reduce regulatory burdens in its area of competence. However, the programme examines burdens far in excess of compliance costs — it also considers other factors such as organisational and process aspects, quality of service, time and market saving. The programme has helped reduce regulatory burdens by 2.67 billion NIS in annual direct costs and saved over 40 million 'waiting' days.

Most of the legislative planning activities are in the hands of individual ministries, with limited inter-ministerial co-ordination. This is one of the key factors behind inflationary regulatory activity. The Government is working on reforming the planning system. The Better Regulation Department's role in regulatory oversight, such as issuing substantive opinions on RIAs on the basis of transparent criteria, should be strengthened.

Institutional setup for regulatory oversight

The **Better Regulation Department (BRD)** was established as part of the Prime Minister's Office in 2016. It has been entrusted with some relatively soft powers of co-ordination of regulatory policy including the development of guidance. There is no single entity charged with screening and commenting on the quality of RIAs and non-compliance with RIA requirements is not sanctioned. A network of "Better Regulation Leaders" in all line ministries has also been created, to help the respective ministries to implement the 2118 Resolution. These Leaders also provide an important linkage between the BRD and the line ministries. The **Ministry of Justice** oversees the legal quality of regulations and the entire legislative process in the government.

Indicators of Regulatory Policy and Governance (iREG): Israel, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (53% of all primary laws in Israel).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815794

Location of regulatory oversight functions: Israel

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●		●						
	Stakeholder engagement	●								
	Ex post evaluation	●								
Identifying policy areas where regulation can be made more effective		●								
Systematic improvement of regulatory policy		●								
Co-ordination of regulatory policy		●		●						
Guidance, advice and support		●								
Scrutiny of legal quality				●						

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Italy

Overview and recent developments

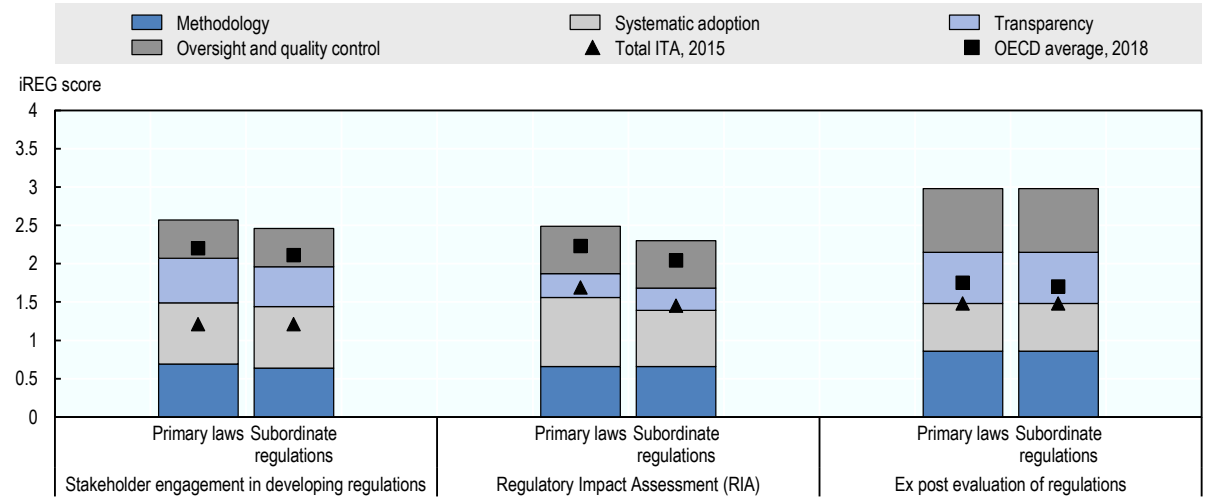
In September 2017, the Italian government introduced a new set of procedures for regulatory impact assessment (RIA), *ex post* evaluation, stakeholder engagement and regulatory planning. Ministries have to prepare a simplified RIA, providing a first assessment of expected impacts and a justification for not conducting a full RIA for low impact proposals, which is reviewed by the Department of Legal and Legislative Affairs (DAGL) within the Presidency of the Council of Ministers, whose gatekeeping role has also been strengthened. Ministries are also required to publish twice a year a 6-month legislative programme, highlighting planned RIAs and consultations. The programmes are to be posted on the central government website and the website of individual ministries. New guidelines to support public consultation aimed at enhancing transparency and participation were introduced in 2017 and new guidance on RIA and *ex post* evaluation was introduced in February 2018. *Ex post* evaluations have become more commonplace across a wider range of policy areas since 2015.

The challenge ahead is to "connect the dots" to develop a culture of evidence-based user-centric policy making. For instance, *ex post* evaluations could be more systematically planned when preparing RIAs for major legislation and quality filters and advice could continue to be strengthened. Consultation could become more systematic and consistent across different ministries and used to understand citizens' preferences, gather evidence on implementation options (early stage) and gaps (evaluation).

Institutional setup for regulatory oversight

The **Department of Legal and Legislative Affairs (DAGL)** of the Presidency of the Council of Ministers reviews the quality of RIAs and *ex post* evaluations. It can issue a negative opinion to the State Secretary to the Presidency if the quality of RIA is deemed inadequate and before the draft legislation is presented to the Council. The DAGL also validates planned RIAs and consultations included in the 6-month legislative programmes, proposes changes to the regulatory policy framework, promotes training, provides technical guidance and reports annually to Parliament on regulatory quality tools. An **Impact Assessment Independent Unit (IAIU)** supports the DAGL in reviewing *ex ante* and *ex post* evaluations. The IAIU is composed of external experts serving a four-year term, selected through an open and competitive process. An **Impact Assessment Office in the Senate** conducts *ex post* evaluations of selected legislation. The **Committee on legislation in the Chamber of Deputies** checks the effectiveness of simplification principles in draft legislation. The **Council of State** checks quality of RIA and stakeholder engagement practices and evaluates regulatory policy.

Indicators of Regulatory Policy and Governance (iREG): Italy, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (88% of all primary laws in Italy).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815813

Location of regulatory oversight functions: Italy

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●								●
	Stakeholder engagement	●								●
	Ex post evaluation	●								
Identifying policy areas where regulation can be made more effective							●			●
Systematic improvement of regulatory policy		●								●
Co-ordination of regulatory policy		●								
Guidance, advice and support		●								
Scrutiny of legal quality		●					●			●

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Japan

Overview and recent developments

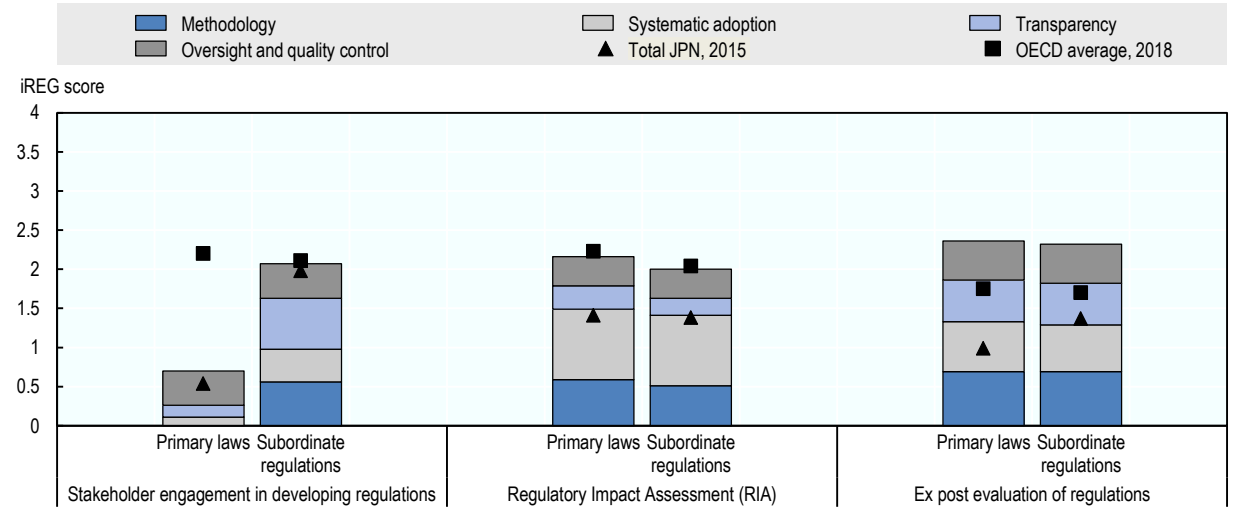
Japan has made significant efforts to improve its regulatory environment. In 2017, the government has stressed its commitment to regulatory reform by introducing a Basic Program on Reducing Administrative Burden. The program is linked to Japan's Revitalization Strategy (2016) and aims to introduce new frameworks, principles, and mechanisms for regulatory and institutional reform, with the view of achieving the program's intended targets and objectives by 2019. Japan has also revised its Implementation Guidelines for Policy Evaluation of Regulations in 2017, which provides an update of the 2007 guidelines, and further elaborates on the information and criteria in relation to quantifying and qualifying impacts and costs, including the various techniques and processes that ministries can adopt under specific circumstances. The 2017 guidelines also clearly define the necessity of conducting *ex post* evaluations of regulations within the period of five years since its implementation.

An interactive website is available for the public to access relevant documents, such as impact assessments, and provide comments on draft subordinate regulations. Japan would benefit from extending existing efforts to engage with stakeholders to the process of developing primary laws, for example through public online consultations on the interactive government website.

Institutional setup for regulatory oversight

The **Council for Promotion of Regulatory Reform** works within the Cabinet Office of the Government and is responsible for the promotion of regulatory reform. The Council is also mandated to monitor and review the implementation of regulatory reform initiatives in place and provide objective recommendations for future initiatives, at the request of the Prime Minister. The **Administrative Evaluation Bureau (AEB)** of the Ministry of Internal Affairs and Communications is responsible for overseeing, planning, and managing *ex* ante and *ex post* evaluations and establishes guidelines and platforms to support these evaluations. The AEB also conducts evaluations of the various ministerial policies, which includes ministry guidelines and common rules for policy evaluations, and reviews these policies, under the supervision of the Cabinet. The **Japan Fair Trade Commission (JFTC)** supports the AEB in reviewing evaluations and assessments related to competition. Government ministries and agencies have to assess the impact on competition with a checklist when they establish, revise or abolish certain types of regulations. The JFTC provides a checklist and guidance to ministries and agencies that undertake this assessment.

Indicators of Regulatory Policy and Governance (iREG): Japan, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (77% of all primary laws in Japan).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815832

Location of regulatory oversight functions: Japan

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA				●					
	Stakeholder engagement									
	Ex post evaluation				●					
Identifying policy areas where regulation can be made more effective		●								
Systematic improvement of regulatory policy					●					
Co-ordination of regulatory policy										
Guidance, advice and support					●	●				
Scrutiny of legal quality										

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Korea

Overview and recent developments

Korea has significantly improved its regulatory policy system over the recent years. *Ex post* evaluation is mandatory for all regulations developed by the executive and central ministries are required to outline the intended evaluation plan as part of each RIA. Korea has been putting effort into systematically implementing this approach in practice. RIAs are undertaken for all subordinate regulations in Korea and for the primary laws initiated by the executive. To increase the quality of RIA and reduce the burden of preparing RIA statements, e-RIA was launched in May 2015, providing public officials with the data necessary for cost-benefit analysis.

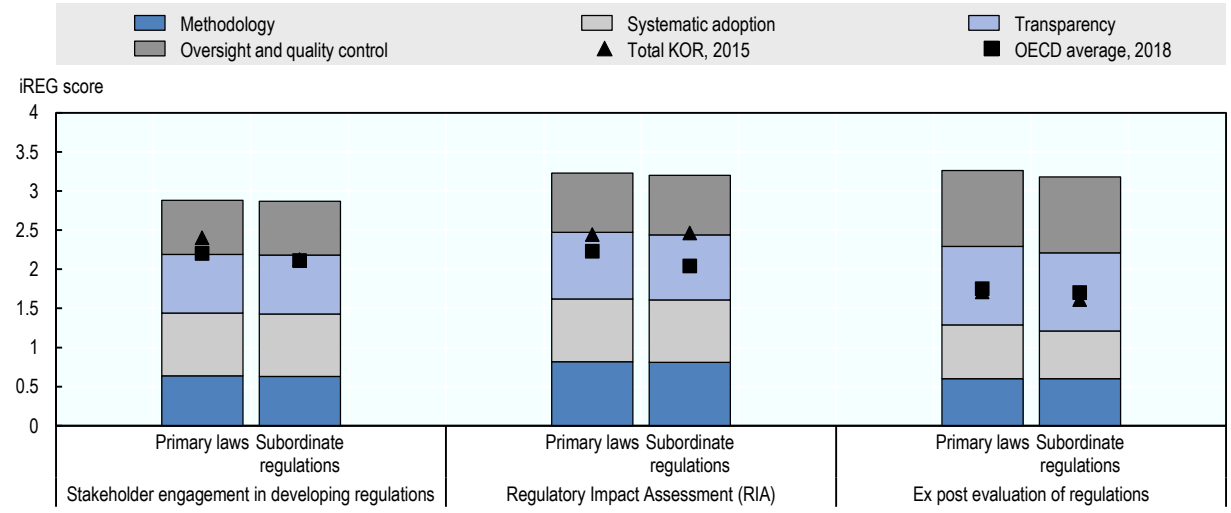
Consultations are conducted for all regulations initiated by the executive and recent efforts aim to increase the transparency of consultation processes. The e-Legislation Centre launched in 2016 and the Regulatory Information Portal inform the public in advance about upcoming consultations and regulators are required to provide feedback on the comments submitted through these portals. Korea also introduced the petition system "Regulatory Reform *Sinmungo*" to alert the government to unnecessary burdens on business and citizens and the "Cost-in, Cost-out" rule in 2016 after an initial pilot phase.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approx. 13% of primary laws in Korea. Primary laws initiated by parliament are not accompanied by a RIA and not always supported by stakeholder engagement. To further improve the regulatory quality in Korea, there should be regulatory quality check mechanisms put in place for regulations initiated by the National Assembly.

Institutional setup for regulatory oversight

The **Regulatory Reform Committee (RRC)**, which is co-chaired by the Prime Minister and a representative from the non-governmental sector, reviews all regulatory proposals from central administrative agencies throughout the regulatory cycle. This includes oversight of evaluation and stakeholder engagement processes. The Prime Minister's Office, through its Regulatory Reform Office (RRO), serves the role of RRC's secretariat and plays an oversight and steering role across central administrative agencies. The Public-Private Joint Regulation Advancement Initiative, led by the RRO and non-government organisations, regularly consults with public stakeholders. Two regulatory research centres, the **Korea Development Institute (KDI)** and the **Korea Institute of Public Administration (KIPA)**, support cost-benefit analysis, provide guidance and training and conduct evaluations of the regulatory policy framework.

Indicators of Regulatory Policy and Governance (iREG): Korea, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (11% of all primary laws in Korea).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815851

Location of regulatory oversight functions: Korea

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●				●				
	Stakeholder engagement	●				●				
	Ex post evaluation	●				●				
Identifying policy areas where regulation can be made more effective		●				●				
Systematic improvement of regulatory policy		●				●				
Co-ordination of regulatory policy		●								
Guidance, advice and support		●				●				
Scrutiny of legal quality		●								

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Latvia

Overview and recent developments

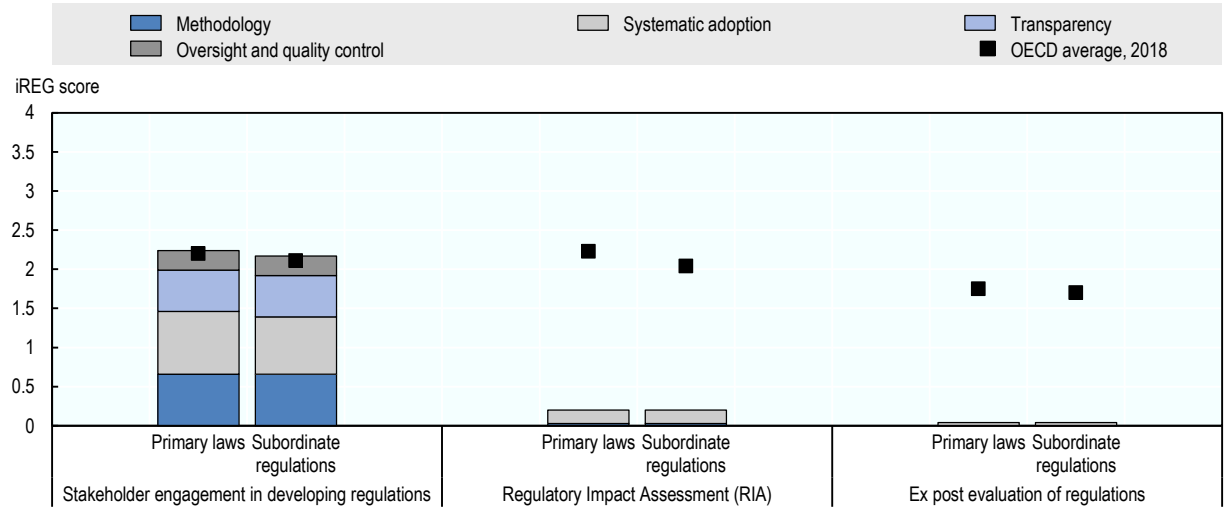
There is no single document comprehensively articulating regulatory policy in Latvia. However, many particular elements of regulatory policy are firmly embedded in strategic documents of the government. The obligation to conduct regulatory impact assessment (RIA) was introduced in 2009. RIA is required for all draft legal acts including subordinate regulations submitted to the Cabinet. RIA should be prepared early in the policy-making process and undergoes public consultation with the draft law. The impacts assessed cover mostly financial, budgetary, and administrative costs. Quantification of impacts tends to be rare. There is a structured and systematic process for consulting with social and civil partners. Reviews of regulatory stock are mostly business-oriented. While there is no explicit programme on *ex post* reviews of regulation, the regulatory framework is being improved continuously through intensive co-operation with stakeholders.

Latvia should consider the introduction of a threshold test for the preparation of more in-depth impact analyses for draft legislation and policy documents and explore ways for improving the quantification of the impacts of draft legislation and policy documents, including through guidance and capacity development for cost-benefit analysis.

Institutional setup for regulatory oversight

The responsibility for co-ordinating regulatory policy and promoting regulatory quality is divided among the **Ministry of Justice** and the **State Chancellery**, and the Cross-Sectoral Co-ordination Centre (as concerns the development planning system) and Ministry of Environment Protection and Regional Development (for binding regulations of local governments). The Ministry of Economy plays a significant role in administrative simplification activities. The Ministry of Justice mostly oversees legal quality of regulation which includes mainly compliance with other legal instruments. The Chancellery through its Legal Department focuses on compliance of each regulatory draft with the rules for drafting legislation, including the obligation to conduct impact assessment or requirements for stakeholder engagement. The Chancellery is also co-ordinating the development and application of uniform rules of regulatory drafting including the impact assessment guidelines. The assessment of the Ministry of Justice and the State Chancellery is binding for other ministries. The ministry responsible for drafting the document revises the proposal if the document does not comply with the relevant requirements or if the RIA is based on insufficient or low-quality data.

Indicators of Regulatory Policy and Governance (iREG): Latvia, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on RIA for primary laws only cover those initiated by the executive (70% of all primary laws in Latvia).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815908

Location of regulatory oversight functions: Latvia

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●		●						
	Stakeholder engagement	●								
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective				●			●			
Systematic improvement of regulatory policy		●		●						
Co-ordination of regulatory policy		●								
Guidance, advice and support		●		●						
Scrutiny of legal quality		●		●						

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Lithuania

Overview and recent developments

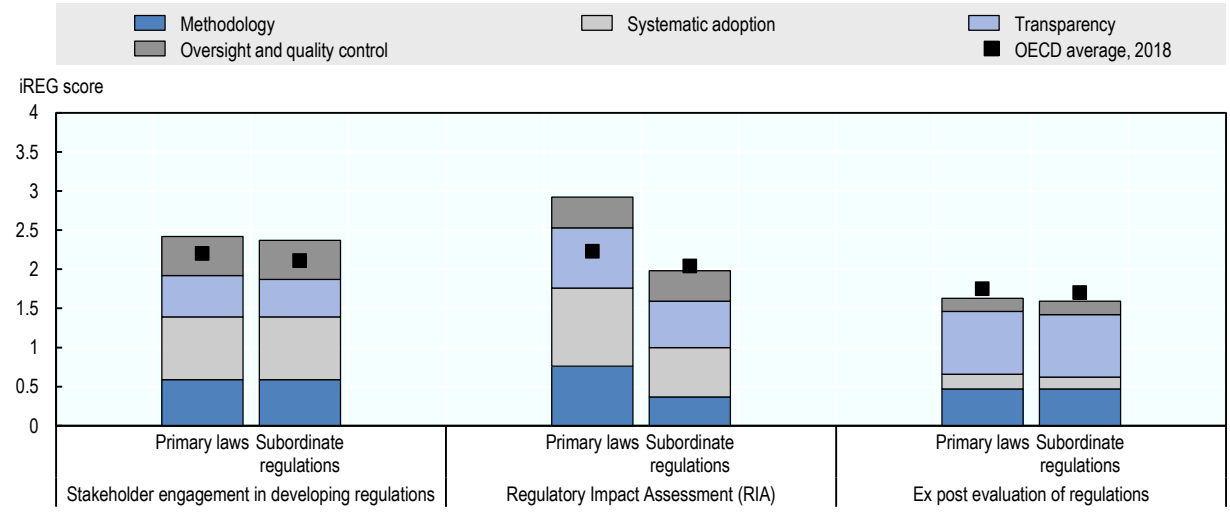
There is no single formal government regulatory policy in Lithuania, though some elements are embedded in several strategic documents. While impacts are required to be assessed for any legislative acts, RIA remains a largely formal exercise to justify choices already made, rarely based on data or analysis of alternative options. Around two-thirds of about 900 draft laws submitted to the *Seimas* every year are parliamentary drafts with similar requirements for conducting RIA and public consultations as for those developed by the executive, however, without any oversight. Consultations in the development of regulations are anchored in the administration and interaction between stakeholders and the government sometimes takes place before a decision to regulate is made. Yet consultations currently lack methodology and technical guidance.

A major part of the Lithuanian government's efforts focuses on administrative burden reduction, mainly for businesses. There are some general requirements to conduct monitoring and *ex post* reviews of existing regulations, and the government plans to introduce a pilot of more in-depth 'fitness checks'. Concerning regulatory enforcement and inspections reform, Lithuania is ahead of most of OECD countries. Lithuania could consider building on existing efforts for better co-ordination of regulatory policy by bringing the different elements of regulatory policy together in an integrated strategic plan and strengthening the role of the Government Office. It should also improve RIA processes, with a special focus on starting early in the regulation-making process and better quantification of regulatory impacts.

Institutional setup for regulatory oversight

The institutional responsibility for co-ordinating regulatory policy and promoting regulatory quality is spread across several institutions, with the main role attributed to the **Government Office**. Its co-ordination role is gradually being strengthened. It co-ordinates and supervises the law-making process when draft laws are initiated by the executive and is in charge of preparing the annual legislative programme. It monitors the overall quality of impact assessment and provides guidance and training. The **Ministry of Economy** co-ordinates initiatives in the field of administrative simplification for business, including licencing and business inspection reforms and administrative burden reduction plans. The **Ministry of Interior** is responsible for developing the administrative burden policy for citizens and public sector organisations. Once the draft law is submitted to Parliament, the **Legal Department of the Office of the *Seimas*** checks compliance of the draft with the laws which are already in effect and technical law-making requirements.

Indicators of Regulatory Policy and Governance (iREG): Lithuania, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (67% of all primary laws in Lithuania).
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815870

Location of regulatory oversight functions: Lithuania

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●	●		●					
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective		●	●							
Systematic improvement of regulatory policy		●	●	●						
Co-ordination of regulatory policy		●	●							
Guidance, advice and support		●	●	●	●					
Scrutiny of legal quality		●		●			●			

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Luxembourg

Overview and recent developments

Since 2015, Luxembourg has made some minor improvements to its regulatory management tools. Digital means of consultations are now undertaken in Luxembourg, albeit not systematically. Members of the public can now choose to participate in some consultations through a central government website in addition to ministry websites. Over time, it will be important to expand the usage of the central website to all regulatory proposals.

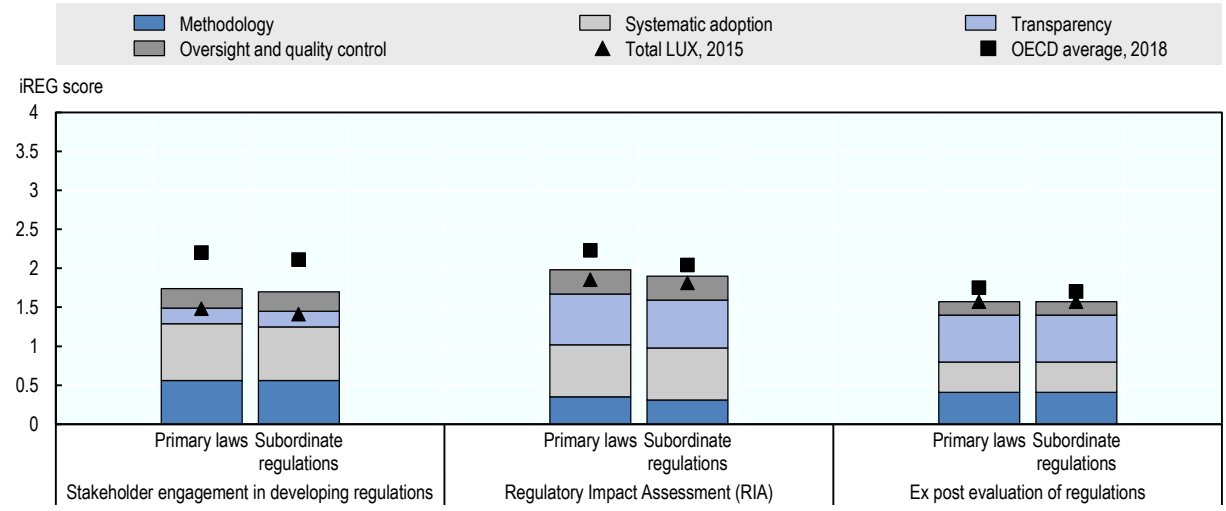
RIA is undertaken for all regulations in Luxembourg and takes the form of a checklist mainly focussing on administrative burdens and enforcement costs. In order to enhance the usefulness of RIA, the analysis included in the impact assessments could be deepened and extended to other types of impacts and benefits of regulation. While Luxembourg currently refers to European Commission best practice instead of providing own guidance material, the limited current focus of RIA in Luxembourg does not reflect EC standards. Luxembourg may consider creating bespoke guidance material to enhance domestic support for regulatory policy.

Ex post evaluations have been undertaken in Luxembourg although they remain an inconsistently applied regulatory management tool. Putting in place an evaluation framework, including a clear methodology, could help to ensure that regulations remain fit for purpose.

Institutional setup for regulatory oversight

The **Ministry of the Civil Service and Administrative Reform** is the central oversight body responsible for quality control of regulatory management tools in Luxembourg. Its oversight functions apply to stakeholder engagement, RIA, and *ex post* evaluations; however it has no gatekeeper role with respect to any of these areas. It does however provide advice and guidance to ministries in the use of these regulatory management tools. It is also responsible for a range of other oversight functions including the evaluation of regulatory policy, identifying areas where regulation can be made effective, and coordination on regulatory policy. The **Council of State** is an arm's length body that is responsible for providing legal scrutiny of regulatory proposals. It has a gatekeeper function with the possibility of stopping a regulation from proceeding any further where it considers that certain legal criteria have not been met.

Indicators of Regulatory Policy and Governance (iREG): Luxembourg, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815889

Location of regulatory oversight functions: Luxembourg

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA				●					
	Stakeholder engagement				●					
	Ex post evaluation				●					
Identifying policy areas where regulation can be made more effective					●					
Systematic improvement of regulatory policy					●					
Co-ordination of regulatory policy					●					
Guidance, advice and support					●					
Scrutiny of legal quality					●	●				

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Mexico

Overview and recent developments

In Mexico, since 2000 RIA and public consultation on draft regulation has been mandatory for all regulatory proposals coming from the executive. Mexico strengthened its RIA process by adding in 2016 assessments of impacts on foreign trade and consumer rights, which complement existing assessments on competition and risk. Since 2012, mandatory guidelines require the use of *ex post* evaluation of technical regulations, and since 2018 regulations with compliance costs have to be evaluated every five years.

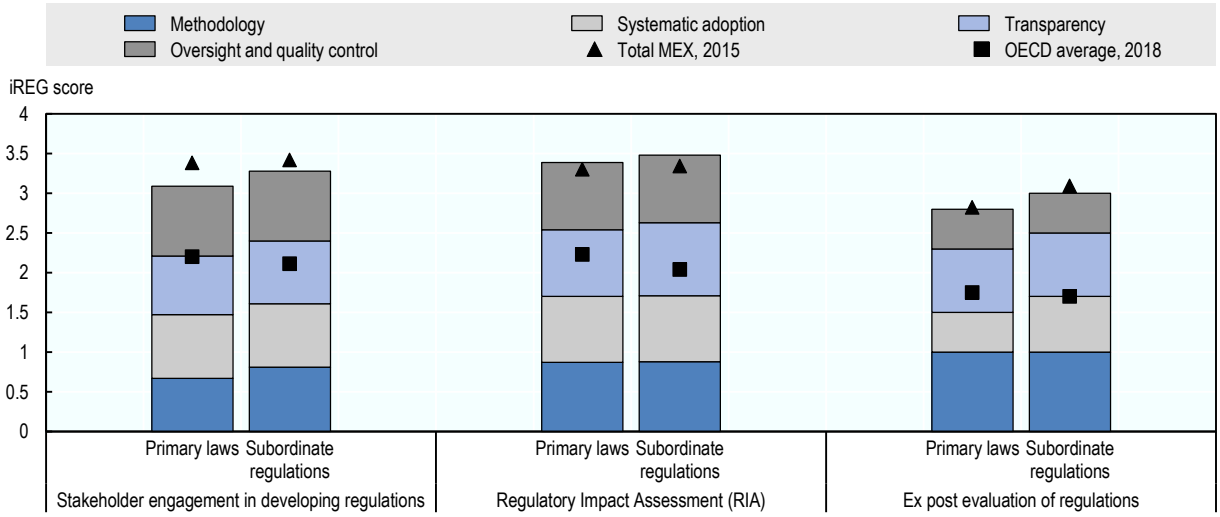
The new General Law of Better Regulation to reform the Mexican Constitution with regards to regulatory policy was issued in May 2018. Besides modernizing the policy, it also establishes the National System of Better Regulation, specifying the duties and responsibilities of autonomous bodies and state and municipal governments. The Law requires subnational governments to adopt key tools such as RIA. Mexico should ensure full implementation of these tools, as some of the largest regulatory barriers remain at regional level.

Indicators presented on RIA and stakeholder engagement for primary laws only cover processes carried out by the executive, which initiates approx. 34% of primary laws in Mexico. There is no formal requirement in Mexico for consultation and for conducting RIAs to inform the development of primary laws initiated by parliament.

Institutional setup for regulatory oversight

Following the adoption of the General Law of Better Regulation, Mexico's COFEMER has been transformed into **CONAMER** to reflect its broadened mandate. It remains a deconcentrated body of the Ministry of Economy with technical and operational autonomy, but remains hierarchically subordinated to the ministry. The General Law of Better Regulation defines CONAMER's attributions and mandate, which is to promote transparency in the development and enforcement of regulations and the simplification of procedures, ensuring that they generate benefits that outweigh their costs. Some of CONAMER's core functions in order to pursue a high quality regulatory framework are assessing draft regulations through RIA, overseeing the public consultation process of draft regulation, coordinating and monitoring the regulatory planning agenda, promoting simplification programmes and reviewing the existing stock of regulations. The General Bureau of Standards of the Ministry of Economy has the responsibility of supervising the development of draft technical regulations and standards by line ministries and agencies, including ensuring the adoption or consideration of international standards and practices. The draft technical regulations and standards then must follow the general regulatory policy discipline of RIA overseen by CONAMER.

Indicators of Regulatory Policy and Governance (iREG): Mexico, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (34% of all primary laws in Mexico).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815927

Location of regulatory oversight functions: Mexico

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA		●							
	Stakeholder engagement		●							
	Ex post evaluation		●							
Identifying policy areas where regulation can be made more effective			●							
Systematic improvement of regulatory policy			●							
Co-ordination of regulatory policy			●							
Guidance, advice and support			●							
Scrutiny of legal quality		●	●							

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Netherlands

Overview and recent developments

The Netherlands has a long-standing tradition of regulatory reform, with a strong emphasis on the reduction of burdens for business and citizens. This focus has largely remained in the centre of recent Better Regulation initiatives.

The Integraal Afwegingskader (IAK) combines existing requirements and instructions for *ex ante* impact assessment. While the core focus remains on measuring the costs of a regulation, the IAK has been gradually updated since 2015 by introducing assessments of the impact on innovation, SME's, gender equality and developing countries. Periodic *ex post* evaluation of the effectiveness and efficiency of regulations, mandatory for all primary laws since 2001, now includes an evaluation of regulatory burden and is complemented by reviews of administrative burden and compliance costs in specific sectors.

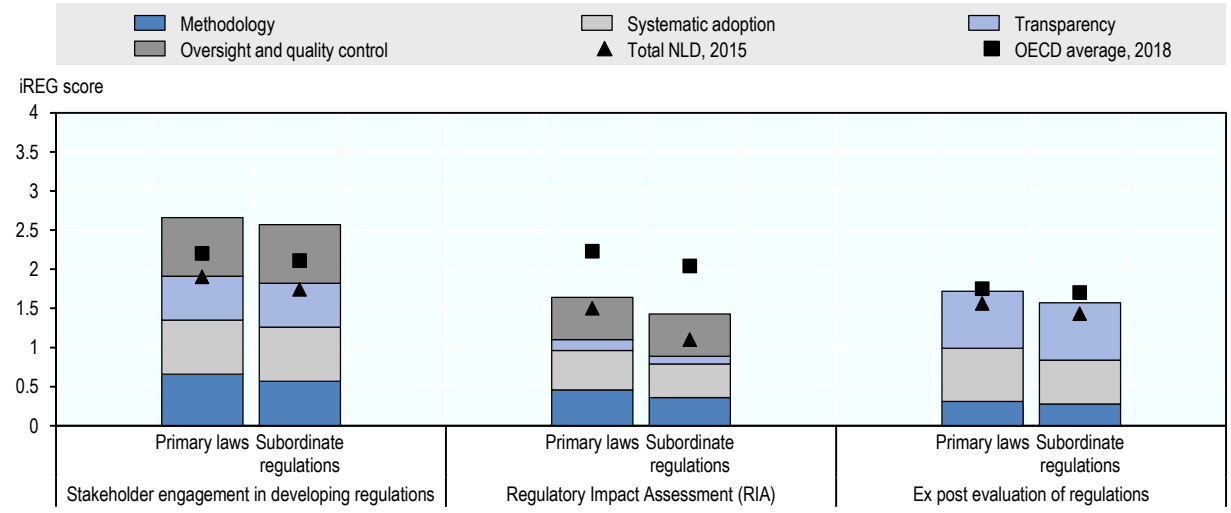
In recent years, the Netherlands placed a strong focus on accessibility and transparency of the regulatory process. For this purpose, a digital calendar has been launched, allowing the public to track the legislative process. Public consultation through the central interactive website has been further promoted and is more frequently used to consult on draft proposals as well as on policy documents informing about the nature of the problem and possible solutions. SME's can provide suggestions in the early stages of the development of a regulation as part of the recently introduced SME-Test.

Informing the public systematically in advance that a consultation is planned to take place could help to receive more input for public consultations. The Dutch RIA framework could be also further strengthened by extending the focus on regulatory burden towards a more systematic assessment of benefits and distributional effects of a regulation.

Institutional setup for regulatory oversight

Within the government, the **Unit for Judicial Affairs and Better Regulation Policy** in the Ministry of Justice and Security is responsible for scrutinizing the overall compliance with the RIA framework. The **Unit for Regulatory Reform and ICT-policy** in the Ministry of Economic Affairs coordinates the program for regulatory burden reduction and provides oversight on the quality of regulatory burden assessments. The **Adviescollege Toetsing Regeldruk (ATR)**, located at arm's length from the government, advices ministries on the quality of the individual burden assessments at the early stage of the development of a proposal and can recommend improving the assessment if it is deemed inadequate. After approval of the Cabinet, the **Council of State** issues a formal opinion on the overall legal quality of a legislative proposal.

Indicators of Regulatory Policy and Governance (iREG): Netherlands, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (98% of all primary laws in the Netherlands).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815946

Location of regulatory oversight functions: Netherlands

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA		●	●		●				
	Stakeholder engagement									
	Ex post evaluation		●							
Identifying policy areas where regulation can be made more effective			●			●				
Systematic improvement of regulatory policy			●	●		●				
Co-ordination of regulatory policy			●	●						
Guidance, advice and support			●	●						
Scrutiny of legal quality				●						●

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

New Zealand

Overview and recent developments

New Zealand has made substantive changes to its regulatory management policy as a result of introducing its regulatory stewardship approach. The expectation of regulatory stewardship applies to all regulatory agencies and involves adopting a whole-of-system, lifecycle view of regulation. It also includes an express expectation of an increased focus on international regulatory cooperation, which may help to reduce regulatory overlap and improve regulatory coherence, including with key partners such as Australia.

A revised Cabinet Manual provides that government agencies can adopt a more flexible approach in stakeholder consultation. It encourages them to develop and maintain close relationships with stakeholders throughout the regulatory policy cycle. It will be important to evaluate the effectiveness and efficiency of the consultation system over time.

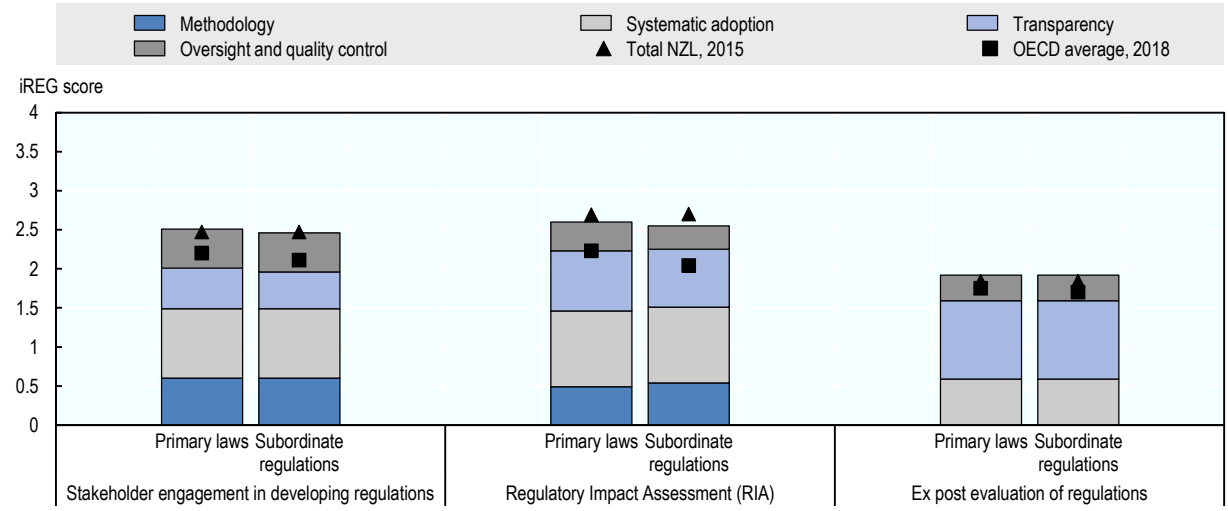
The Government's Expectations for Good Regulatory Practice, include that regulatory agencies will monitor the performance of existing regulatory systems on an ongoing basis so as to determine whether they remain fit-for-purpose. However, in practice, relatively few formal *ex post* evaluations have actually been undertaken.

New gatekeeping processes are designed to strengthen incentives for regulatory agencies to adhere to the RIA process. A requirement for a Supplementary Analysis Report (SAR) is triggered in the event that regulatory proposal is agreed despite having no RIA and no valid exemption, or when the RIA was not quality assured, or was assessed as not meeting the quality assurance criteria. RIA still requires departments to specify how they will monitor and review the changes, preferably in the context of their ongoing monitoring of the wider regulatory system, once they are implemented.

Institutional setup for regulatory oversight

The **Regulatory Quality Team** within the Treasury is responsible for the quality control of regulatory management tools and the systematic improvement of regulation. The **Legislation Design and Advisory Committee** and the **Parliamentary Counsel Office** are both responsible for advice and guidance and scrutinising the legal quality of regulations. The **New Zealand Productivity Commission** is an independent research and advisory body. It has evaluated New Zealand's regulatory policy system including RIA and regulator performance. It has undertaken a number of reviews in specific policy areas or sectors such as housing affordability, the tertiary education sector, and urban planning.

Indicators of Regulatory Policy and Governance (iREG): New Zealand, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (97% of all primary laws in New Zealand).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815984

Location of regulatory oversight functions: New Zealand

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA		●							
	Stakeholder engagement		●							
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective			●			●		●		
Systematic improvement of regulatory policy			●			●				
Co-ordination of regulatory policy			●							
Guidance, advice and support			●			●		●		
Scrutiny of legal quality						●		●		

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Norway

Overview and recent developments

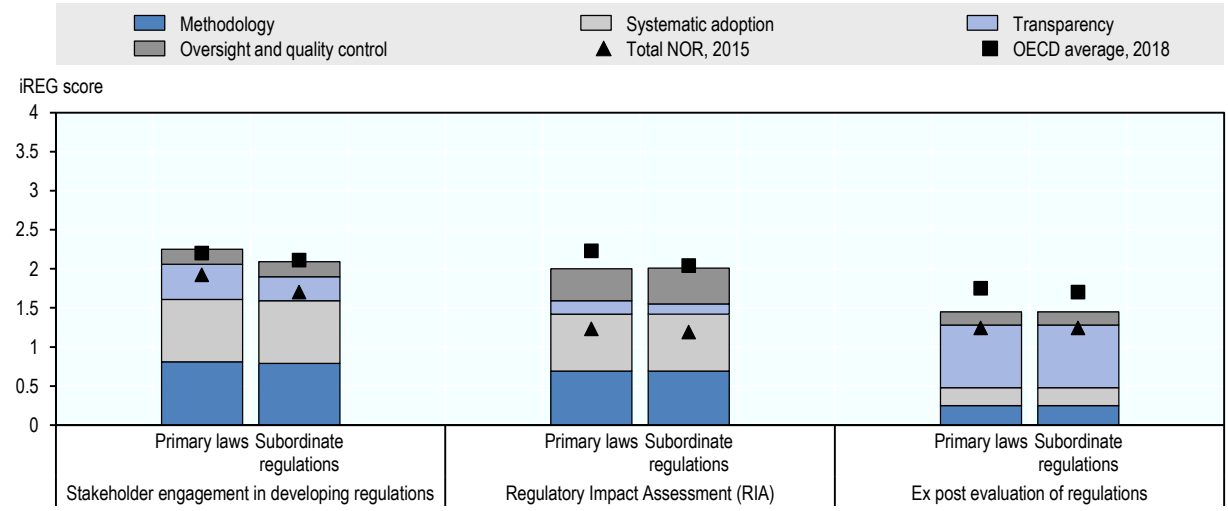
Norway improved its standard procedure for developing regulations by updating the *Instructions for Official Studies and Reports* in 2016. Now under the responsibility of the Ministry of Finance, these Instructions establish whole-of-government procedures regarding the requirements and guidance on preparing regulatory proposals, RIA, stakeholder engagement and *ex post* evaluations. The Instructions establish new thresholds for determining when a simplified versus full analysis is required, as well as requiring the quantification of costs/benefits when the regulation is expected to have a large impact on many people. Transparency could be enhanced by publishing all RIAs online as well as the reasoning behind conducting a simplified analysis, when applicable.

Public consultation is conducted for all draft laws. While the 2016 Instructions calls for more early-stage consultations, data shows that this provision has yet to be fully implemented. The Instructions also encourage better coordination between national and sub-national governments for all laws, and the use of inclusive mechanisms such as videoconferences or social media to ensure inputs from all parties affected. *Ex post* evaluations are not mandatory, but have been carried out for certain regulations in response to requests from parliament, external groups, audit office, or due to legal requirement. Principle-based reviews on competition and administrative burdens have also been conducted in recent years to improve productivity growth and reduce the cost on businesses.

Institutional setup for regulatory oversight

The **Ministry of Finance** is responsible for the *Instructions for Official Studies and Reports*, which sets the requirements and guidance on the preparation of regulatory proposals, RIA, stakeholder engagement and *ex post* evaluation. It also provides guidance and training on these topics. The Ministry of Finance, along with the Ministry of Local Government and Modernisation, may also initiate efforts for improving the effectiveness of regulations. The **Ministry of Justice and Public Security** has the main responsibility for scrutinising the legal quality of regulations under development. A significant reform is the establishment of the **Better Regulation Council (NBRC)**, a body at arm's length from government that reviews selected RIAs and proposals for new or altered regulations that have consequences for businesses. It is overseen by the Ministry of Trade, Industry, and Fisheries and responsible for promoting good regulatory practices and reducing burdens. The NBRC publishes formal opinions on the quality of RIAs using a traffic light system and can make suggestions for revisions. These opinions are posted on their website, as well as that of the Ministry for use in public hearings.

Indicators of Regulatory Policy and Governance (iREG): Norway, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815965

Location of regulatory oversight functions: Norway

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA					●				
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective										
Systematic improvement of regulatory policy			●			●				
Co-ordination of regulatory policy										
Guidance, advice and support			●							
Scrutiny of legal quality				●						

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Poland

Overview and recent developments

Poland has made a number of changes to its regulatory management practices since 2015, based on the new rules of work of the Council of Ministers, which was an activity within the Better Regulation Programme. The rules applying to the Council of Ministers which took effect in 2015 introduced public consultation as a general principle of the regulation making process, as well as requiring a consultation report. In the event that consultation does not take place, ministries are required to provide detailed justifications in Regulatory Impact Assessment (RIA). There has been a significant improvement in stakeholder engagement with the general public via the introduction of a central government website; and the government also maintains an active list of participants who have stated that they wish to be informed about regulatory proposals.

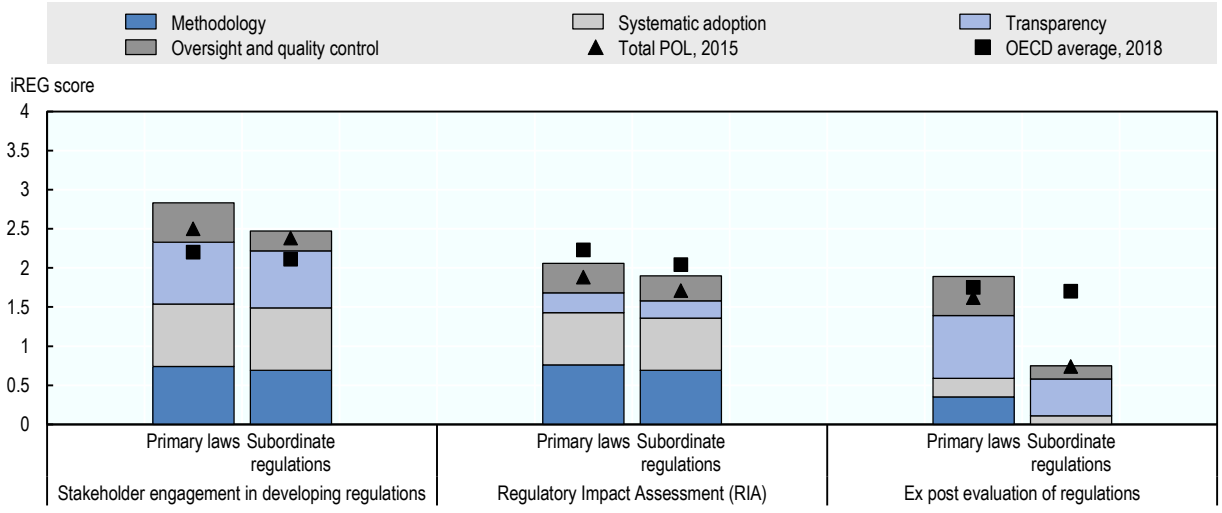
RIAs are required for all laws and regulations. Changes in 2014 have included the development of new guidelines on impact assessment and the dissemination of standardised RIA forms. *Ex post* evaluations can be required at the request of the Council of Ministers or subsidiary bodies, and further actions in the area of systematic regulatory review particularly focused on cutting red tape are planned to commence in 2018. Over time, *ex post* evaluations could be broadened beyond administrative burdens and focus more on the total social, economic, and environmental impacts of regulation.

Regulatory policy requirements for the executive do not apply to laws initiated by parliament, which constituted almost 40% of all laws passed on average between 2014 and 2016. Nevertheless RIAs are expected for all legislative initiatives introduced by the Senate based on standards set by the Council of Ministers.

Institutional setup for regulatory oversight

The **Chancellery of the Prime Minister** is responsible for the central oversight of regulatory management tools in Poland. The Ministry of Economic Development is responsible for the systematic improvement of regulation and the better regulation agenda in Poland. The **Coordinator of RIA and the Government Programming Board** are jointly responsible for providing quality control of stakeholder engagement and RIA, with the Board also being responsible for quality checking *ex post* evaluations. The **Legislative Council** is responsible for providing legal scrutiny on the quality of regulatory proposals. Parliamentary oversight is limited to legal scrutiny and is provided for both laws initiated in the executive and by parliament by the **Legislative Office in the Chancellery of the Senate**, and by both the **Bureau of Research and the Legislative Bureau in the Chancellery of the Sejm**, respectively.

Indicators of Regulatory Policy and Governance (iREG): Poland, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (57% of all primary laws in Poland).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933816003

Location of regulatory oversight functions: Poland

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●	●							
	Stakeholder engagement	●	●							
	Ex post evaluation	●	●							
Identifying policy areas where regulation can be made more effective			●				●			
Systematic improvement of regulatory policy		●	●							
Co-ordination of regulatory policy										
Guidance, advice and support		●	●							
Scrutiny of legal quality		●					●			

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Portugal

Overview and recent developments

In March 2017 through Resolution No. 44, the Council of Ministers took key steps in installing RIA in Portugal. Under its current implementation, the so-called Legislative Impact Analysis requires policy makers to qualitatively describe benefits and to quantify the impact of new regulations on businesses. It also includes an SME Test and a competition impact assessment. The Technical Unit for Legislative Impact Assessment (UTAIL), was established to provide oversight and support for the new RIA. In 2018, ministries will also be required to assess legislative impacts on citizens and as of 2019 impacts on public administration.

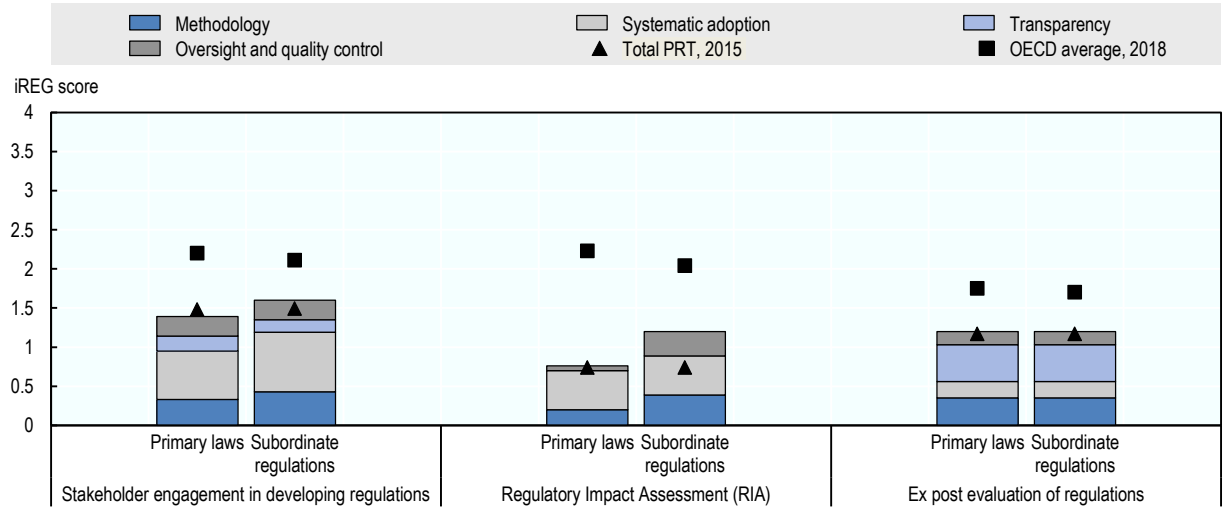
Although the role of RIA has expanded, it is not yet used in consultation with stakeholders. Stakeholders often only have a chance to comment when there is a draft regulation. Portugal could approach stakeholders earlier and before a preferred option is selected. A RIA could also be made available to stakeholders to support discussions.

In 2016, Portugal updated its administrative simplification programme from the Simplex to the Simplex+. The programme centres on the measures that the public service commits to implement within a year to simplify the life of citizens and companies. A team criss-crossed the country over four months to gather feedback, interviewing 2 000 citizens and business and holding special forums within the public sector. A key factor supporting the success of Simplex+ is the thorough follow-up and monitoring. Members of the public can submit suggestions at any time about administrative processes. Portugal could consider introducing "in-depth" reviews in particular sectors or policy areas.

Institutional setup for regulatory oversight

To support the implementation of RIA, the Council of Ministers created the **Technical Unit for Legislative Impact Assessment (UTAIL)** within the Legal Centre of the Presidency of the Council of Ministers (CEJUR). UTAIL acts as a supervising body that supports the implementation of RIA. It develops the impact assessment methodology, gives technical support, provides training to the ministries and other public administrative bodies and produces and reviews reports for each impact assessment analyses. The **Agency for Administrative Modernization (AMA)** is a public institute under indirect government administration. The AMA promotes public administration modernisation, through administrative simplification, namely through the evaluation of administrative burdens of Simplex+ projects; the research and the dissemination of good practices in administrative and regulatory simplification; and contributing to the simplification environment.

Indicators of Regulatory Policy and Governance (iREG): Portugal, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (80% of all primary laws in Portugal).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933816022

Location of regulatory oversight functions: Portugal

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●								
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective						●				
Systematic improvement of regulatory policy		●				●				
Co-ordination of regulatory policy										
Guidance, advice and support		●								
Scrutiny of legal quality										

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Slovak Republic

Overview and recent developments

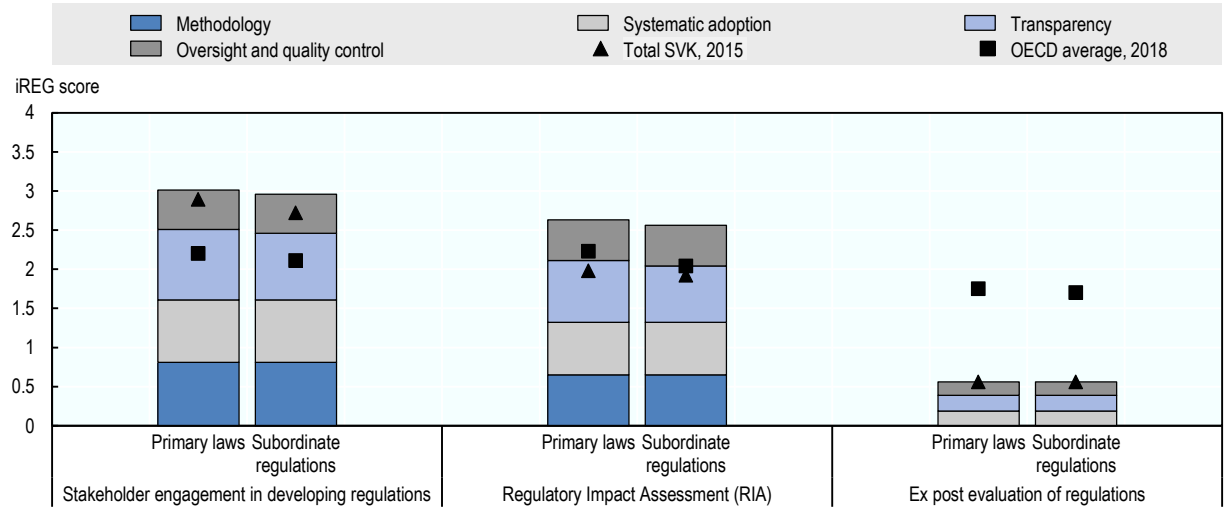
The Slovak Republic has made significant progress in implementing some of the regulatory management tools. The RIA 2020 – Better Regulation Strategy represents a comprehensive approach towards a whole-of-government regulatory policy focusing, among other issues, on improving bot *ex ante* and *ex post* evaluation of regulations. The obligation to conduct regulatory impact assessments according to the "Unified Methodology for the Assessment of Selected Impacts" has been in place since 2008 with reforms introducing strong methodology for assessing economic, social and environmental impacts including an SME Test and impacts on innovation in 2015. Despite these improvements, in many cases Slovak ministries still struggle with the quantification of wider impacts, focusing mainly on budgetary impacts and, to a lesser extent, impacts on business. Procedures for public consultations in the later stage of the regulation-making process are well developed, with automatic publication of all legislative documents on the government portal. The 2015 reforms made early-stage consultations more prominent, especially those with business associations. *Ex post* reviews of existing regulations have so far focused mostly on administrative burdens, however, the RIA 2020 Strategy contains plans for more comprehensive reviews.

Despite improvements caused by creating the Permanent Committee, Slovakia would benefit from further strengthening regulatory oversight, making one body close to the centre of government responsible for evaluating integrated impacts rather than spreading the responsibility across several ministries, through members of one Committee. There is a need to improve policies on *ex post* reviews of regulations. Systemic use of targeted, in-depth reviews would be advisable. The RIA 2020 strategy represents a positive step forward.

Institutional setup for regulatory oversight

The **Permanent Working Committee of the Legislative Council of the Slovak Republic** at the Ministry of Economy established in 2015 is responsible for overseeing the quality of regulatory impact assessments. Several ministries (Ministry of Economy as a co-ordinator, Ministry of Finance, Ministry of Labour and Social Affairs, Ministry of Environment, Ministry of the Interior and Deputy Prime Minister's Office for Investments and Informatization) are represented in the Committee as well as the Government Office, and the Slovak Business Agency. They share competencies for checking the quality of RIAs with each one focusing on their area of competences. The **Legislative Council of the Government** as such is an advisory body focusing on legal quality of government regulations.

Indicators of Regulatory Policy and Governance (iREG): Slovak Republic, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (98% of all primary laws in the Slovak Republic.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933816041

Location of regulatory oversight functions: Slovak Republic

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA		●							
	Stakeholder engagement		●							
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective										
Systematic improvement of regulatory policy			●							
Co-ordination of regulatory policy										
Guidance, advice and support			●							
Scrutiny of legal quality		●								

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Slovenia

Overview and recent developments

Slovenia has adopted a whole-of-government framework for regulatory policy, which is set out in a number of government resolutions and documents, such as the Resolution on Legislative Regulation and the Rules of Procedure of the Government. RIA and stakeholder engagement are compulsory and are almost always conducted in practice for primary laws in Slovenia. Stakeholder engagement is often done for a short period and RIA often includes only a qualitative assessment, although the situation has improved modestly. Slovenia could strengthen oversight of these regulatory policy tools to ensure that they are used effectively.

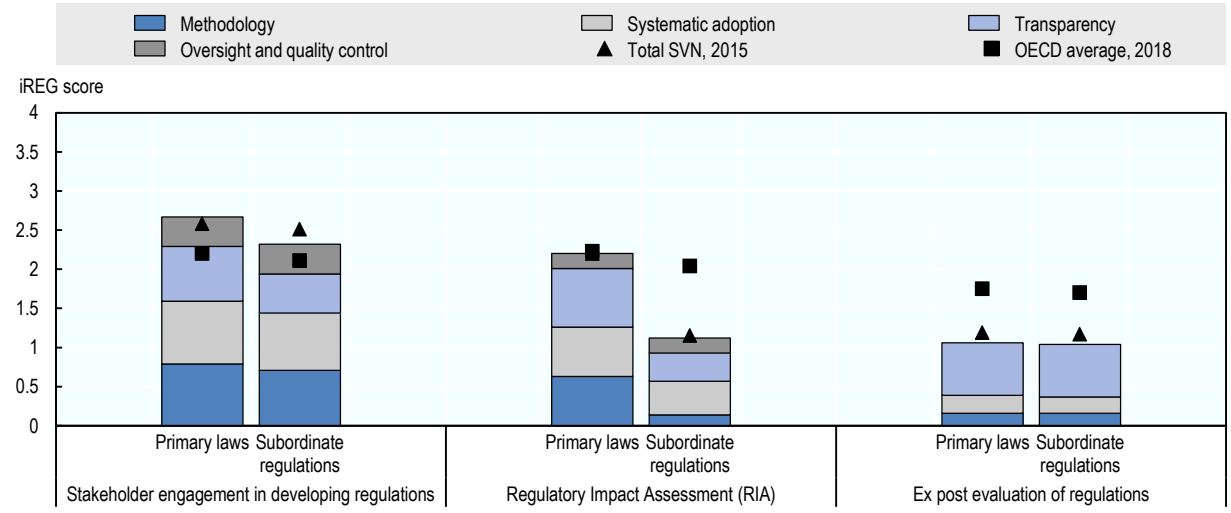
Slovenia was an early adopter of the Standard Cost Model (SCM), and has focused *ex post* evaluation efforts on reducing administrative burdens for businesses ever since. Now, Slovenia has consolidated regulatory reforms through the "Single document" to target particular irritants and has also initiated selected sectoral reforms.

The new Modular Environment for the Preparation of Electronic Documents (MOPED) is currently in the implementation phase. It will simplify the preparation of documents in the legislative process. Within MOPED, all stages of the legislative process will be standardised, forming an integrated legislative cycle. In addition, Slovenia introduced a Small and Medium Enterprise Test (SME Test) to help ministries estimate regulatory costs to businesses.

Institutional setup for regulatory oversight

The **General Secretariat of the Government** is responsible for preparation of the Legislative Work Programme, ensures that government material conforms to the Rules of Procedure of the Government and informs the proposer if something is missing, such as a RIA. The General Secretariat may also require the proposer to submit legislative material to working groups or established government councils, if the working group or council has not yet considered the proposal. Oversight of many regulatory policy tools is primarily within the **Ministry of Public Administration** (MPA), which checks the accuracy of the administrative cost impact. The MPA also draws attention to the barriers still left in the proposal and provides training in regulatory policy. Proposers of regulation engage with the MPA through interministerial consultation. The **Government Office of Legislation** (GoL) examines law proposals by the Government and those acts for which the National Assembly seeks the opinion of the Government. If the GoL gives a negative opinion on a proposal, the ministry must amend it.

Indicators of Regulatory Policy and Governance (iREG): Slovenia, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (93% of all primary laws in Slovenia).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933816060

Location of regulatory oversight functions: Slovenia

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA				●					
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective					●					
Systematic improvement of regulatory policy		●			●					
Co-ordination of regulatory policy		●			●					
Guidance, advice and support					●					
Scrutiny of legal quality		●								

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Spain

Overview and recent developments

Spain is gradually broadening its Better Regulation agenda from an initial focus on administrative simplification to stakeholder engagement and evaluation. A new user-friendly website has been recently set up by the Spanish Government (http://transparencia.gob.es) which includes the annual regulatory planning agenda for primary and subordinate regulations, as well as a centralized platform to provide access to public consultations. Still, stakeholder engagement is not yet undertaken on a systematic basis in Spain.

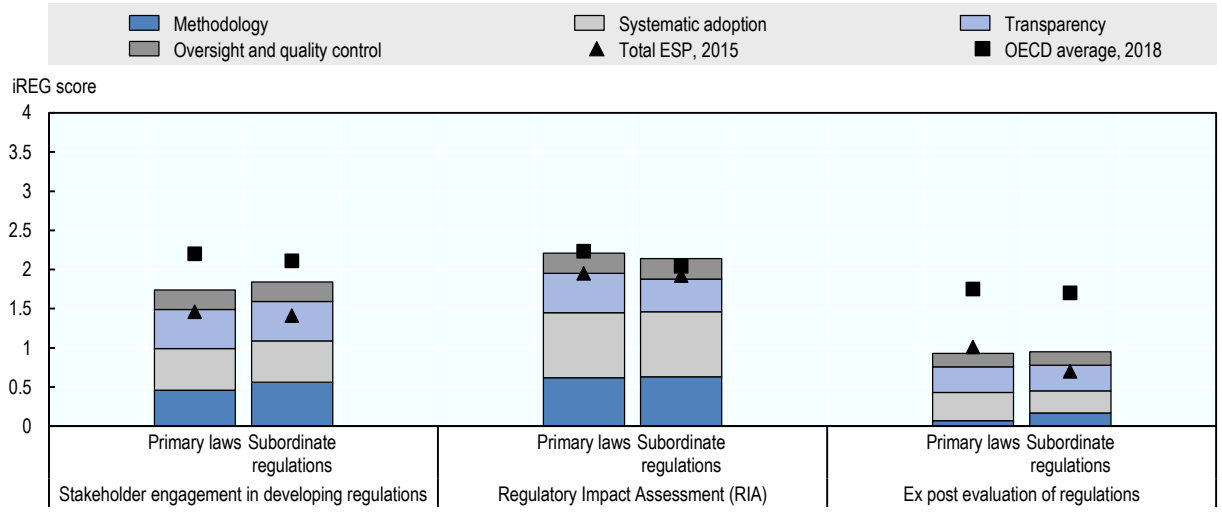
RIAs are required for all regulations in Spain. New evaluation procedures were issued in October 2017, introducing additional requirements to systematically consider impacts of regulatory drafts on competition and on small and medium sized enterprises, as well as new thresholds for the conduct of *ex post* evaluations. A new oversight body, the Office on Regulatory Coordination and Quality was established in 2017 and has begun its activities in 2018.

An update from the 2009 RIA guidelines would provide useful support to regulators, all the more in the conduct of the new RIA procedures. The guidance could be further developed by providing advice on methods of data collection as well as providing clear assessment methodologies. In this regard, Spain would also benefit from developing standard evaluation techniques for *ex post* evaluation since the *ex post* review system is still in its early stages and not yet implemented systematically.

Institutional setup for regulatory oversight

The **Office on Regulatory Coordination and Quality** within the Ministry of the Presidency, Relations with the Parliament and Equality is specifically mandated to oversee the implementation of Better Regulation requirements, namely by examining the content of RIAs and *ex post* evaluations. The **Ministry of Territorial Policy and Public Service** is responsible for promotion and follow-up of simplification of administrative burdens and public consultation and participation. Together with the **Ministry of Economy and Enterprise** it scrutinizes the quality of different aspects of RIAs. These oversight functions were taken over from the Ministry of Finance and Public Service in the recent change of Government in 2018. The **Council of State** is responsible for assessing the legality of regulations and the process they were developed with, efficiency of the administration in achieving its goals and scrutinising the legal quality of subordinate regulations or primary laws initiated by the executive.

Indicators of Regulatory Policy and Governance (iREG): Spain, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (93% of all primary laws in Spain).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815604

Location of regulatory oversight functions: Spain

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●	●			●				
	Stakeholder engagement	●				●				
	Ex post evaluation	●								
Identifying policy areas where regulation can be made more effective					●					
Systematic improvement of regulatory policy			●			●				
Co-ordination of regulatory policy			●							
Guidance, advice and support			●							
Scrutiny of legal quality		●				●				

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Sweden

Overview and recent developments

Simplification remains a cornerstone of Sweden's regulatory policy. In the 2017 budget, simplification efforts focus on two areas: "Better service" and "More fit-for-purpose regulations". The government will monitor "Better Service" efforts against how much easier and faster it becomes to submit information and receive a response. For the area "More fit-for-purpose regulations", the objective is for regulation to promote economic growth and to reduce regulatory compliance costs for businesses.

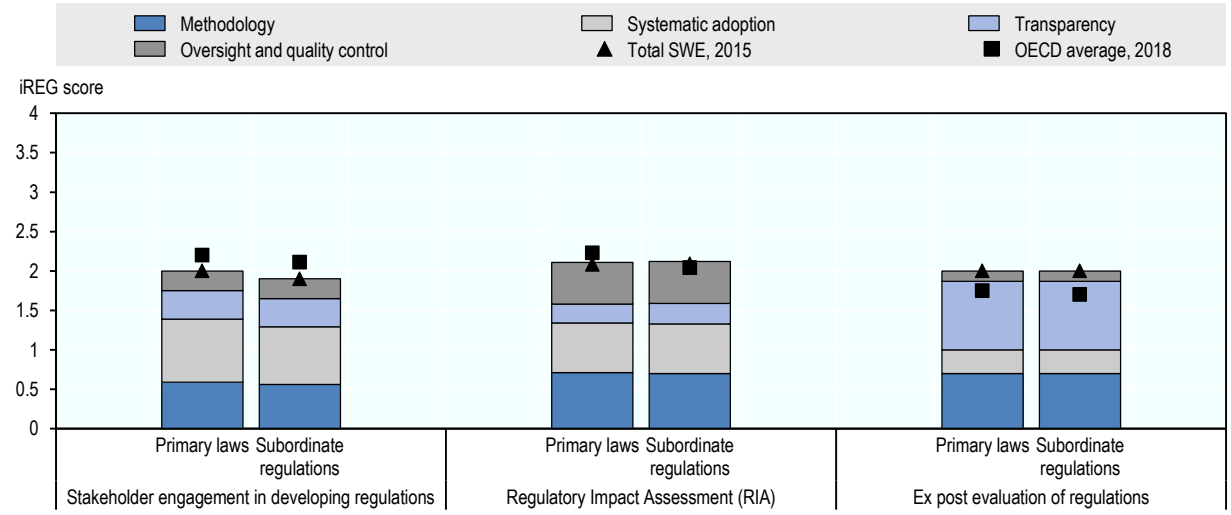
Ex ante evaluation is required for all primary laws and subordinate regulations by the 2007 Ordinance on Impact Analysis of Regulation. *Ex post* evaluation is normally conducted *ad hoc* by a ministry, government agency, or by a committee of inquiry. Individuals or interest groups can also make suggestions to conduct *ex post* evaluations by sending proposals directly to the responsible ministry or government agency. Sweden could consider expanding *ex post* evaluation through carrying out comprehensive in-depth reviews in particular sectors or policy areas.

Stakeholder engagement is deeply engrained into the law-making process in Sweden. One of the four fundamental laws of the Swedish Constitution requires the government to engage with stakeholders when formulating government instruments. When a committee of inquiry is appointed to investigate an issue, it normally includes a mix of policy makers, experts, and politicians, enabling consultation early in the process. The committee analyses and evaluates the proposal. The final report is sent to relevant stakeholders for consideration, before the joint draft procedure continues within the Government Offices. Ministries usually create a new webpage for each consultation. Sweden could introduce a central government portal to make it easier for stakeholders to find and participate in consultations as early in the process as possible.

Institutional setup for regulatory oversight

The **Swedish Better Regulation Council** was established in 2008, formally as an independent committee of inquiry appointed by the Government and since 2015 as a permanent structure. Its secretariat is located within the Swedish Agency for Economic and Regional Growth. The **Swedish Agency for Economic and Regional Growth** is responsible for methodological development, guidance and training in regulatory policy tools. The SAERG also develops and proposes simplifications measures, participates in international activities aimed at simplifying regulation for businesses, and promotes awareness among other government agencies of how businesses are affected by enforcement of regulation. An opinion from the **Legislative Council** in Sweden should normally be obtained before the parliament decides to adopt a law.

Indicators of Regulatory Policy and Governance (iREG): Sweden, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933816079

Location of regulatory oversight functions: Sweden

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA					●				
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective					●	●				
Systematic improvement of regulatory policy					●	●				
Co-ordination of regulatory policy										
Guidance, advice and support						●				
Scrutiny of legal quality										●

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Switzerland

Overview and recent developments

Switzerland did not undertake any major reforms of its regulatory policy framework since 2015. RIA has to be conducted for all regulations in Switzerland. While most RIAs are simple RIAs that focus on qualitative analysis, in-depth RIAs that contain more thorough analysis and quantify impacts are conducted only for a few economically significant regulations. The Swiss Federal Audit Office reviewed the quality of the Swiss RIA framework in 2016. It found that available RIA tools are underused and that close to 30% of RIAs examined were of insufficient quality. The report recommends to further improve RIA quality by enhancing quality control mechanisms.

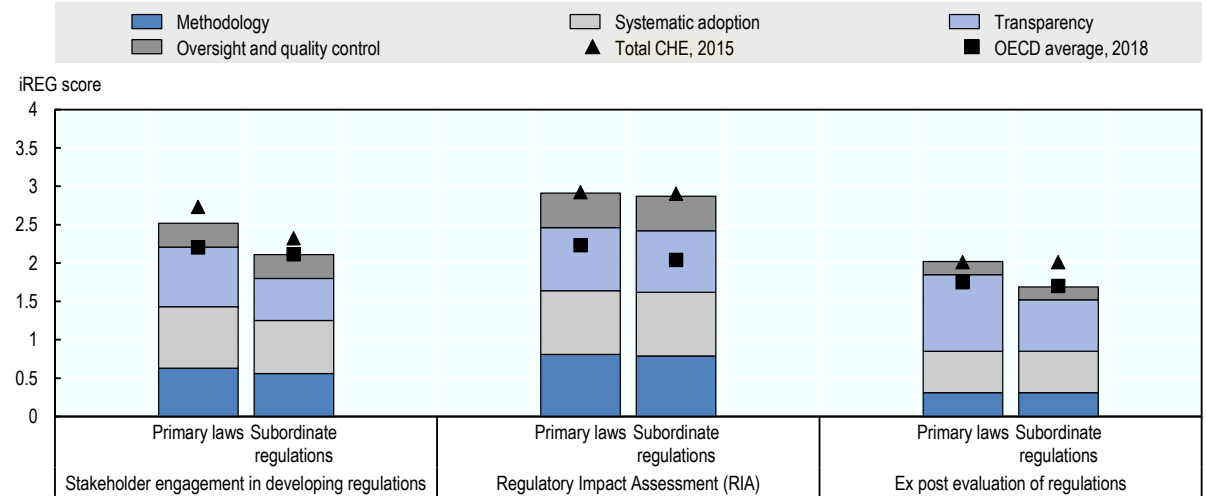
Stakeholders can comment on all draft primary laws and major subordinate regulations in public online consultations, which last at least 12 weeks. Early-stage stakeholder engagement on the nature of the problem and possible solutions is carried out for most regulations but is not open to the general public. Switzerland could benefit from establishing a more systematic approach to public early-stage consultations.

While a requirement for policy evaluation is enshrined in the Swiss Constitution, *ex post* evaluation of regulations is mandatory only for some regulations, and there are no standardised evaluation techniques to be used when conducting evaluations.

Institutional setup for regulatory oversight

The **State Secretariat for Economic Affairs (SECO)** issues guidelines for conducting RIA and reviews selected RIAs to provide non-public opinions on their quality. SECO also publishes reports on the level of regulatory costs and results from business perception surveys of administrative burden. The **Federal Office of Justice** and the Federal Chancellery's **Legal and Central Language Services** are responsible for scrutinising the legal quality of draft regulation and provide advice on stakeholder engagement. The Federal Office of Justice provides guidelines for legislative drafting and stakeholder engagement processes as well as for *ex post* evaluation. It also manages the Federal Administration Evaluation Network, which provides a forum for exchange on evaluation inside the federal government. The extra-parliamentary commission of experts **"SME Forum"**, consisting mostly of entrepreneurs, operates at arm's length from government. It scrutinises the measurement of regulatory costs and impacts on SMEs in selected RIAs and makes recommendations for improving the regulatory framework for SMEs.

Indicators of Regulatory Policy and Governance (iREG): Switzerland, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement for primary laws only cover those initiated by the executive (82% of all primary laws in Switzerland).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815471

Location of regulatory oversight functions: Switzerland

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA		●			●				
	Stakeholder engagement	●		●						
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective			●			●				
Systematic improvement of regulatory policy			●	●					●	
Co-ordination of regulatory policy				●						
Guidance, advice and support		●	●	●						
Scrutiny of legal quality		●		●						

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Turkey

Overview and recent developments

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.

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, Regulatory Impact Assessment (RIA) could be more formally required when developing subordinate regulations. Currently RIA only applies to subordinate regulations if the Prime Minister's Office requires it to be undertaken.

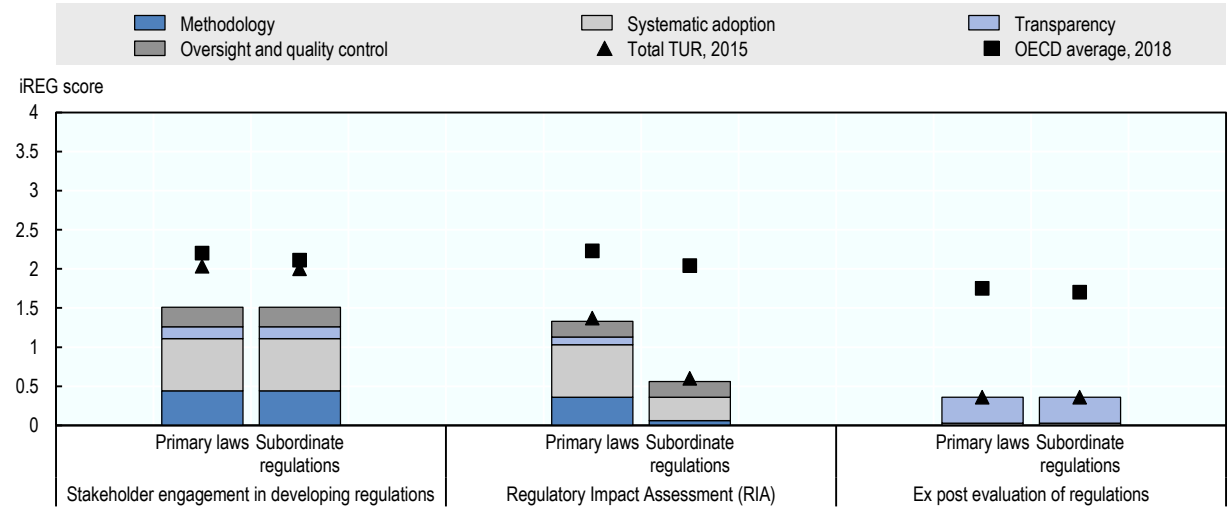
There is no evidence of consultation open to the general public in Turkey over the last few years. Stakeholder engagement could be improved by instituting a systematic approach to consultation on new regulatory proposals, as well as through the creation of early warning documents which inform the public of upcoming consultations.

The review of existing regulations is not a formal part of Turkey's regulatory management practices. There are ad hoc opportunities for regulators to receive complaints from affected parties, although it is up to the individual ministry to determine whether anything further will be done with them. The practice of *ex post* evaluation should be systemised to inform new policy design as well as assess the progress of existing regulations.

Institutional setup for regulatory oversight

The **General Directorate for Laws and Decrees** is the central oversight body in Turkey. Its core responsibility is the oversight and quality control of regulatory management tools, specifically relating to Regulatory Impact Assessment. However, its quality control assessment does not include a gatekeeper function. It is additionally responsible for advocacy of better regulation across government, and for providing coordination on regulatory policy as well as guidance and training in the use of regulatory management tools. Further, it is responsible for the scrutiny of the legal quality of regulations in Turkey.

Indicators of Regulatory Policy and Governance (iREG): Turkey, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (74% of all primary laws in Turkey).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933816098

Location of regulatory oversight functions: Turkey

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●								
	Stakeholder engagement									
	Ex post evaluation									
Identifying policy areas where regulation can be made more effective										
Systematic improvement of regulatory policy		●								
Co-ordination of regulatory policy		●								
Guidance, advice and support		●								
Scrutiny of legal quality		●								

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

United Kingdom

Overview and recent development

The United Kingdom continues to invest in its regulatory policy system, with a particular focus on business. UK government departments regularly conduct post implementation reviews, in particular for all measures with an impact on business following the introduction of the Small Business, Enterprise and Employment Act in 2015. The government also established over the last years the Business Impact Target programme and the Cutting Red Tape reviews programme to reduce regulatory costs for business.

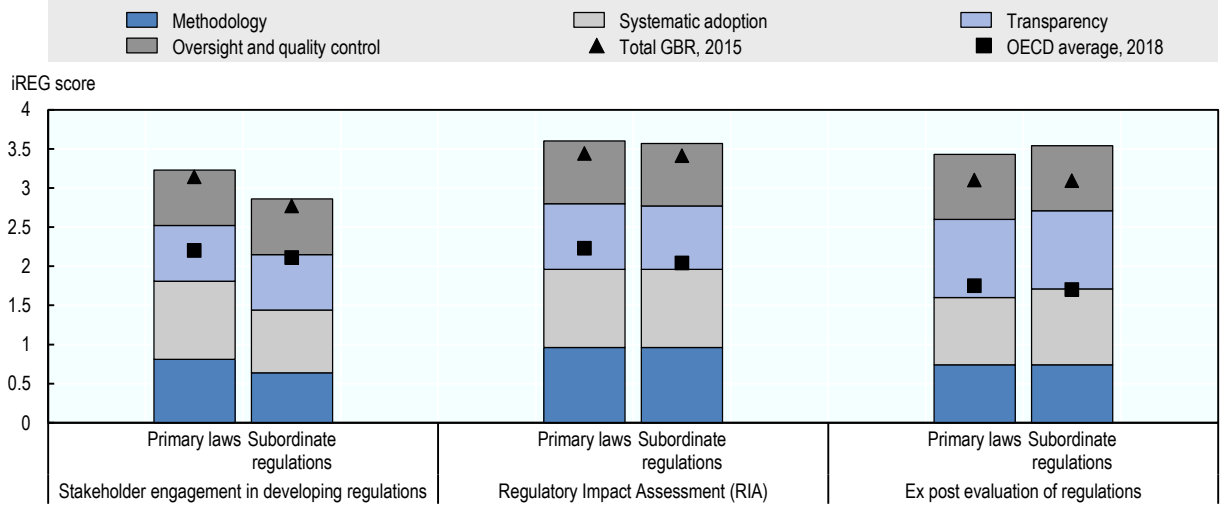
Consultations are conducted for all regulations in the United Kingdom. To provide for a more proportionate and targeted approach, the Cabinet Office published a revised set of consultation principles. With the "dialogue app" an innovative form of stakeholder engagement on modern employment practices has been introduced. To enhance the accessibility of these consultations, minimum consultation period with the general public could be considered. In an effort to identify innovation-friendly regulatory approaches, the government's Medicines and Healthcare Products Regulatory Agency's Innovation Office provides a single point of access to free regulatory advice for organizations wishing to introduce new products and the Financial Conduct Authority's Regulatory Sandbox allows firms to undertake live testing of innovative products or services.

The United Kingdom continues to place emphasis on evidence-based policy making. A preliminary and final stage RIA that takes into account stakeholder comments are carried out for all regulations except for deregulatory and low-cost measures, which are eligible for a fast track procedure. Recently, initial review notices have been introduced to alert regulators at an early stage if there are concerns with the quality of the RIA to allow for enough time for improvement. The United Kingdom may benefit from extending the focus of its current regulatory policy agenda on business on other elements important for inclusive growth.

Institutional setup for regulatory oversight

The **Regulatory Policy Committee** (RPC) is a non-departmental advisory body responsible for providing the government with external, independent scrutiny of evidence and analysis supporting new regulatory proposals in RIAs. It also has a role to scrutinise the quality of *ex post* evaluations of legislation. The **Better Regulation Executive** located within the Department for Business, Energy & Industrial Strategy is responsible for better regulation policy and is the lead unit in the UK government for promoting and delivering changes to the regulatory policy framework. The **National Audit Office** reports on the effectiveness of the regulatory policy framework as a whole by conducting value-for-money studies. Parliamentary bodies scrutinise draft laws for legal quality and identify areas of policy where regulation can be made more effective.

Indicators of Regulatory Policy and Governance (iREG): United Kingdom, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (71% of all primary laws in the UK).
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933815699

Location of regulatory oversight functions: United Kingdom

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA					●				
	Stakeholder engagement									
	Ex post evaluation					●				
Identifying policy areas where regulation can be made more effective					●	●				
Systematic improvement of regulatory policy					●	●			●	
Co-ordination of regulatory policy					●					
Guidance, advice and support		●			●	●				
Scrutiny of legal quality		●				●	●			

Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

United States

Overview and recent developments

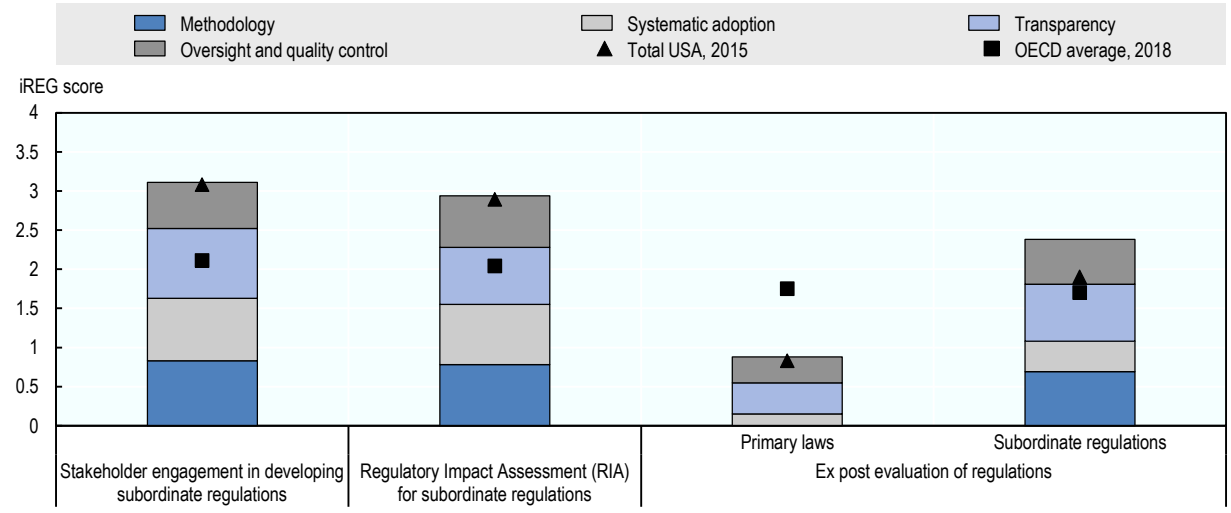
The Administrative Procedure Act governs the rulemaking process in the U.S., requiring agencies to provide public notice and seek comment when proposing new regulations or revising or repealing existing ones. Agencies must consider the comments and in the final rule explain how they addressed significant issues raised by commenters. A final rule is subject to judicial review to ensure it conforms with legal requirements, including those concerning notice and comment. The evaluation of regulatory costs and benefits is well developed in the U.S. RIAs are required for all significant regulatory proposals, and full RIAs are required for proposals with annual impacts over USD 100 million. *Ex post* evaluation of subordinate regulations is mandatory since 2011. A stock-flow linkage rule introduced in 2017 requires agencies to issue two deregulatory actions for every regulatory action, in a way that the total cost of regulations does not exceed the agency's Fiscal Year Cost Allowance, as approved by the Office of Management and Budget. The Office of Information and Regulatory Affairs (OIRA) located within the Executive Office of the President provides oversight and guidance on the implementation of *ex post* evaluations and the stock-flow linkage rule. The U.S. could benefit from strengthening the link between *ex ante* and *ex post* evaluation, for example by requiring regulators to identify a process for assessing progress in achieving a regulation's goals as part of RIA or by mandating a post-implementation review for regulations exempted from RIA.

As the executive does not initiate primary laws in the United States, only the scores for subordinate regulations are displayed for stakeholder engagement and RIA. There is no mandatory requirement for consultation with the general public, RIAs, or *ex post* evaluation for primary laws initiated by Congress.

Institutional setup for regulatory oversight

OIRA is the central regulatory oversight body of the United States. It scrutinises the quality of significant regulations, RIAs and *ex post* evaluations and can return draft regulations to agencies for reconsideration if their quality is deemed inadequate. OIRA does not currently review rules issued by independent agencies. OIRA also co-ordinates the application of regulatory management tools across the government, reports to Congress on their impacts, provides guidance and training on their use and identifies areas where regulation can be made more effective. **The US Government Accountability Office (GAO)** works for Congress and investigates how the federal government spends taxpayer dollars. It also conducts ad hoc reviews of regulatory programmes and the use of regulatory management tools.

Indicators of Regulatory Policy and Governance (iREG): United States, 2018



Notes: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators 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.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

StatLink https://doi.org/10.1787/888933816117

Location of regulatory oversight functions: United States

Regulatory oversight functions		Centre of government	Ministry of Finance, Economy or Treasury	Ministry of Justice	Other ministries	Non-departmental body	Parliament	Office of the Attorney General	Supreme audit institution	Part of the judiciary
Quality control of…	RIA	●								
	Stakeholder engagement	●								
	Ex post evaluation	●								
Identifying policy areas where regulation can be made more effective		●								
Systematic improvement of regulatory policy		●								
Co-ordination of regulatory policy		●								
Guidance, advice and support		●								
Scrutiny of legal quality		●								

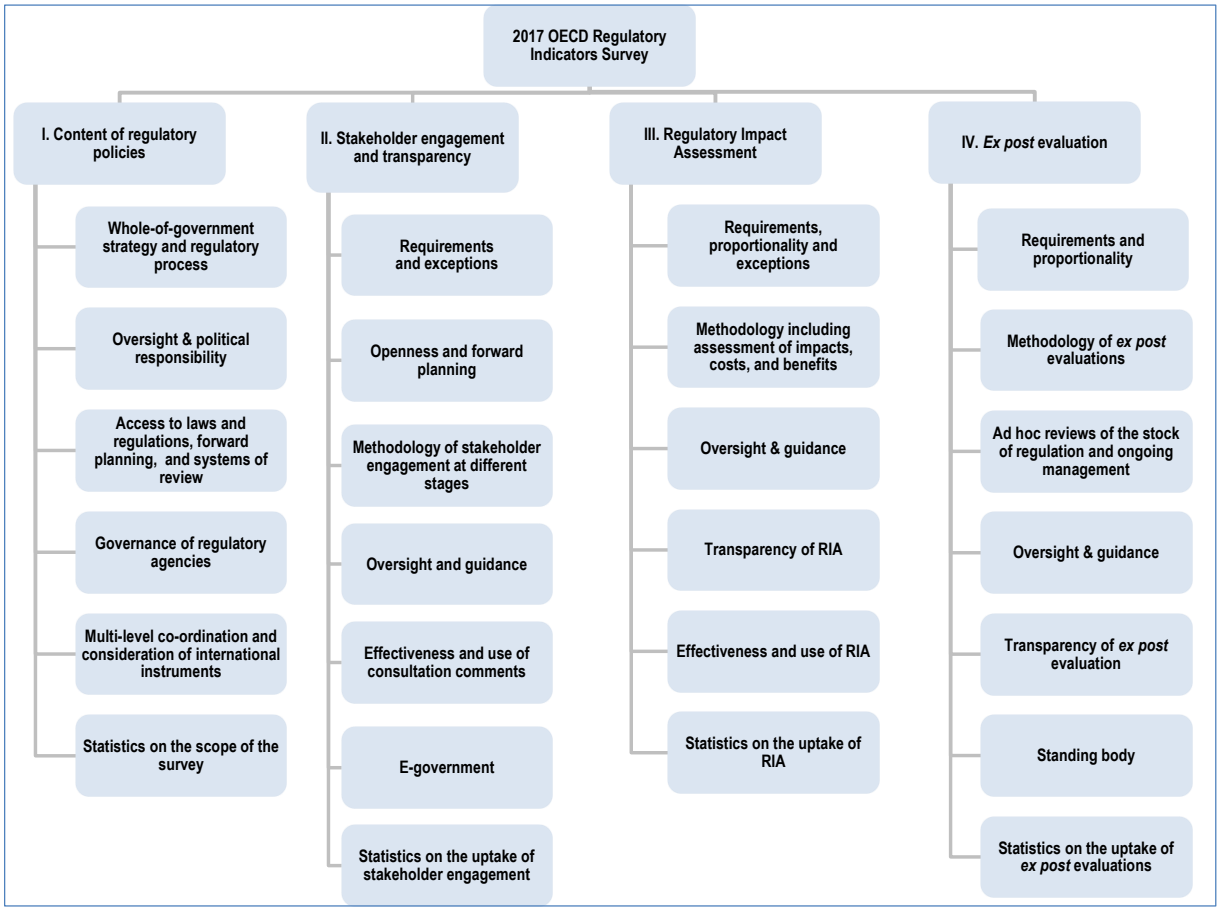
Notes: ● indicates that a given regulatory oversight function is covered by at least one body in a particular location. Data present the situation as of 31 December 2017 and do not reflect changes that may have taken place in 2018.
Source: Survey questions on regulatory oversight bodies, Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

Annex A. The 2017 OECD Regulatory Indicators Survey and the composite indicators

The 2017 Regulatory Indicators Survey

The 2017 Regulatory Indicators Survey is structured around the areas of good practices described in the 2012 Recommendation (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 A.1).

Figure A.1. Structure of the 2017 OECD Regulatory Indicators Survey



This is the second edition of the Regulatory Indicators survey, following a first edition in 2014. The Regulatory Indicators Surveys 2014 and 2017 follow up on previous Regulatory Management Surveys carried out in 1998, 2005, and 2008/09. Compared to

the Regulatory Management Surveys, the Regulatory Indicators Survey puts a stronger focus on evidence and examples to support country responses, as well as on insights into how different countries approach similar regulatory policy requirements. They are based on an ambitious and forward-looking regulatory policy agenda and designed to track progress in regulatory policy over time. The surveys capture 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, they gather evidence on the implementation of these formal requirements and the uptake of regulatory management practices. The surveys mostly focus on the processes of developing regulations that are carried out by the executive branch of the national government.

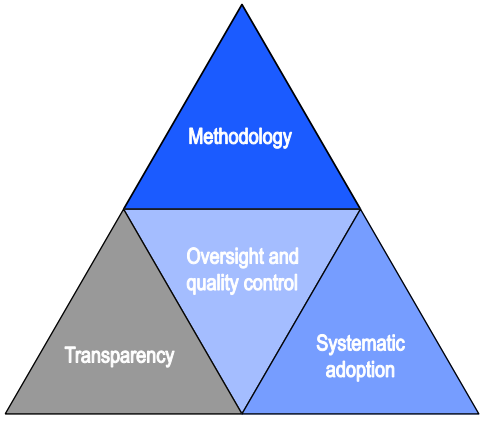
The information collected through the 2017 Regulatory Indicators survey is valid as of 31 December 2017. It is envisaged that the survey be updated every three years. Additional questions may be added in the future to expand the scope of the survey. Information from the 2017 survey is analysed against time-series data from the 2014 survey.

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 A.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.

Figure A.2. Structure of composite indicators



Each category is composed of several equally weighted sub-categories built around specific questions in the 2017 OECD Regulatory Indicators Survey. The separate sub-categories are listed in Table A.1).

Table A.1. Overview of categories and sub-categories of composite indicators

	Stakeholder engagement	Regulatory impact assessment	*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[1]	• 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

	Stakeholder engagement	Regulatory impact assessment	*Ex post* analysis
			• Proportionality
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
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

1. Following advice from the OECD Steering Group on Measuring Regulatory Performance, the sub-categories "Use of interactive websites during early stages of developing regulations" and "Use of interactive websites during later stages of developing regulations" used in 2014 were merged for the 2018 edition of the composite indicators. Scores for the 2014 composite indicators were adjusted accordingly to ensure over-time comparability.

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, has been made available publicly on the OECD website (http://oe.cd/ireg).

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.

Administrative simplification: Administrative simplification is a tool used to review and simplify the stock of administrative regulations. The main goal of activities focusing on administrative simplification is to remove unnecessary costs imposed on regulated subjects by government regulations that can hamper the economic competition and innovation.

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.

Arm's length body: Arm's length is taken to mean the body is not subject to the direction on individual decisions by executive government, but could be supported by officials who are located within a ministry or have its own staff. They are defined by exception, excluding all traditional, vertically integrated ministries.

Broad circulation for comment: Consultation materials, and request for comments, are sent to a selected group of stakeholders, rather than being openly advertised to the general public.

Centre of government: Centre of government refers to the administrative structure that serves the executive (President or Prime minister, and the Cabinet collectively). The centre of government has a great variety of names across countries, such as General Secretariat, Cabinet Office, Chancellery, Office/Ministry of the Presidency, Council of Ministers Office, etc.

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*.

Document of legislative intent: The documents that contain the information considered by the legislature prior to reaching its decision to enact a law; for example memoranda from government agencies and legislators, and comments or reports from legislative committees, commissions, legal associations, and lobbying groups.

Ex post evaluation: *Ex post* evaluation refers to the process of assessing the effectiveness of policies and regulations once they are in force. It can be the final stage when new policies or regulations have been introduced and it is intended to know the extent of which they met the goals they served for. It can also be the initial point to understand a particular situation as a result of a policy or regulation in place, providing elements to discuss the shortcomings and advantages of its existence. Ex post evaluation should not be confused with monitoring, which refers to the continuous assessment of implementation in relation to an agreed schedule.

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.

Formal consultation with selected groups: Exchanges with selected interested parties where the proceedings are formally recorded.

Government administration and enforcement costs: Costs incurred by government in administering and enforcing the regulatory requirements.

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.

High-level official: A high-level official is a senior public official in the ministry. For example Permanent Secretary, Departmental Secretary, State Secretary, Secretary-General, Deputy Minister, etc.

Indirect costs: Indirect costs are incidental to the main purpose of the regulations and often affect third parties. They are likely to arise as a result of behavioural changes prompted by the first round impacts of the regulations. Dynamic costs – i.e. costs caused by negative changes in market conditions over time – may be included in this category. Indirect costs are also called "second round" costs.

Informal consultation with selected groups: *Ad hoc* meetings with selected interested parties, held at the discretion of regulators.

International Instruments: For the purpose of this survey, international instruments cover legally binding requirements that are meant to be directly binding on member states and non-legally binding instruments (including technical standards) that may be given binding value through transposition in domestic legislation or recognition in international legal instruments. This broad notion therefore covers e.g. treaties, legally binding decisions, non-legally binding recommendations, model treaties or laws, declarations and voluntary international standards.

International Regulatory Co-operation (IRC): Based on OECD (2013), *International regulatory Co-operation: Addressing Global Challenges*, IRC is defined as any agreement, formal or informal, between countries to promote some form of cooperation in the design, monitoring, enforcement, or ex-post management of regulation.

Legal quality: For the purpose of the 2017 Indicators of Regulatory Policy and Governance survey, the legal quality of a regulation is determined by its constitutionality, the coherence with the existing body of law and international obligations and the use of plain language drafting. Legal quality is a key element of regulatory quality more broadly, as it provides business and citizens with certainty and clarity as to the rules they have to abide by.

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.

Minister: The most senior political role within a portfolio. In Westminster system governments, these are typically styled "ministers", but the title varies.

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". This category further distinguishes between primary laws initiated by parliament and those initiated by the executive.

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. A RIA 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 (OECD, 2012, p. 25).

Regulatory management tools: The term "regulatory management tools" comprises different tools available to implement regulatory policy and foster regulatory quality. In particular, the 2017 Indicators of Regulatory Policy and Governance survey focuses on quality control of three regulatory management tools in particular: Regulatory Impact Assessment (RIA), stakeholder engagement, and *ex post* evaluation.

Regulatory policy: The set of rules, procedures and institutions introduced by government for the express purpose of developing, administering and reviewing regulation.

Regulatory quality: 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. The notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient, coherent and simple.

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.

Sanctioning function: Sanctioning function refers to the oversight body's authority to prevent a regulation from proceeding to the next stage/an *ex post* evaluation from being finalised if quality standards have not been met. Sanctioning function is also referred to as gatekeeper function.

Stakeholder engagement: Stakeholder engagement refers to the process by which the government informs all interested parties of proposed changes in regulation and receives feedback.

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. Examples include regulations, rules, orders, decrees, etc. 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.

Virtual public meeting: A meeting where members of the general public can attend and make comments via internet or phone.

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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